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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 217

[Docket No. 260123-0032]

RIN 0648-BN38

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Sea Ice Road and Trail Construction, Use, and Maintenance Activities along the Beaufort Sea Coast in Alaska

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS has received a request from Hilcorp Alaska, LLC (Hilcorp) for promulgation of incidental take regulations (ITR) and issuance of an associated Letter of Authorization (LOA) that would authorize continued take of marine mammals over 5 years (2026-2031) incidental to the construction, maintenance and use of sea ice roads, trails and adjacent ice pads after the expiration of the existing ITR and LOA. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is proposing regulations setting forth permissible methods of taking, other means of effecting the least practicable adverse impact on such marine mammal stocks (*i.e.*, mitigation measures), and requirements pertaining to monitoring and reporting takes and requests comments on the proposed rule. NMFS will consider public comments prior to making any final decision on the promulgation of the requested ITR and issuance of the LOA; agency responses to public comments will be summarized in the final rule, if promulgated.

DATES: Comments and information must be received no later than [*insert date 30 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: A plain language summary of this proposed rule is available at: *https://www.regulations.gov/docket/NOAA-NMFS-2026-0265*.

Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA-NMFS-2026-0265 in the Search box (note: copying and pasting the FDMS Docket Number directly from this document may not yield search results). Click on the "Comment" icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing at: *https://www.regulations.gov* without change. All personal identifying information (*e.g.*, name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Robert Pauline, Office of Protected Resources, NMFS, (301) 427-8401.

Purpose of Regulatory Action

This proposed rule, if promulgated, would establish a framework under the authority of the MMPA (16 U.S.C. 1361 *et seq*.) to authorize, for a 5-year period (2026-2031), take of marine mammals incidental to Hilcorp's annual ice roads, trails, and pads construction, use, and maintenance activities along the Beaufort Sea coast in Alaska. NMFS received an application from Hilcorp requesting the 5-year ITR and LOA to take a single stock of marine mammal (Arctic stock of ringed seals). Take would occur by Level B harassment incidental to ice roads, trails and pads construction, use, and maintenance activities. A limited number of takes by serious injury and mortality (M/SI) is also proposed to be

authorized due to the potential for such takes from ice roads, trails, and pads construction, use, and maintenance activities.

Legal Authority for the Proposed Action

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1371(a)(5)(A)) directs 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, regulations are promulgated, and public notice and an opportunity for public comment are provided.

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). If such findings are made, NMFS must prescribe the permissible methods of taking and other "means of effecting the least practicable adverse impact" on (1) the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and (2) the availability of the species or stocks for taking for certain subsistence uses (referred to as "mitigation") and requirements pertaining to the monitoring and reporting of the takings. The definitions of all applicable MMPA statutory terms used above are included in the relevant sections below.

Section 101(a)(5)(A) of the MMPA and the implementing regulations at 50 CFR part 216, subpart I provide the legal basis for proposing and, if appropriate, promulgating 5-year regulations and for issuance of any subsequent associated LOA. This rule would also establish required mitigation, monitoring, and reporting requirements for Hilcorp's activities.

Summary of Major Provisions within the Proposed Rule

The major provisions of this proposed rule are as follows:

- The proposed authorization of take of a single marine mammal stock by Level B harassment;
- The proposed authorization of a limited number of takes of a single marine mammal stock by serious injury and mortality;
- Monitoring of the construction areas to detect the presence of marine mammals before beginning construction activities;
- Any proposed new or workaround ice trail routes will avoid suspected seal structures by 150 m after March 1;
- Required wildlife training for all project personnel; and
- Submission of annual and final marine mammal monitoring reports.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq*.) and NOAA Administrative Order (NAO) 216-6A, NMFS must review its proposed action (*i.e.*, promulgation of regulations and subsequent issuance of a LOA thereunder) with respect to potential impacts on the human environment.

Accordingly, in 2020 NMFS prepared an Environmental Assessment (EA) that considered environmental impacts associated with the issuance of an ITR and LOAs for the same activities, including the construction, maintenance, and operation of ice roads, trails, and pads. That ITR and those LOAs expire on November 30, 2025 (85 FR 83451, December 22, 2020). NMFS developed a Supplemental Information Report (SIR) to assist in determining whether a supplemental NEPA document is necessary (Companion Manual for NOAA Administrative Order 216-6A, 2025). After reviewing the SIR, NMFS has preliminarily determined that the proposed action falls within the scope of the 2020 EA. NMFS will consider all comments submitted in response to this notice prior to concluding the NEPA process associated with the proposed ITR and LOA request.

Summary of Request

On December 22, 2020, NMFS promulgated regulations and issued LOAs to Hilcorp and Eni US Operating Co. Inc. (Eni) for the take of the Arctic stock of ringed seal incidental to ice roads, trails, and pads construction, maintenance, and use activities on the Beaufort Sea coast (85 FR 83451). The current regulations and LOAs are effective through November 20, 2025.

On November 1, 2024, Hilcorp became the owner and operator of the Nikaitchuq Unit and Oooguruk Unit (*i.e.*, Western North Slope (WNS), which includes Spy Island Drillsite (SID) and Oooguruk Drillsite (ODS)), previously owned and operated by Eni. NMFS issued a revised LOA to Hilcorp on November 6, 2024, following its acquisition of Eni (89 FR 88014). With the exception of changing the LOA holder's name, no other changes were made to the revised LOA. Hilcorp and Eni complied with all the requirements (*e.g.*, mitigation, monitoring, and reporting) of the previous LOAs and information regarding its monitoring results may be found in the **Estimated Take of Marine Mammals** section.

On September 12, 2024, NMFS received an application from Hilcorp requesting authorization for the take of marine mammals incidental to construction, maintenance and use of ice roads, trails, and pads along the Beaufort Sea coast. A revised application was submitted on April 3, 2025. We determined the application was adequate and complete on May 5, 2025. This request is similar to that submitted by Hilcorp and Eni for the previous ITR and LOAs. The project area is unchanged, but the methodology used to estimate take, the final take estimates, and the mitigation and monitoring requirements are revised to reflect the best scientific information available. On May 16, 2025, we published a notice of receipt of Hilcorp's application in the **Federal Register**, requesting comments and information related to the request for 30 days (90 FR 21011). We received no public comments. Hilcorp requests authorization to take members of the Arctic stock

of ringed seal (*Pusa hispida*) by Level B harassment M/SI. The proposed regulations would be valid for 5 years (2026-2031).

Description of Proposed Activity

Overview

Hilcorp conducts oil and gas operations at Northstar and SID, respectively, in coastal Beaufort Sea waters off of Alaska (figure 1). During the ice-covered season, Hilcorp annually constructs sea ice roads, trails, and pads to connect and allow access between West Dock and Northstar. Prior to the new ownership by Hilcorp, Eni constructed and utilized an ice road or trail connecting the Oliktok Production Pad (OPP) and SID as well as an annual ice road from shore to the ODS.

Dates and Duration

The proposed regulations would be valid for a period of 5 years. Ice roads, trails, and pads activities within Hilcorp's project area would occur between December 1 and May 31 each year (*i.e.*, up to 181 days each year), depending on weather and ice conditions. Hilcorp begins constructing ice roads, trails, and pads as early as possible, usually early to mid-December, depending on weather and ice conditions. If weather conditions are not favorable, construction may be delayed as late as January. Ice road construction takes about six weeks from initial surveying until the ice is thick enough to allow travel by wheeled vehicles. Maintenance and use of the ice roads, trails, and pads continues until the ice becomes too unstable to access, usually sometime between mid-April and mid-May.

Specific Geographic Region

Northstar, an artificial gravel island, is located in State of Alaska coastal waters about 9.7 km (6 mi) offshore from Point Storkersen in the Beaufort Sea (figure 1). Water depths along the ice routes range from 0 to 10 m, the majority of which are at depths <9 m.

The 0.05 square kilometer [km^2] (11-acre) SID is also an artificial, gravel island constructed in shallow (1.8-2.4 m, 6-8 ft), State of Alaska coastal waters approximately 4.8 km (3 mi) north of Oliktok Point and just south of the Spy Island barrier island.

ODS consists of a 0.024 km^2 (6-acre) gravel drill site approximately 8 km (5 mi) offshore in 1.4 m (4.5 ft) of water. The site is connected to an onshore facility by a flowline system consisting of a 9.2 km (5.7 mi) subsea buried flowline bundle which transitions onshore to a 3.7 km (2.3 mi) traditional North Slope aboveground flowline support system.

All three of these locations are covered by landfast ice during winter.

