
6 Additional Regulatory Considerations

**Supplemental Environmental Impact Statement/
Overseas Environmental Impact Statement
Mariana Islands Training and Testing**

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6 Additional Regulatory Considerations

In accordance with the Council on Environmental Quality regulations for implementing the National Environmental Policy Act (NEPA), federal agencies shall, to the fullest extent possible, integrate the requirements of NEPA with other planning and environmental review procedures required by law or by agency practice so that all such procedures run concurrently rather than consecutively. This chapter summarizes environmental compliance for the Proposed Action; consistency with other federal, state, and local plans, policies, and regulations in addition to the ones discussed in Chapter 3 (Affected Environment and Environmental Consequences); the relationship between short-term impacts and the maintenance and enhancement of long-term productivity in the affected environment; irreversible and irretrievable commitments of resources; and energy conservation.

6.1 Consistency with Other Applicable Federal, State, and Local Plans, Policies, and Regulations

Implementation of the Proposed Action in this Supplemental Environmental Impact Statement/ Overseas Environmental Impact Statement (SEIS/OEIS) would comply with applicable federal, state, and local laws, regulations, and executive orders. The United States (U.S.) Department of the Navy (Navy) has consulted and will continue to consult with regulatory agencies, as appropriate, during the NEPA process and before implementing the Proposed Action.

Table 6.1-1 summarizes environmental compliance requirements that were considered in preparing this SEIS/OEIS (including those that may be secondary considerations in the resource evaluations). Section 3.0.2 (Regulatory Framework) provides brief excerpts of the primary federal statutes, executive orders, international standards, and guidance that form the regulatory framework for the resource evaluations. Section 1.6 (The Environmental Planning Process) provides brief excerpts of the primary federal statutes, executive orders, and guidance that form the regulatory framework for the resource evaluations in Chapter 3 (Affected Environment and Environmental Consequences). Documentation of consultation and coordination with regulatory agencies is provided in Appendix C (Agency Correspondence).

Table 6.1-1: Summary of Environmental Compliance for the Proposed Action

Statutes, Regulations, International Standards, and Guidance	Status of Compliance
Statutes and Regulations	
<i>Abandoned Shipwreck Act</i> (43 United States Code [U.S.C.] sections 2101-2106)	See Section 3.11 (Cultural Resources) for assessment and conclusion that the Proposed Action is consistent with the act.
<i>Act to Prevent Pollution from Ships</i> (33 U.S.C. sections 1901–1915)	The Navy complies with these regulations and operates in a manner that minimizes or eliminates any adverse effects to the marine environment. See Section 3.1 (Sediments and Water Quality) for the assessment.
<i>Clean Air Act</i> (CAA) (42 U.S.C. sections 7401 et seq.) <i>CAA General Conformity Rule</i> (40 C.F.R. section 93[B]) State Implementation Plan (SIP)	The Proposed Action would not conflict with attainment and maintenance goals established in the State Implementation Plan. As determined previously, a CAA conformity determination will not be required because emissions attributable to the alternatives including the Proposed Action would be below <i>de minimis</i> thresholds. See the Section 3.1 (Air Quality) for discussion of training and testing activities and compliance with the CAA.
<i>Clean Water Act</i> (CWA) (33 U.S.C. 1251 et seq.)	No permits are required under the CWA Sections 401, 402, or 404 (b) (1) for the Proposed Action.
<i>Coastal Zone Management Act</i> (16 U.S.C. sections 1451-1464)	The Navy will continue compliance with <i>the Coastal Zone Management Act</i> . See Section 6.1.1 (Coastal Zone Management Act Compliance).
<i>Endangered Species Act</i> (ESA) (16 U.S.C. sections 1531 et seq.)	<p>This SEIS/OEIS analyzes potential effects to species listed under the ESA and is administered by both the U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS).</p> <p>In accordance with Section 7 of the ESA (50 C.F.R. section 402