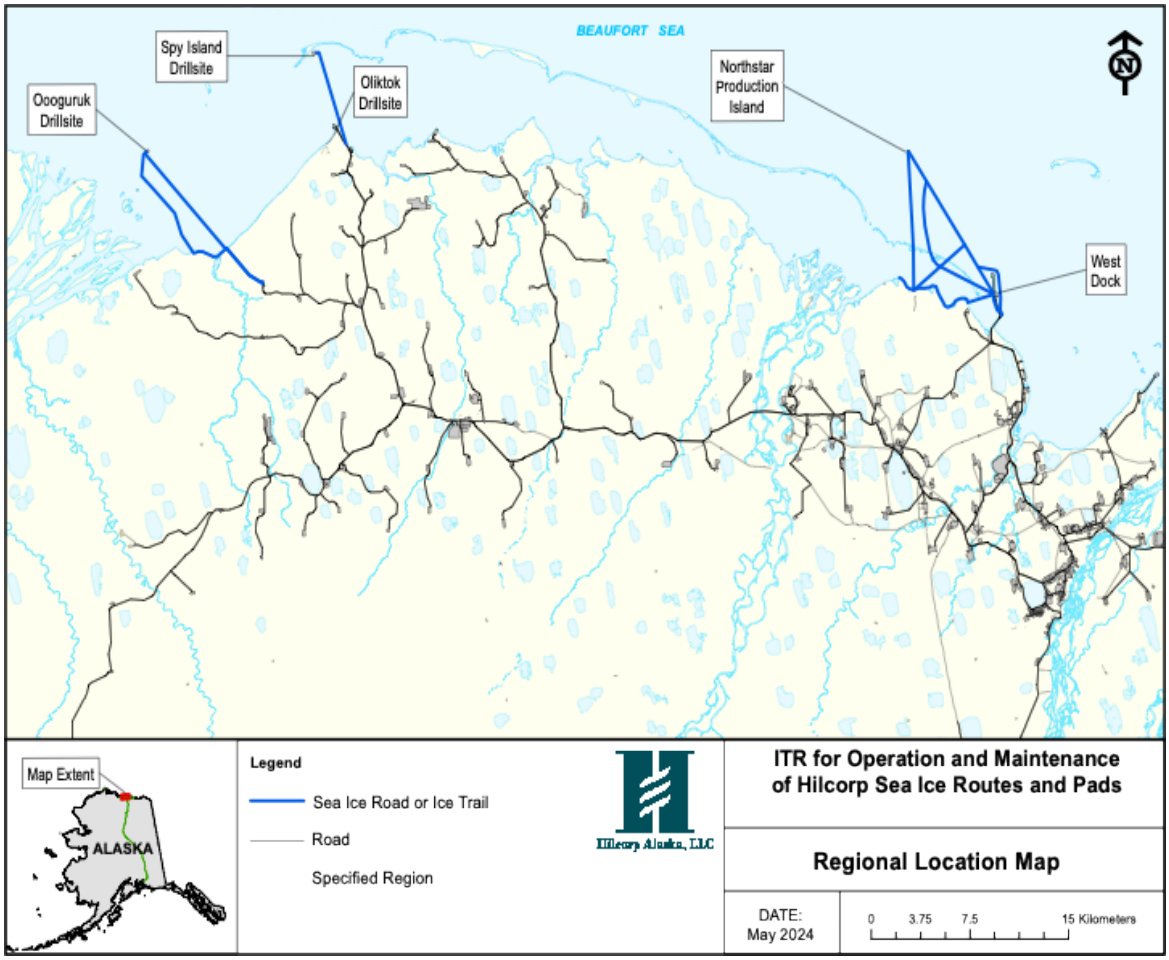

Figure 1. Project Site for Hilcorp Sea Ice Routes and Trails

Detailed Description of the Specified Activity

The proposed activities include building, maintaining, and operating vehicles on ice roads, trails, and adjacent ice pads. These ice roads, trails, and pads are constructed each winter to transport personnel, equipment, and supplies to the Northstar, ODS, and SID production facilities. Below are more detailed descriptions of what construction, maintenance and use activities would be employed at the Northstar, ODS, and SID production facilities.

Northstar to West Dock

Annually, during the ice-covered season, Hilcorp builds sea ice routes connecting the mainland to Northstar. These routes, which are in water depths ranging from 0 to 10 meters (mostly under 9 meters), allow for the transport of personnel, equipment, materials, and supplies.

The specific routes (shown in figure 1-3 in the application) can change each year due to operational needs and weather. Not all routes depicted are built every year. These routes can be thicker ice roads for heavy vehicles or unimproved ice trails for tracked vehicles like Tuckers or PistenBullys®. Ice trails are more frequently used, while ice roads are built only when heavy construction or large equipment is needed. Any ice trail built near the shoreline (in <1 meter water) is on grounded ice. Because the exact routes vary, Hilcorp has assumed that there is a 40 km² area where sea ice routes may be constructed each year, with the understanding that not all routes are built annually.

Depending on the specific operational needs from year-to-year (*i.e.*, what equipment is needed on the island), Northstar may construct a sea ice road that connects Production Module 2, or this route may also be constructed as an ice trail. For an ice road in water deeper than about 3 m, sea ice must be approximately 2.5 m thick to support the weight of heavier vehicles and equipment. The sea ice road is typically constructed by special pumps with ice augers. Seawater for creating the offshore ice road is obtained by

drilling holes through the existing sea ice using the augers and pumping salt water to flood the existing ice surface. Rolligons® move along the planned ice road corridor while flooding the surface. Water trucks are used to spray a freshwater cap over the thickened sea ice for durability. Sea ice road construction activities occur 24 hours a day, 7 days a week during the construction phase and are halted during unsafe conditions such as high winds or extremely low temperatures.

Following construction, the ice road surface is maintained using graders with snow wings and blowers, or front-end loaders with snow blower attachments. Snow can also be cleared by personnel operating snow blowers. Care is taken so that large berms or large piles of snow are not created adjacent to the road or on the road shoulders. When clearing snow with blowers, any active wind is used to disperse the blown snow over a large area. Delineators may be used to mark the roadway in about 15-m increments down the centerline of the road, and at no more than 0.4 km increments on both sides of the ice road to demarcate the intended path of vehicle travel and areas to be maintained. Corners of rig mats, steel plates, and other materials used to bridge sections of hazardous ice, are clearly marked or mapped using global positioning system (GPS) coordinates of the locations. Ice roads are generally constructed only in years when construction or large maintenance projects are planned to facilitate access by large vehicles and heavy loads. Depending on weather and ice conditions, portions of the sea ice road may become unsafe for travel due to unstable sections. If this occurs, Hilcorp may use unimproved sea ice trails to provide safe transit to and from the island. Construction of sea ice trails may occur later in the season (*i.e.*, March through mid-May), depending on conditions, as described in the following section.

Sea ice trails serve as unimproved access routes for tracked vehicles. Unlike ice roads, ice trail construction does not involve seawater flooding or freshwater caps. Instead, a tracked vehicle typically pulls a drag to smooth the ice surface. This method

eliminates the need for augers, pumps, backhoes, or ditchwitches. While a bulldozer might be used to build a ramp from the trail to the island, it is not used on the ice trail itself. Occasionally, small rough patches on a trail might require minor seawater flooding to allow tracked vehicles to pass. For this, a hand auger powered by a small generator can be used to drill into the ice and draw up water.

To establish a trail, snow machines and lightweight tracked vehicles initially mark the corridor once it is deemed safe for access. The unimproved sea ice trail then naturally thickens as ice and snow are compacted by larger tracked vehicles. Generally, significant snow removal or surface modifications are not needed for ice trails. For grounded ice trails and roads, minimal freshwater flooding may be used to cap the ice or repair cracks. Floating ice, however, requires seawater flooding until it reaches a desired thickness, which is determined by the required strength and integrity for safe travel. Once the desired thickness is achieved, floating ice areas can also be flooded with freshwater to cap the ice or repair cracks, minimizing the overall freshwater needed.

Hilcorp may construct some or all of the sea ice trails depicted in Figure 1-3 in the application each year. These trails typically range from 15 to 52 km in length. As the season progresses, if unstable or unsafe ice areas develop, Hilcorp may build several shorter “work-around” or detour trails in previously undisturbed areas adjacent to the main corridors. Due to safety considerations, these detours might need to be constructed after March 1st. Work-around routes are constructed as ice trails and are not flooded or capped with water. Typically, these detours deviate approximately 20 to 45 meters from the original road or trail, allowing crews to safely bypass soft spots or cracks. Any such work-arounds or detours would remain within the 40 km² area shown in Figure 1-3 in the application.

WNS: Oliktok Production Pad to SID

SID, an artificial gravel island offshore, serves as the base for an annual ice road that extends about 7 km offshore to OPP and connects to three ice pads (Figure 1-4 in the application). This road incorporates both floating and grounded ice sections, with the initial portion near the shore being grounded. Two of the three ice pads are on floating ice: a 150-m by 60-m pad southeast of SID and a 90-m by 45-m pad northeast of the island. The third ice pad is on grounded ice near Oliktok Point at the end of the ice road. All ice pads are situated within the ice road/trail buffer zone and are used for estimating potential seal takes.

The construction of the SID sea ice road begins with surveying and staking the route once the ice is thick enough to support personnel on snow machines. Small vehicles equipped with augers and pumps then bore holes and flood the staked route. The free-flood method is used for the floating sections of the road. This involves using low-pressure pumps to apply an initial 8-centimeter layer of seawater to the ice surface, some of which may flow to lower areas. After the first water layer has frozen, the next flood is then applied and so on until the desired ice thickness is reached. Hand augers can be used to check the ice thickness. Flooding operations occur 24 hours a day, 7 days a week during this phase. The ice needs to be 41 to 51 cm thick to support Rolligons®, which have large tires designed to distribute weight over a wider area. For heavier vehicles like passenger trucks, vacuum trucks, drill trucks, and tractor trailers, the ice must reach approximately 183 cm thick. The maintained ice road, including its shoulder areas, is approximately 50 meters wide.

Rig mats are used to bridge small leads and cracks during both construction and maintenance. For road surfacing and repairs during maintenance activities, fresh water is utilized. Once the ice road is fully flooded and open to traffic, snow loads on the surface must be managed. Snow is cleared frequently, and the 50-meter width of the ice road (including shoulders) is consistently maintained.

Using the same construction methods as at Northstar, an unimproved ice trail is built near SID each year just west of and parallel to the sea ice road corridor. The ice trail is located approximately 15 to 30 m west of the western edge of the ice road shoulder and is used when the ice road is being constructed. Once the ice road is open to regular traffic, the ice trail is not used. After March 1st, due to safety considerations, Hilcorp may also need to use several shorter length trails in undisturbed areas to work around unstable and unsafe areas of ice as the season progresses. As described above, these work-around or detour trails allow PistenBullys® or other tracked vehicles to safely go around soft spots or cracks.

After March 1st, Hilcorp may also construct shorter, temporary work-around or detour trails in previously undisturbed areas. These detours are built to safely navigate unstable or unsafe ice sections, allowing PistenBullys® and other tracked vehicles to go safely around soft spots or cracks.

WNS: Oooguruk Drill Site Ice Route

ODS, a gravel drill site located 8 km offshore, constructs an annual ice road and a staging area ice pad for its operations. The ice road construction process is the same as that for the OPP to SID ice road, as described previously. While ODS, similar to SID, is in water depths generally unsuitable for ringed seal habitat, Hilcorp has included ODS in since there may be potential changes in ice conditions and ringed seal habitat.

The typical or proposed ice road shown in figure 1-5 in the application extends approximately 9 km offshore to ODS. An alternative route (figure 1-6 in the application) is located in shallower water, allowing it to be grounded and used earlier in the season. This alternative route, extending about 11 km offshore, is used when early road completion is necessary or when extra-heavy loads, such as a drill rig, are anticipated. Each ice road can be up to 50 m wide, including shoulders used for detours around equipment or during maintenance.

Additionally, a grounded ice pad staging area, measuring 140 m by 180 m, is constructed next to the southwest edge of ODS (figures 1-5 and 1-6 in the application). ODS is in 1-2 m of water, and the area from the site to the shore typically becomes grounded landfast ice in winter. Therefore, both the typical and alternative ice road routes are on grounded, rather than floating, ice. Offshore ice trails are not required for ODS operations.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see **Proposed Mitigation** and **Proposed Monitoring and Reporting**).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. NMFS fully considered all of this information, and we refer the reader to these descriptions instead of reprinting the information. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.*, physical and behavioral descriptions) may be found on NMFS' website (*https://www.fisheries.noaa.gov/find-species)*.

Table 1 lists the only stock of marine mammals for which take is expected and proposed to be authorized for this activity and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs).

PBR and annual serious injury and mortality (M/SI) from anthropogenic sources are included here as gross indicators of the status of the species or stocks and other threats.

Marine mammal abundance estimates presented in Table 1 represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' U.S. Alaska SARs. All values presented in table 1 are the most recent available at the time of publication (including from the draft 2024 SARs) and are available online at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*.

Table 1 -- Species with Estimated Take from the Specified Activities

Common name	Scientific name	Stock	ESA/MMPA status; Strategic (Y/N)[2]	Stock abundance (CV, N_{min}, most recent abundance survey)[3]	PBR	Annual M/SI[4]
Order Carnivora – Pinnipedia						
Family Phocidae (earless seals)						
Ringed Seal	*Pusa hispida*	Arctic	T, D, Y	342,836[5] (UND, UND, 2013)	UND	6,459

1 - Information on the classification of marine mammal species can be found on the web page for The Society for Marine Mammalogy's Committee on Taxonomy (*https://marinemammalscience.org/science-and-publications/list-marine-mammal-species-subspecies/*).
2 - Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.
3 - NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region/*. CV is coefficient of variation; Nmin is the minimum estimate of stock abundance.
4 - These values, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.*, commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range.
5 - Using a subset of data collected in 2012 by Moreland *et al.* (2013) from aerial abundance and distribution surveys over the entire ice-covered portions of the Bering Sea, Conn *et al.* (2014) calculated an abundance estimate of 171,418 ringed seals (95% CI: 141,588-201,090). This estimate is considered to be low by a factor of 2 or more because availability bias due to seals in the water at the time of the surveys was not accounted for and the estimate

did not include ringed seals in the shorefast ice zone (Young *et al.* 2023). Therefore, abundance of 171,418 has been multiplied by a factor of 2 for this analysis (*i.e.*, 342,836 animals).

As indicated above, only the Arctic stock of ringed seals temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur. While bearded seals (*Erignathus barbatus*), spotted seals (*Phoca largha*), bowhead whales (*Balaena mysticetus*) and beluga whales (*Delphinapterus leucas*) have been documented in the area, the temporal occurrence of these species is such that take is not expected to occur and they are not discussed further beyond the explanation provided here. Bearded seals (*Erignathus barbatus*) and spotted seals (*Phoca largha*) occur in the Beaufort Sea only during the open water season (mid-July through mid-November) and are not likely to be encountered in the project area during the ice-covered months. Additionally, bowhead whales and beluga whales are not proposed for authorized take because there is no temporal overlap of cetaceans during the ice-covered season.

Ringed seals are distributed in all seasonally ice-covered seas of the Northern Hemisphere (Lang *et al.* 2021, Muto *et al.* 2020). Five subspecies of ringed seals are currently recognized, with only the Arctic stock occurring in U.S. waters of the Arctic Ocean and Bering Sea (Rice and Society for Marine Mammalogy 1998). They are year-round residents of the Chukchi and Beaufort seas and are generally the most encountered seal in the U.S. Arctic.

Ringed seals are abundant in the winter and spring on shorefast and pack ice in the northern Bering Sea, Norton Sound, Kotzebue Sound, Chukchi Sea, and Beaufort Sea, where they utilize sea ice for pupping and nursing as well as resting. Landfast ice has been shown to be the best habitat for ringed seal pupping (Kelly 1988). Moulton *et al.* (2002) found the highest concentrations of ringed seals on stable, shorefast ice over water depths of about 10-20 m in late May and early June; but waters less than 5 m deep are not preferred wintering areas for ringed seals (Frost *et al.* 2004, Moulton *et al.* 2002). In the summer months, they use sea ice as a platform for molting and resting, although ringed

seals can remain pelagic in productive foraging areas for long periods of time. In the fall, ringed seals utilize sea ice as a platform for resting, and rarely haul out in terrestrial habitats.

During the winter, ringed seals excavate and maintain breathing holes in the ice and occupy lairs in accumulated snow (Smith and Stirling 1975). Ringed seals give birth in lairs from mid-March through April, nurse their pups in the lairs for 5 to 8 weeks, and mate in late April and May (Hammill *et al.* 1991; Lydersen and Hammill 1993; as cited in (Ireland *et al.* 2016)). Seal mothers continue to forage throughout lactation and move young pups between a network of four to six lairs (Ireland *et al.* 2016). Arctic ringed seals generally prefer landfast ice along the shoreline for pupping. Frost *et al.* (2004) conducted aerial surveys over the Beaufort Sea coast from Utqiaġvik to Kaktovik and determined that ringed seal density was greatest in water depths between 16 and 115 ft. (5 and 35 m), and in relatively flat ice close to the fast ice edge. Aerial surveys conducted in association with construction near the Northstar facility found ringed seal annual densities ranged from 0.39 to 0.83 seals per km^2 (Moulton *et al.* 2005).

The ringed seal diet is composed predominantly of pelagic fish such as cod (Crain *et al.* 2021) but also includes shrimp and planktonic crustaceans; the relative importance of each type of prey depends on local availability and season (Lowry *et al.* 1980, as cited in (Ireland *et al.* 2016)). They have been shown to dive to depths of up to 46 m or more while foraging. Ringed seals are hunted by killer whales and polar bears. Spatial distributions and population fluctuations of ringed seals and polar bears appear to be tightly correlated in some areas (Stirling and Øritsland 1995 as cited in (Ireland *et al.* 2016)).

Optimal overwintering areas for ringed seals in the Beaufort Sea occur in waters between 10 and 35 m deep, preferably in the landfast ice along the shoreline close to lead systems. In May 2022, two trained wildlife-detection dogs were used to survey an area in

Prudhoe Bay near Northstar Island. A total of 61 ringed seal structures (47 breathing holes and 14 lairs) were identified in an 88.2 km^2 area resulting in a density of 0.68 structures/km^2. Lair density was higher in water deeper than 5m; however, seal structures were found in all water depths (Quakenbush *et al.* 2022). Ringed seal movements during winter and spring are typically quite limited, especially where ice cover is extensive (Kelly *et al.* 2010a).

On April 1, 2022, NMFS designated critical habitat for the Arctic subspecies of ringed seals (87 FR 19232). On September 26, 2024, the Alaska district court issued a decision in which it ruled in part for Alaska, vacated NMFS' ice seal critical habitat designations, and remanded the ringed and bearded seal critical habitat designation to NMFS. State of Alaska v. Nat'l Marine Fisheries Serv., No. 3:23-cv-32-SLG, 2024 WL 4298114 (Sept. 26, 2024) (1-FedER-003). Notwithstanding the court decision vacating NMFS' critical habitat designations for ice seals, the underlying information regarding the importance of the area and associated features to ringed seals and their habitat remains relevant to the discussion here. The critical habitat designation covered areas of marine habitat in the Bering, Chukchi, and Beaufort Seas. During the designation, NMFS considered three physical and biological features (PBFs): (1) snow covered sea ice suitable for subnivean birth lair formation and maintenance defined as waters 3 m or more in-depth containing area of shorefast ice or dense stable pack ice that contain snow drifts at least 54 cm deep to maintain lairs; (2) sea ice suitable for basking and molting defined as waters 3 m or more in depth with 15 percent or higher concentrations of sea ice; and (3) primary prey resources to support ringed seals defined as small, schooling fish and small crustaceans. The critical habitat designation covered areas of marine habitat in the Bering, Chukchi, and Beaufort seas and overlapped with the Hilcorp project area as shown in figure 4-6 in the application. Note that identified ringed seal habitat surrounds only Northstar; neither SID nor ODS is located in identified ringed seal habitat

as delineated by the 3 m isopleth offshore (see Figure 4-6 in the application). However, as described later and in more detail in the **Potential Effects of Specified Activities on Marine Mammals and their Habitat** section, we do not anticipate physical impacts to any marine mammal habitat as a result of Hilcorp's activities, including impacts to ringed seal sea ice habitat suitable as a platform for basking and molting and impacts on prey availability. Further, this proposed rule includes mitigation measures, as described in the **Proposed Mitigation** section, which would minimize or prevent impacts to sea ice habitat suitable for the formation and maintenance of subnivean birth lairs.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section provides a discussion of the ways in which components of the specified activity may impact marine mammals and their habitat. The **Estimated Take of Marine Mammals** section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The **Negligible Impact Analysis and Determination** section considers the content of this section, the **Estimated Take of Marine Mammals** section, and the **Proposed Mitigation** section to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and whether those impacts are reasonably expected to, or reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Ringed seals could be adversely affected by disturbance resulting from visual stimuli. The majority of impacts are likely to occur due to the physical presence of machinery and vehicles used for ice roads, trails, and pads construction as well as associated human workers. In an unlikely scenario, these activities could result in M/SI if an animal is crushed by construction machinery or vehicle while in its subnivean lair. While this is not expected, there is a prior record of such an occurrence from 1998.

As described in Quakenbush *et al.* (2022, 2023b), respectively, two different basking seals were observed not to be affected by the close passage of a hovercraft and were observed to remain on the ice in 2022, and "active structures were found within 19.5 m of facilities and within an active ice road." Annual marine mammal reports were submitted to NMFS by Hilcorp and Eni in 2020, 2021, 2022 and 2023 (Eni US Operating Co. Inc. 2020, 2021, 2022, Hilcorp 2022, 2023). The few seals observed (49 seals total over 4 years) from the ice routes were noted as sleeping, resting or basking, which seems to indicate a lack of overt behavioral response to ice roads, trails, and pads activities.

The associated noise from the machinery and vehicles could cause pinniped behavioral modification and temporary displacement within the vicinity of the project area if in-water and airborne noise levels are high enough. As noted previously, nearly all construction, maintenance and use activities would occur on the ice surface. While it is possible that underwater noise associated with ice roads, trails, and pads activities could potentially result in take, it is not considered likely due to relatively low sound source levels associated with construction, maintenance and use of ice roads/trails/pads. NMFS recommends the use of acoustic criteria that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur auditory injury (AUD INJ) of some degree (equated to Level A harassment). We note that the criteria for AUD INJ have been recently updated (NMFS 2024). Auditory injury for marine mammal hearing (MMPA Level A harassment) is defined as permanent threshold shift (PTS) from exposure to non-impulsive, acoustic sources >195 dB re 1 μPa at 1 m. Greene et al (2008) presented in-water auditory data recorded at Northstar for ice road construction including dozing snow off the frozen surface, augering holes through the ice, and pumping seawater up through the holes to flood the ice surface. The highest recorded sound underwater was 189 dB re 1 Pa and was associated with the bulldozer, which is

less than 195 dB 195 dB re 1 µPa. Therefore, take by Level A harassment is not reasonably expected to occur. The current threshold for Level B harassment (non-impulsive source) in-water is 120 dB re 1 µPa (NMFS 2016). Southall et al. (2007) assessed relevant studies, found considerable variability among pinnipeds, and determined exposures between approximately 90 and 140 dB generally do not induce strong behavioral responses of pinnipeds in water, but an increasing probability of avoidance and other behavioral effects exists in the 120 to 160 dB range. The use of the Ditchwitch to cut ice or from pumping at Northstar did not exceed 120 dB at 100 m (Greene *et al*. 2008). At closer distances to the ice roads, trails, or pads Level B thresholds could be exceeded by some construction equipment such as a bulldozer. Kelly *et al.* (1986) reported that some ringed seals temporarily departed their lairs when sound sources were within 97 to 3,000 m but later returned to their lairs.

In-air noise associated with ice trail activities is not expected to cause disturbance to ringed seals, as construction noise is not likely to exceed 100 dB re 20 µPa at the source. Airborne sounds for the bulldozer and Ditchwitch according to Greene *et al* (2008) ranged between 64.7 to 76.3 dB re 20 µPa. During the winter of 2000, background unweighted in air noise levels from various machines measured in the vicinity of Northstar ranged from 59 to 84 dB re 20 µPa, and this background noise level was related to wind speed (Greene *et al.* 2008). Similar levels were reported during the winter of 2001 and 2002 by Blackwell et al. (2004a, b) with minimum background unweighted in air noise levels of 44 to 52 dB re 20 µPa measured in ice-covered conditions with low wind up to 10 km (6 mi) from Northstar in Prudhoe Bay. As a result of the expected low levels, in-air noise during construction, operation, and use of the ice roads, trails, and pads is not expected to result in harassment of seals.

For ringed seals, the effects of underwater noise are contingent upon their hearing capabilities. Due to the predominantly airborne and relatively low noise levels generated

by ice trail construction, it is highly unlikely that seals in the vicinity would suffer any permanent or temporary hearing damage (PTS or TTS). The most common reaction of marine mammals to increased noise is a short-term behavioral change or avoidance of the disturbed area (Richardson *et al.* 1995). While minor disturbance from in-air or underwater noise (under ice) might occur due to ice trail activities, any potential impacts on ringed seals exposed to low-level noise would be more likely to involve masking and temporary displacement. However, the probability that acoustic noise associated with ice trail construction would result in masking any acoustic signals of ringed seals during construction is very low. Ice trail construction activities would be initiated prior to March 1st when animals begin constructing dens prior to pupping and during pupping when seals are minimally vocal in the dens to prevent predation (Ireland *et. al.* 2016). The probability that the noise producing activities associated with Hilcorp's proposed project would result in masking acoustic signals important to the behavior and survival of marine mammal species in the project area is so low as to be considered negligible.

Permanent displacement of seals from ice trail construction is considered unlikely but could occur. As described in Williams *et al.* (2006), during three surveys conducted in November/December, March and May of 2001 during Northstar construction activities, 181 ringed seal structures were located and 118 (65 percent) were still actively used by late May 2001. Active ringed seal structures appeared to be evenly distributed across the Northstar study area in relation to the facility. The noise heard through snow and ice and into the subnivean lair or den location of the animal should be considerably weaker than at the source due to sound being attenuated in the ice and snow. In March 2002, sounds and vibrations from vehicles traveling along an ice road along Flaxman Island (a barrier Island east of Prudhoe Bay) were recorded in artificially constructed polar bear dens. Sounds were attenuated strongly by the snow cover of the artificial dens; broadband vehicle traffic noise was reduced by 30-42 dB. Due to attenuation of noise

through ice and snow, it is less likely that seals in lairs would be exposed to levels exceeding 120 dB re 1 µPa underwater and that such exposure would result in displacement.

Potential Effects on Marine Mammal Habitat

The construction and maintenance of ice trails is not expected to cause significant impacts on habitat used by ringed seals or on their food sources. Landfast ice near the shoreline is the best habitat for ringed seal pupping (Kelly 1988), with water depth strongly dictating whether ringed seals overwinter in a given area. Depths greater than about 3 m (10 ft) are typically the minimum depth suitable for successful lair construction (Miller *et al.* 1998, Link *et al.* 1999) although more shallow areas with open leads or cracks can be attractive to seals as described for the road between OPP and SID.

Though ringed seals might be present in the proposed project areas during winter, their numbers are generally expected to be low during ice trail activities. Ice trail construction is a short-term activity likely to cause only minor habitat disruptions. Ringed seals primarily feed on fish and various benthic species like crabs and shrimp. Crucially, ice trail construction within the proposed project areas will not impact the distribution of fish or zooplankton. Since these trails melt annually, they have no lasting effect on water circulation, substrate, fish presence, or benthic populations.

As noted previously, NMFS' identification of important habitat for ringed seals identified three PBFs essential to the conservation of the species. Disturbance associated with construction, operation and maintenance of ice trails is unlikely to have long-term effects on the availability of suitable sea ice habitat for the formation and maintenance of subnivean birth lairs or as a platform for basking and molting. Disturbances due to ice trail construction and maintenance activities are not expected to have any effect on availability of primary prey resources to support Arctic ringed seals because these activities would not cause injury or mortality to fish species nor would they displace food

resources of ringed seals. Therefore, NMFS does not expect meaningful impacts to marine mammal habitat, including prey, from Hilcorp's proposed activities.

Estimated Take of Marine Mammals

This section provides an estimate of the number of incidental takes proposed for authorization under the rulemaking, which informs NMFS' consideration of "small numbers," the negligible impact determinations, and impacts on subsistence uses.

Harassment is one type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of 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).

Most authorized takes would be by Level B harassment in the form of behavioral reactions for individual marine mammals resulting from disturbance associated with the use of various construction equipment and vehicles and personnel on the ice. Level A harassment is neither anticipated nor proposed to be authorized.

Based on a single mortality event which occurred in 1998 (*i.e.*, a Caterpillar® was clearing a trail for seismic vehicles in an area where water depths were about 9 m when it went over a ringed seal lair, resulting in mortality of the pup inside), there is a small probability for take by M/SI for which Hilcorp requested take coverage.

Take Estimation

NMFS estimated take by analyzing previously submitted marine mammal monitoring data from the Northstar, SID and ODS locations as described below, and assuming that similar numbers of animals as were previously observed may be present and taken as a result of the specified activities.

Here, we describe how the best available data were synthesized to produce a quantitative estimate of the take that is reasonably likely to occur and proposed for authorization. Hilcorp and NMFS reviewed the monitoring reports from Hilcorp and Eni between 2019 and 2023 (Eni US Operating Co. Inc. 2020, 2021, 2022 and Hilcorp 2022, 2023). Observations from four of these reports were tallied as shown in table 2. Seal structures observed between 2019-2023 by Hilcorp and Eni are shown in table 3.

The observations performed under the Hilcorp and Eni LOAs were taken at the same locations, at the same time of year, and while engaged in the same activities as those presented in this proposed rule. For these reasons, NMFS considers the data from these monitoring reports to be the best available information for estimating take likely to result from the specified activities.

Table 2 -- Ringed Seal Observations from Hilcorp Facilities 2019-2023[1]

Location	2019-2020	2020-2021	2021-2022	2022-2023	Total	Annual Average
Northstar[2]	0	4	14	29	47	16
SID	2	0	0	0	2	1
SID/ODS	0	0	0	0	0	0

[1]All observations were at distances beyond 50 m.
[2] Northstar records for 2019-2020 are not available.

Table 3 -- Observed Ringed Seal Structures from Hilcorp Facilities 2019-2023[1]

Location	2019-2020	2020-2021	2021-2022	2022-2023	Total	Annual Average
Northstar	0	0	1	1	2	0
SID	0	0	0	0	0	0
SID/ODS	0	0	0	0	0	0

The combined results from table 2 and table 3 are shown in table 4 which shows the average annual observations between 2019 and 2023. While monitoring data for the

2023-2024 and 2024-2025 seasons has been submitted, it does not specify the locations of observations or the number of seal structures observed and is considered incomplete. Therefore, for the purpose of estimating take for the proposed ITR, Hilcorp and NMFS considered monitoring data from 2019 through 2023 and assumed that all of the observations were equivalent to takes by Level B harassment. This approach was taken since previous monitoring reports submitted by Hilcorp and Eni recorded only animal observations and did not clearly identify potential behavioral disturbances. The resulting total takes requested by Hilcorp and proposed by NMFS are shown in table 4. Note that this take estimate assumes that a seal structure (*i.e.* breathing hole or lair) may contain a female and a pup; though this was not observed during the reporting period. At that time of year, pups are often inhabiting lairs. Nonetheless, the annual take estimate for Northstar includes an additional 4 takes based on the conservative assumption that a seal structure may include 2 seals.

Table 4 – Estimated Ringed Seal Take by Level B harassment

	≤ 50 m of Ice Route	> 50 m of Ice Route	Observed Ice Seal Structures	Annual Level B Takes Requested*	Total Requested Level B Takes Over 5-Year Period
WNS: OPP-SID	0	1	0	1	5
WNS: Oooguruk	0	0	0	0	0
Northstar	0	16	2	20*	100
Total Estimate - All Sites					105

*The take estimate assumes that a seal structure may contain a female and a pup; though this was not observed during the reporting period. Nonetheless, the annual take estimate for Northstar includes an additional 4 takes based on the assumption that a seal structure may include 2 seals.

Routine monitoring results from all three sites (Northstar, SID and ODS) from 2019-2023 indicate that serious injury and mortality of ringed seals during ice road, trail, and pad construction, use, and maintenance activities did not occur and is unlikely to occur in future. As noted above, however, the probability of serious injury and mortality is not zero. Thus, to account for the very low probability of serious injury and mortality during ice roads, trails, and pads construction, use, and maintenance activities, Hilcorp is

requesting and NMFS proposes to authorize a total of four serious injury/mortality takes over the 5-year period. This total is based on the possibility, albeit unlikely, that one serious injury/mortality take each would occur at SID and ODS and two takes for serious injury/mortality would occur in the larger Northstar area. The number of takes requested by Hilcorp and proposed by NMFS by Level B Harassment as well as by serious injury and mortality is shown in table 5. The maximum percentage of stock taken in a single year is shown in table 6.

Table 5 – Summary of all Marine Mammal Exposures Requested Over 5-Year Period

	Annual Level B Harassment	Level B Harassment Over 5-Year Period	Serious Injury/Mort	Total Takes Requested Over 5-Year Period
WNS: SID, ODS	1	5	2	7
Northstar	20	100	2	102
TOTAL				109

Table 6 -- Maximum Percentage of Stock Taken in a Single Year

Species	Stock	Total Level B Harassment	Maximum Serious Injury/Mortality	Population Estimate	Take as a percentage of the population
Ringed Seal	Arctic	21	2	342,836[a]	<0.01

[a] Conn *et al.* (2014) calculated an abundance estimate of 171,418 using a subset of aerial survey data collected in 2012 by Moreland *et al.* (2013) that covered the entire ice-covered portions of the Bering Sea. This estimate is considered to be low and was multiplied by a factor of two (Young *et al.* 2023).

Proposed Mitigation

In order to allow the incidental take of marine mammals under section 101(a)(5)(A) of the MMPA, NMFS must prescribe regulations setting forth the permissible methods of taking pursuant to the activity and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include

information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat, as well as subsistence uses, considering the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned) and the likelihood of effective implementation (probability implemented as planned); and

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, and impact on operations.

The mitigation requirements described below were included in Hilcorp's application or are the result of subsequent coordination between NMFS and Hilcorp. Many of the proposed mitigation requirements are similar to those currently in effect, and Hilcorp has agreed that all are practicable. NMFS has fully reviewed the specified activities and the mitigation measures and has determined preliminarily that the proposed measures would result in the least practicable adverse impact on marine mammals and their habitat.

The primary purposes of these mitigation measures would be to minimize human-seal interactions, to avoid takes by serious injury/mortality from the activities, and minimize the impact of any Level B harassment.

The proposed mitigation measures and specific monitoring measures that would be required to implement them are described below. Additional proposed monitoring measures necessary for data collection and reporting purposes are described in the **Proposed Monitoring and Reporting** section.

Wildlife Training

Prior to initiation of ice roads, trails, and pads-related activities, project personnel associated with ice road construction, maintenance, use or decommissioning (*i.e.*, ice road construction workers, surveyors, security personnel, and the environmental team) would receive annual training on implementing mitigation and monitoring measures. Personnel would be advised that interactions with, or approaching, any wildlife is prohibited. Annual training would also include reviewing the company's Wildlife Management Plan. In addition to the mitigation and monitoring plans, other topics in the training would include Ringed Seal Identification and Brief Life History, Physical Environment (habitat characteristics and how to potentially identify habitat), Ringed Seal Use in the Ice Road Region (timing, location, habitat use, birthing lairs, breathing holes, basking, etc.), Potential Effects of Disturbance, and Importance of Lairs, Breathing Holes and Basking to Ringed Seals.

In addition, personnel would be required to follow these mitigation measures:

- Do not approach or interact with ringed seals;
- When traveling the ice road/trail, follow directions of Security and posted signs;
- Notify appropriate personnel if a seal is observed within 50 m, or if a seal structure (*i.e.*, breathing hole or lair) is observed within 150 m of the centerline of the ice road/trail; or the edge of the ice pad or on the ice pad; and

- Stay in the vehicle and continue traveling at a constant speed if a seal is observed near the ice road/trail/pad. Do not slow down, stop, or exit the vehicle.

General Mitigation Measures Implemented Throughout the Ice Road/Trail Season

The following general mitigation measures would be required to be implemented through the entire ice road/trail season (December through May), including during construction, maintenance, use, and decommissioning.

- Ice road/trail speed limits must be no greater than 45 miles per hour (mph)
- Delineators must mark the sea ice roads in a minimum of 0.4-km increments on both sides of the route to delineate the path of vehicle travel. Delineators may also be used to mark the centerline of the roadway. Delineators must be color-coded to indicate the direction of travel and location of the ice road. These measures must ensure that vehicles stay on disturbed ice roads/trails and must not deviate to undisturbed areas.
- Corners of rig mats, steel plates, and other materials used to bridge sections of hazardous ice must be clearly marked or mapped using GPS coordinates of the locations to prevent vehicles traveling on ice roads/trails from deviating to undisturbed areas.
- Personnel must remain in the vehicle and safely continue if they encounter a ringed seal while driving on the road.

If a ringed seal or seal structure is observed within 50 m or 150 m (respectively) of the centerline of the ice road/trail, the company Environmental Specialist would be required to be informed of the observation and the following would be required to occur:

- The seal must be avoided and the location of the seal must be verbally described on the monitoring form relative to the location of the ice road/trail and the observer's location.

- A seal structure must be physically marked within 15 m of the edge of the sea ice road noting the location of the seal/seal structure along the axis/edge of the road (maintaining a distance of at least 15 m from the seal/structure);
- Construction or maintenance work must not occur within 50 m of the seal. These activities may continue if the seal is 50 m or greater away. If the seal is within 50 m of these activities, they may continue as soon as the seal, of its own accord, moves farther than 50 m distance away from activities or has not been observed within that area for 24 hours. Transport vehicles may continue within the designated route without stopping.
- All other personnel using the area must be notified following the notification protocols described in the Wildlife Management Plan;
- During the period in which a seal structure is periodically monitored, as described in the Communication and Monitoring Procedures for Seal and Seal Structure Observations section (below), maintenance work must proceed in a manner that minimizes impacts or disturbance to the area.

Blading and snow blowing of ice roads would be required to be limited to the disturbed ice trail/shoulder areas to the extent safe and practicable. Snow would be required to be plowed or blown from the ice road surface. If snow is accumulating on a road within a 150-m radius of an identified downwind seal or seal lair, measures would be required to be implemented to avoid seal impacts, such as pushing snow further down the road before blowing it off the roadway. Vehicles would be prohibited from stopping within 50 m of identified seals or within 150 m of known seal structures.

Mitigation Measures after March 1st

Additional proposed mitigation measures proposed to be required after March 1st would mitigate any potential disturbances to seals that are actively pupping. If safety concerns due to unstable ice road/trail conditions warrant the creation of a new or

workaround route, the route would be required to be surveyed for seal structures using a trained observer in a tracked vehicle approximately 2 days prior to establishing the route, weather permitting. During the construction of the ice trail, behavioral disturbance of ringed seals may occur but is expected to be limited given the proposed mitigation and monitoring measures. The following protocol would be required to be used for these surveys:

- During daylight hours with good visibility, a trained wildlife observer must survey the route 2 days prior to route construction to search for potential seal structures. The observer must be dedicated to monitoring for seal structures while the driver operates the tracked vehicle.
- If a suspected seal structure is observed within 150 m of the centerline of the proposed new or workaround route, a marker must be placed 15 m from the location and GPS coordinates must be recorded. The new route must avoid any suspected seal structures by a 150-m distance.
- To ensure a safe travel route, flooding and ice buildup or maintenance activities may be conducted in new routes during non-daylight hours, avoiding any identified seal structures by 150 m.
- Once the new ice trail is established, tracked vehicle operation must be limited to the disturbed area to the extent practicable and while ensuring the safety of personnel.

Based on our evaluation of the applicant's proposed measures, NMFS has preliminarily determined that the proposed mitigation measures provide the 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.

Proposed Monitoring and Reporting

In order to issue an LOA for an activity, section 101(a)(5)(A) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of taking authorized by the LOA. The MMPA implementing regulations at 50 CFR 216.104(a)(13) provide that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical to both compliance and ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements proposed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.*, presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic) through better understanding of: (1) action or environment (*e.g.*, source characterization, propagation, ambient noise); (2) affected species (*e.g.*, life history, dive patterns); (3) co-occurrence of marine mammal species with the activity; or (4) biological or behavioral context of exposure (*e.g.*, age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either (1) long-term fitness and survival of individual marine mammals or (2) populations, species, or stocks;

- Effects on marine mammal habitat (*e.g.*, marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

Monitoring

The monitoring and reporting requirements described below were proposed by Hilcorp and/or are the result of subsequent coordination between NMFS and Hilcorp. They are similar to the requirements contained in the current 5-year regulations, and Hilcorp has agreed that they are practicable.

If an ice road, trail or pad is being actively used, a dedicated observer would be required to conduct either a ground-based survey (by vehicle) or a survey assisted by Unmanned Aerial Systems (UAS) during daylight conditions with good visibility to observe if any ringed seals are within 50 m or ringed seal structures are within 150 m of the centerline of the route(s). The following protocols would be required to be followed:

- Surveys must be conducted once per week during daylight hours. Survey protocol consists of either driving the ice road/trail or using UAS to observe the route while stopping every 800 m to observe each side of the corridor within 50 m to check for the presence of seals and 150 m to check for seal structures.
- Use of UAS must comply with applicable Federal Aviation Administration (FAA) regulations and applicable sections of NOAA's UAS Policy 220-1-5 (NMFS 2021, NOAA 2019). UAS must be flown by only an experienced operator. UASs must not be flown directly over pinnipeds hauled out.
- UAS must be flown at altitudes between 60 and 120 m with maximum altitude less than 457 m following FAA protocol (14 CFR Part 107).

Observers for ice road/trail activities would not be required to be trained Protected Species Observers, but they would be required to have received the training described under Wildlife Training and understand the applicable sections of the Wildlife Management Plan. Observers would be required to be capable of detecting, observing and monitoring ringed seal presence and behaviors, and recording data accurately, consistent with the following protocol:

- Observers must have no other primary duties other than to watch for and report observations related to ringed seals during surveys.
- If the observer is driving a vehicle, then the survey must be performed when the driver stops, at periodic intervals sufficient to complete a thorough assessment of the area. If weather conditions become unsafe, the monitoring activity must be discontinued until it is safe to resume.
- If monitoring is conducted using UAS, a trained operator must fly the aircraft while a dedicated observer monitors the aerial imaging for the presence of ringed seals or seal structures within 50 m or 150 m (respectively) of the ice routes.

If a seal or seal structure is observed within 50 m or 150 m (respectively) of the centerline of the ice route, the location of the seal or seal structure would be required to be reported to the Environmental Specialist or Project Manager, who must relay the location to all personnel using the ice road. In addition, the proposed rule would require that personnel responsible for Wildlife Interaction Management be notified following protocols described in each company's specific Wildlife Interaction Plan. The following monitoring procedures would also be required to be followed:

- As soon as practicable after the initial seal observation, the Environmental Specialist or designated person must observe the seal for approximately 15 minutes either on the ground (*i.e.*, if safe and logistically practicable to do so

from a vehicle) or using UAS to document the animal's location relative to the ice road/trail/pad.

- All work that is occurring when the seal is observed and the behavior of the seal during this observation period must be documented until the animal moves more than 50 m from the center of the ice road/trail or is no longer observed. If the seal remains in the area after the 15-minute observation period, monitoring must continue every 6 hours during daylight conditions.
- Monitoring of a seal structure by the Environmental Specialist or designated person must continue every 6 hours during daylight conditions on the day of the initial observation to determine whether a seal is present. Monitoring must consist of observing the structure from a distance of at least 150 m for approximately 15 minutes each time. After the first 24 hours, monitoring (ground-based or using UAS) for the seal must occur every other day while the ice road/trail/pad is being used, unless it is determined the structure is not actively being used (*i.e.*, a seal is not observed at that location during monitoring for 10 consecutive monitoring sessions). During this monitoring period, maintenance work must proceed in a manner that minimizes impacts or disturbance to the area and the animal.

Data Collection and Reporting

This proposed rule would require the Environmental Specialist or designated person to record the following information during survey efforts and observation events:

- The date and start/stop time for each survey including total number of hours of observation and a summary of environmental conditions, such as visibility, that can affect the detection of seals or seal structures (*i.e.*, breathing holes and lairs);

- Date and time of each observation event (*e.g.*, initial observation of a seal or seal structure) and subsequent monitoring;
- Number of animals per observation event and number of adults/juveniles/pups per observation event;
- Behaviors of seals during each observation event;
- Geographic coordinates of the observed animals or structure (breathing hole or lair), with the position recorded by using the most precise coordinates practicable (coordinates must be recorded in decimal degrees, or similar standard, and defined coordinate system);
- For observation events, mitigation measures implemented to minimize impacts; and
- Observers must use standardized electronic data forms to record data, and Hilcorp must submit all datasheets and/or raw sighting data with the draft report.

NMFS proposes to require Hilcorp to submit a company-specific annual monitoring report after the end of the ice road/trail season that summarizes the activities performed during ice road/trail/pad construction, maintenance, use, and de-commissioning that year. Records associated with observations and monitoring of seals or seal structures would be required to be transmitted to NMFS 90 days after the decommissioning of the ice road/trail. The proposed rule would require this report to be submitted with the measures specified in the Data Collection described above and include:

(i) Date, time, location of observation;

(ii) Ringed seal characteristics (*i.e.*, adult or pup) and behavior (avoidance, resting, etc.);

(iii) Activities occurring during observation including equipment being used and its purpose and approximate distance to ringed seal(s);

(iv) Actions taken to mitigate effects of interaction emphasizing (A) which mitigation and/or monitoring measures were successful, (B) which mitigation and/or monitoring measures may need to be improved to reduce interactions with ringed seals, (C) the effectiveness and practicality of implementing mitigation and monitoring measures, (D) any issues or concerns regarding implementation of mitigation and/or monitoring measures, and (E) potential effects of interactions based on observation data.

Reporting Dead or Injured Marine Mammals

In the event that personnel involved in the project activities covered by the authorization discover an injured or dead marine mammal, this proposed rule would require Hilcorp to report the incident to the Office of Protected Resources (OPR), NMFS (*PR.ITP.MonitoringReports@noaa.gov* and *ITP.pauline@noaa.gov*) and to the Alaska regional stranding coordinator (907-586-7209) as soon as feasible. The report would be required to include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;
- If available, photographs or video footage of the animal(s); and
- General circumstances under which the animal was discovered.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact 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 (50

CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be "taken" through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.*, intensity, duration), the context of any impacts or responses (*e.g.*, critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.*, as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

The discussion of our analysis applies only to the ringed seal, which is proposed for take by Level B harassment and serious injury and mortality.

Level B Harassment

Hilcorp requested and NMFS is proposing to authorize take of ringed seals by Level B harassment. The amount of taking proposed to be authorized is small relative to the stock's abundance. Potential impacts of Hilcorp's proposed ice roads, trails, and pads construction activities would mostly result from behavioral disturbances due to exposure to machinery and human activity. It is highly unlikely that behavioral disturbance from in-water exposure to machinery would result in biologically significant effects on the seals (individually or to the population). Additional proposed mitigation measures required after March 1st would mitigate any potential disturbances to seals that are

actively pupping. During the construction of the ice trail, behavioral disturbance of ringed seals may occur but is expected to be limited given the proposed mitigation and monitoring measures. The potential effect of the Level B harassment is expected to be localized and brief. Furthermore, much of the construction, operation and use of ice roads, trails, and pads is expected to be conducted entirely on grounded sea ice which would not be suitable habitat for ringed seals and, therefore, no harassment would be expected to occur in those areas.

Habitat

Identified ringed seal habitat surrounds only Northstar in the project area. Neither SID nor ODS are located in ringed seal habitat as delineated by the 3 m isopleth. Disturbance associated with construction, operation, and maintenance of ice roads/trails/pads is unlikely to have long-term effects on the availability of sea ice habitat identified in two of the three PBFs essential to the conservation of the species. Disturbances due to ice road/trail/pad construction, operation, and maintenance activities are not expected to have any effect on the third PBF regarding availability of prey species because these activities would not cause injury or mortality to fish species, nor would they displace food resources of ringed seals.

Serious Injury and/or Mortality

NMFS is proposing to authorize a very limited number of mortalities or serious injuries that could occur incidental to ice road/trail/pad construction, operation, and maintenance. NMFS considers many factors in making a negligible impact determination, including, but not limited to, the status of the species or stock relative to the optimum sustainable population (OSP) level (if known); whether the recruitment rate for the species or stock is increasing, decreasing, stable, or unknown; the size and distribution of the population; and existing impacts and environmental conditions. The potential biological removal (PBR) metric can help inform the potential effects of serious injury

and mortality caused by activities authorized under 101(a)(5)(A) on marine mammal stocks.

PBR is defined in the MMPA (16 U.S.C. 1362(20)) as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population, and is a measure to be considered when evaluating the effects of serious injury and mortality on a marine mammal species or stock. Optimum sustainable population (OSP) is defined by the MMPA (16 U.S.C. 1362(9)) as the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element. PBR values are calculated by NMFS as the level of annual removal from a stock that will allow that stock to equilibrate within OSP at least 95 percent of the time.

To specifically use PBR, along with other factors, to evaluate the effects of serious injury and mortality, we first calculate a metric called "residual PBR" that incorporates information regarding ongoing anthropogenic serious injury and mortality into the PBR value (*i.e.*, PBR minus the total annual anthropogenic mortality/serious injury estimate). We then consider how the anticipated potential incidental serious injury and mortality from the activities being evaluated compares to residual PBR. Anticipated or potential serious injury and mortality that exceeds residual PBR is considered to have a higher likelihood of adversely affecting rates of recruitment or survival, while anticipated serious injury and mortality that is equal to or less than residual PBR has a lower likelihood (both examples given without consideration of other types of take, which also factor into a negligible impact determination). For a species or stock with incidental serious injury and mortality less than 10 percent of residual PBR, we consider serious injury and mortality from the specified activities to represent an insignificant incremental

increase in ongoing anthropogenic serious injury and mortality that alone (*i.e.*, in the absence of any other take) should not affect annual rates of recruitment and survival.

The PBR for the Arctic stock is 4,755 seals (158,507 × 0.06 × 0.5). This PBR is negatively biased (*i.e.*, lower than expected) because of its dependence on the negatively biased N_{MIN} estimate. The best estimate of the mean annual level of human-caused mortality and serious injury in the U.S. waters portion of the stock is 6,459 ringed seals, which is greater than the negatively biased PBR of 4,755 seals (Muto *et al.*, 2021). However, because this exceedance of PBR stems from an unrealistically low N_{MIN}, it should not be taken as indicative of a risk to this stock. The PBR was obtained from an N_{MIN} that is known to be an extreme underestimate of the abundance in the U.S. waters of the Bering Sea, which in turn is just a portion of the Arctic ringed seal stock in U.S. waters, and the best estimate of human-caused mortality and serious injury is for the entire U.S. portion of the stock, including, for example, Alaska Native subsistence takes in the Chukchi and Beaufort seas. Previous estimates from the U.S. waters of the Chukchi Sea (Bengtson *et al.* 2005) and results from a recent (2016) NOAA survey of those waters indicate that there are several hundreds of thousands of ringed seals in that region that are not included in N_{MIN} because the former results are outdated and the latter have not yet been published. Furthermore, ringed seals are known to remain abundant in the U.S. waters of the Beaufort Sea (which are also not included in N_{MIN}) based, for example, on hunter reports to the ISC and NOAA test surveys conducted in 2019. NMFS believes with high confidence that the number of ringed seals in Alaska waters greatly exceeds the number of individuals that would be required for the current take to balance the PBR (*i.e.*, N_{MIN} × Mortality and Serious Injury / PBR = 215,310 individuals). Therefore, the apparent exceedance of PBR in this case reflects inadequacy in the abundance estimates rather than an indication of excessive take. The minimum estimated mean annual rate of U.S. commercial fishery-related mortality and serious injury (5 seals) added to the

maximum annual M/SI total of 2 for the proposed Hilcorp project is less than 10% of the negatively biased PBR (10% of PBR = 476) and, therefore, can be considered negligible.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- Only 4 ringed seals would be authorized to be taken by serious injury/mortality over 5 years, which would represent less than 0.1 percent of residual PBR;
- No Level A harassment (auditory injury) would be expected;
- No long-lasting modification in marine mammal habitat, including designated critical habitat, would be expected;
- The only harassment would be Level B harassment in the form of brief and localized behavioral disturbance and avoidance;
- The amount of takes proposed to be authorized overall is low compared to population size; and
- The total area affected by ice route activities would be a small portion of ringed seals' range.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted previously, only take of small numbers of marine mammals may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities

other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the maximum number of individuals taken in any year to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted maximum annual number of individuals to be taken is less than one-third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The number of takes NMFS proposes to authorize is far below one-third of the modeled abundance for the Arctic stock of ringed seal (specifically, take of individuals is less than <0.01 percent). Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals would be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

In order to issue an IHA, NMFS must find that the specified activity will not have an "unmitigable adverse impact" on the subsistence uses of the affected marine mammal species or stocks by Alaskan Natives. NMFS has defined "unmitigable adverse impact" in 50 CFR 216.103 as an impact resulting from the specified activity: (1) that is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (i) causing the marine mammals to abandon or avoid hunting areas; (ii) directly displacing subsistence users; or (iii) placing physical barriers between the marine mammals and the subsistence hunters; and (2) that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

Given the nature of the activity and the required mitigation measures, serious injury and mortality of marine mammals is not expected to occur. However, due to a single seal mortality event in 1998, very limited take by serious injury and mortality has been proposed for authorization. The only marine mammals likely to be affected are ringed seals and, beyond the aforementioned take by M/SI, any impacts would be limited to temporary behavioral disturbances. As described above, the required mitigation and monitoring measures are expected to reduce the frequency and severity of takes of marine mammals.

There is no documented subsistence hunting or use of ringed seals in the project area. While subsistence use of ringed seals occurs within proximity of three communities along the Beaufort Sea coast (*i.e.*, Utqiagvik, Nuiqsut and Kaktovik), these communities are 25 to 50 km from the project area. SID, ODS, and Northstar are not known ringed seal hunting locations. The distances from communities to the project are not conducive to subsistence hunting. Subsistence hunters harvest ice seals primarily during the open water period of July through August, when boat crews hunt ringed, spotted and bearded seals. Additionally, since ice trail/road/pad activities occur during winter months when it is dark most of the day, it is not likely hunting would occur near those locations and during the activities.

Hilcorp frequently engages the subsistence communities along the North Slope as part of routine operations. Hilcorp has and will continue to meet with the North Slope Borough Department of Wildlife Management and the Ice Seal Committee (ISC) to discuss planned activities. Hilcorp has engaged in multiple coordination efforts with the ISC and the North Slope Borough Department of Wildlife Management (NSB DWM). These entities have never expressed concerns that ice trail/road/pad activities at these locations are affecting the availability of ringed seals for subsistence. For these reasons, a formal Plan of Cooperation (POC) is not required.

Hilcorp plans to continue to engage with affected subsistence communities regarding its ongoing North Slope operations, attend established upcoming relevant meetings, and periodically meet with affected communities in either one-on-one meetings or community presentations. Hilcorp has requested and encourages all stakeholders to contact Hilcorp directly if there are any concerns with Hilcorp operations interfering with subsistence activities. There are no mitigation or monitoring measures proposed specifically to address subsistence use.

Based on the description of the specified activity, the measures described to minimize adverse effects on the availability of marine mammals for subsistence purposes, and the proposed mitigation and monitoring measures, NMFS has preliminarily determined that there will not be an unmitigable adverse impact on subsistence uses from Hilcorp's proposed activities.

Adaptive Management

The regulations governing the take of marine mammals incidental to Hilcorp's ice road/trail/pad activities would contain an adaptive management component. The reporting requirements associated with this proposed rule, if adopted, are designed to provide NMFS with monitoring data to allow consideration of whether any changes are appropriate. The use of adaptive management allows NMFS to consider new information from different sources to determine (with input from Hilcorp regarding practicability) on an annual or biennial basis if mitigation or monitoring measures should be modified (including additions or deletions). Mitigation measures could be modified if new data suggests that such modifications would have a reasonable likelihood of reducing adverse effects to marine mammals and if the measures are practicable.

The following are some of the possible sources of applicable data to be considered through the adaptive management process: (1) results from monitoring reports, as required by MMPA authorizations; (2) results from general marine mammal

and sound research; and (3) any information which reveals that marine mammals may have been taken in a manner, extent, or number not authorized by these regulations or LOAs issued pursuant to these regulations.

Endangered Species Act

Section 7(a)(2) of the ESA of 1973 (16 U.S.C. 1531 *et seq*.) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of incidental take authorizations, NMFS Office of Protected Resources (OPR) consults internally whenever we propose to authorize take for endangered or threatened species, in this case with the Alaska Regional Office (AKRO).

NMFS is proposing to authorize take of ringed seal which are listed under the ESA.

NMFS OPR has requested initiation of Section 7 consultation with the NMFS AKRO for the issuance of the LOA. NMFS will conclude the ESA consultation prior to reaching a determination regarding the proposed issuance of the authorization.

Request for Information

NMFS requests interested persons to submit comments, information, and suggestions concerning Hilcorp's request and the proposed regulations (see **ADDRESSES**). All comments germane to this rulemaking will be reviewed and evaluated as we prepare a final rule and make final determinations on whether to issue the requested authorization. This proposed rule and referenced documents provide all environmental information relating to our proposed action for public review.

Classification

The Office of Management and Budget has determined that this proposed rule is not significant for purposes of Executive Order 12866. This proposed rule is not an

Executive Order 14192 regulatory action because this rule is not significant under Executive Order 12866.

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Hilcorp is the sole entity that would be subject to the requirements in these proposed regulations, and Hilcorp is not a small governmental jurisdiction, small organization, or small business, as defined by the RFA. Because of this certification, a regulatory flexibility analysis is not required and none has been prepared.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number. This proposed rule contains collection-of-information requirements subject to the provisions of the PRA. These requirements have been approved by OMB under control number 0648-0151 and include applications for regulations, subsequent LOAs, and reports.

Dated: January 26, 2026.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 217 is proposed to be amended as follows:

PART 217 – REGULATIONS GOVERNING THE TAKE OF MARINE MAMMALS INCIDENTAL TO SPECIFIED ACTIVITIES

1. The authority citation for part 217 continues to read as follows:

Authority: 16 U.S.C. 1361 et seq., unless otherwise noted.

2. Add subpart P to part 217 to read as follows:

Subpart P – Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Sea Ice Road and Trail Activity along the Beaufort Sea Coast

Sec.

217.150 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to Hilcorp Alaska, LLC (Hilcorp) and those persons they authorize or fund to conduct activities on their behalf for the taking of marine mammals that occurs in the areas outlined in paragraph (b) of this section and that occurs incidental to construction, use, and maintenance of ice roads/trails/pads. Requirements imposed on Hilcorp must be implemented by those persons it authorizes or funds to conduct activities on its behalf.

(b) The taking of marine mammals by Hilcorp may be authorized in a Letter of Authorization (LOA) only if it occurs along the Beaufort Sea coast on Alaska's North Slope.

217.151 Effective dates.

Regulations in this subpart are effective for a period of 5 years from the date of issuance.

217.152 Permissible methods of taking.

Under LOAs issued pursuant to this subpart, the Holder of the LOA (hereinafter "Hilcorp") may incidentally, but not intentionally, take marine mammals within the area

described in § 217.150(b) by mortality, serious injury or Level B harassment associated with ice road/trail/pad construction, maintenance, and use activities, provided the activities are in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate LOAs.

217.153 Prohibitions.

Except for the taking described in § 217.152 and authorized by the LOAs issued under this subpart, it is unlawful for any person to do any of the following in connection with the activities described in § 217.150:

(a) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or an LOA issued under this subpart;

(b) Take any marine mammal not specified in such LOAs;

(c) Take any marine mammal specified in such LOAs in any manner other than as specified;

(d) Take a marine mammal specified in such LOAs after NMFS determines such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(e) Take a marine mammal specified in such LOAs after NMFS determines such taking results in an unmitigable adverse impact on the species or stock of such marine mammal for taking for subsistence uses.

217.154 Mitigation requirements.

When conducting the activities identified in § 217.150(a), the mitigation measures contained in any LOA issued under this subpart must be implemented. These mitigation measures shall include but are not limited to:

(a) General conditions.

(1) Copies of any issued LOAs must be in the possession of Hilcorp, their designees, and work crew personnel operating under the authority of the issued LOAs;

(2) Prior to initiation of sea ice road/trail/pad-related activities, project personnel associated with ice road construction, maintenance, use or decommissioning must receive annual training on implementing mitigation and monitoring measures, including the following:

(i) Personnel must be advised that interactions with any wildlife, including approaching wildlife, is prohibited;

(ii) When traveling the ice road/trail, project personnel must follow directions of security and posted signs;

(iii) Annual training must include reviewing Hilcorp's Wildlife Management Plan;

(iv) Personnel must notify appropriate personnel if a seal is observed within 50 m or if a seal structure (*i.e.*, breathing hole or lair) is observed within 150 m of the centerline of the ice road/trail or the edge of the ice pad or on the ice pad;

(v) Personnel must stay in the vehicle and continue traveling at a constant speed if a seal is observed near the ice road/trail/pad and must not slow down, stop, or exit the vehicle; and

(b) General mitigation measures throughout the Ice Road/Trail Season (December through May).

(1) Sea ice routes must be surveyed and the snow/ice surface altered (*i.e.*, tracked) or route established prior to March 1st.

(2) Ice road/trail speed limits must be no greater than 45 miles per hour (mph).

(3) Delineators must mark the sea ice roads in a minimum of 0.4-km increments on both sides of the route to delineate the path of vehicle travel. Delineators may also be used to mark the centerline of the roadway. Delineators must be color-coded to indicate the direction of travel and location of the ice road.

(4) Corners of rig mats, steel plates, and other materials used to bridge sections of hazardous ice must be clearly marked or mapped using GPS coordinates of the locations.

(5) Blading and snow blowing of ice roads must be limited to the previously disturbed ice road/shoulder areas to the extent safe and practicable. Snow must be plowed or blown from the ice road surface.

(6) In the event snow is accumulating on a road within a 150-m radius of an identified downwind seal or seal lair, measures must be taken to avoid seal impacts, such as pushing snow further down the road before blowing it off the roadway. Vehicles must not stop within 50 m of identified seals or within 150 m of known seal structures.

(7) Personnel must be instructed to remain in the vehicle and safely continue if they encounter a ringed seal while driving on the road.

(8) If a ringed seal or seal structure is observed within 50 m or 150 m (respectively) of the centerline of the ice road/trail, the company Environmental Specialist must be informed of the observation and the following will occur:

(i) The seal must be avoided and the location of the seal will be verbally described on the monitoring form relative to the location of the ice road/trail and the observer's location;

(ii) A seal structure must be physically marked within 15 m of the edge of the sea ice road noting the location of the seal/seal structure along the axis/edge of the road (maintaining a distance of at least 15 m from the seal/structure);

(iii) Construction or maintenance work must not occur within 50 m of the seal. These activities may continue if the seal is 50 m or greater away. If the seal is within 50 m of these activities, they may continue as soon as the seal, of its own accord, moves farther than 50 m distance away from activities or has not been observed within that area for 24 hours. Transport vehicles may continue within the designated route without stopping;

(iv) All other personnel using the area must be notified following the notification protocols described in the Wildlife Management Plan, North Slope Fields, Alaska; and

(v) During the period in which a seal structure is periodically monitored, as described in the Communication and Monitoring Procedures for Seal and Seal Structure Observations section (below), maintenance work must proceed in a manner that minimizes impacts or disturbance to the area.

(c) Additional mitigation measures after March 1st: In addition to the general mitigation measures listed in § 217.154(b), the following measures must be implemented after March 1st:

(1) If safety concerns due to unstable ice road/trail conditions warrant the creation of a new or workaround route, the route must be surveyed for seal structures using a trained observer in a tracked vehicle approximately 2 days prior to establishing the route, weather permitting. The following protocol must be used for these surveys:

(i) During daylight hours with good visibility, a trained wildlife observer must survey the route 2 days prior to route construction to search for potential seal structures. The observer must be dedicated to monitoring for seal structures while the driver operates the tracked vehicle.

(ii) If a suspected seal structure is observed within 150 m of the centerline of the proposed new or workaround route, a marker must be placed 15 m from the location and GPS coordinates must be recorded. The centerline of the new route must avoid any suspected seal structures by a 150-m distance.

(2) To ensure a safe travel route, flooding and ice buildup or maintenance activities may be conducted in new routes during non-daylight hours, avoiding any identified seal structures by 150 m.

(3) Once the new ice trail is established, tracked vehicle operation must be limited to the disturbed area to the extent practicable and when safety of personnel is ensured.

217.155 Requirements for monitoring and reporting.

(a) If an ice road or trail is being actively used, a dedicated observer must conduct either a ground-based survey (by vehicle) or with the assistance of Unmanned Aerial Systems (UAS) along the ice road/trail/pad during daylight conditions with good visibility to observe if any ringed seals are within 50 m or ringed seal structures are within 150 m of the centerline of the route(s).

(b) The following protocols must be followed:

(1) Surveys must be conducted once per week during daylight hours. Survey protocol consists of either driving the ice road/trail or using UAS to observe the route while stopping every 800 m to observe each side of the corridor within 50 m to check for the presence of seals and 150 m to check for seal structures.

(2) Use of UAS must comply with applicable Federal Aviation Administration (FAA) regulations. UAS must be flown by only an experienced operator. UAS must not be flown directly over pinnipeds hauled out.

(3) UAS must be flown at altitudes between 60 and 120 m with maximum altitude less than 457 m following FAA protocol (14 CFR part 107).

(4) UAS flights must be conducted in accordance with FAA regulations and in accordance with applicable sections of NOAA's UAS Policy 220-1-5 (NMFS 2021, NOAA 2019).

(5) A trained operator must fly the aircraft while a dedicated observer monitors the aerial imaging for the presence of ringed seals or seal structures within 50 m or 150 m (respectively) of the ice routes.

(c) Observers for ice road/trail/pad activities need not be trained Protected Species Observers, but they must have received the training described under Wildlife Training and understand the applicable sections of the Wildlife Management Plan. Observers must

be capable of detecting, observing, and monitoring ringed seal presence and behaviors and accurately and completely recording data.

(d) Observers must have no other primary duties other than to watch for and report observations related to ringed seals during surveys.

(e) If the observer is driving a vehicle, then the survey must be performed when the driver stops at periodic intervals sufficient to complete a thorough assessment of the area, given visibility conditions. If weather conditions become unsafe, the monitoring activity must be discontinued until it is safe to resume.

(f) If a seal or seal structure is observed within 50 m or 150 m (respectively) of the centerline of the ice route, the location of the seal or seal structure must be reported to the Environmental Specialist or Project Manager, who will relay the location to all personnel using the ice road. In addition, the personnel responsible for Wildlife Interaction Management must be notified following protocols described in each company's specific Wildlife Management Plan. The following monitoring procedures must also be followed:

(1) As soon as practicable after the initial seal observation, the Environmental Specialist or designated person must observe the seal for approximately 15 minutes either on the ground (*i.e.*, if safe and logistically practicable to do so from a vehicle) or using UAS to document the animal's location relative to the ice road/trail/pad.

(2) All work that is occurring when the seal is observed and the behavior of the seal during this observation period must be documented until the animal moves more than 50 m from the center of the ice road/trail or is no longer observed. If the seal remains in the area after the 15-minute observation period, monitoring must continue every 6 hours during daylight conditions.

(3) Monitoring of a seal structure by the Environmental Specialist or designated person must continue every 6 hours during daylight conditions on the day of the initial observation to determine whether a seal is present.

(4) Monitoring must consist of observing the structure from a distance of at least 150 m for approximately 15 minutes each time.

(5) After the first 24 hours, monitoring (ground-based or using UAS) for the seal must occur every other day the ice road/trail/pad is being used, unless it is determined the structure is not actively being used (*i.e.*, a seal is not observed at that location during monitoring for 10 consecutive monitoring sessions). During this monitoring period, maintenance work must proceed in a manner that minimizes impacts or disturbance to the area and the animal.

(g) The following information must be recorded:

(1) Date and time of each observation event (*e.g.*, initial observation of a seal or seal structure) and subsequent monitoring;

(2) Environmental conditions during each observation event;

(3) Number of animals per observation event and number of adults/juveniles/pups per observation event;

(4) Behaviors of seals during each observation event;

(5) Geographic coordinates of the observed animals or structure (breathing hole or lair), with the position recorded by using the most precise coordinates practicable (coordinates must be recorded in decimal degrees or similar standard and defined coordinate system); and

(6) For observation events, mitigation measures implemented to minimize impacts.

(h) Observers must use standardized electronic data forms to record data, and Hilcorp must submit all datasheets and/or raw sighting data with the draft report

(i) A final end-of-season report compiling all ringed seal observations must be submitted to NMFS Office of Protected Resources within 90 days of decommissioning the ice road/trail. The report must include:

(1) Date, time, location of each observation;

(2) Ringed seal characteristics (*i.e.*, adult or pup) and behavior (avoidance, resting, etc.);

(3) Activities occurring during observation including equipment being used and its purpose and approximate distance to ringed seal(s);

(4) Actions taken to mitigate effects of interaction emphasizing:

(i) which mitigation and/or monitoring measures were successful;

(ii) which mitigation and/or monitoring measures may need to be improved to reduce interactions with ringed seals;

(iii) the effectiveness and practicality of implementing mitigation and monitoring measures;

(iv) any issues or concerns regarding implementation of mitigation and/or monitoring measures; and

(v) potential effects of interactions based on observation data.

(j) In the event a seal is killed or seriously injured by ice road/trail/pad activities, Hilcorp must immediately cease the specified activities and report the incident to the NMFS Office of Protected Resources NMFS (*PR.ITP.MonitoringReports@noaa.gov* and *ITP.pauline@noaa.gov*) and Alaska Region Stranding Coordinator (907-586-7209). The report must include the following information:

(1) Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);

(2) Species identification (if known) or description of the animal(s) involved;

(3) Condition of the animal(s) (including carcass condition if the animal is dead);

(4) Observed behaviors of the animal(s), if alive;

(5) If available, photographs or video footage of the animal(s); and

(6) General circumstances under which the animal was discovered.

217.156 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, Hilcorp must apply for and obtain an LOA.

(b) An LOA, unless suspended or revoked, may be effective for a period of time not to exceed the expiration date of these regulations.

(c) If an LOA expires prior to the expiration date of these regulations, Hilcorp may apply for and obtain a renewal of the LOA.

(d) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA, Hilcorp must apply for and obtain a modification of the LOA as described in § 217.157.

(e) The LOAs shall set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact (*i.e.*, mitigation) on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(f) Issuance of the LOAs shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(g) Notice of issuance or denial of an LOA shall be published in the Federal Register within thirty days of a determination.

217.157 Renewals and modifications of Letters of Authorization.

(a) An LOA issued under this subpart for the activity identified in § 217.150(a) shall be renewed or modified upon request by the applicant, provided that:

(1) The proposed specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for these regulations (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section); and

(2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous LOAs under these regulations were implemented.

(b) For LOAs modification or renewal requests by the applicants that include changes to the activity or the mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section) that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), NMFS may publish a notice of proposed LOAs in the **Federal Register**, including the associated analysis of the change, and solicit public comment before issuing the LOA.

(c) The LOAs issued under §§ 216.106 of this chapter and 217.156 for the activity identified in § 217.150(a) may be modified by NMFS under the following circumstances:

(1) Adaptive management. NMFS may modify (including augment) the existing mitigation, monitoring, or reporting measures (after consulting with Hilcorp regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring set forth in the preamble for these regulations.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA:

(A) Results from Hilcorp's monitoring from the previous year(s).

(B) Results from other marine mammal and/or sound research or studies.

(C) Any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent LOAs.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS will publish a notice of proposed LOA in the Federal Register and solicit public comment.

(2) If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in LOAs issued pursuant to §§ 216.106 of this chapter and 217.156, an LOA may be modified without prior notice or opportunity for public comment. Notice would be published in the **Federal Register** within thirty days of the action.

217.158 – 217.159 [Reserved]

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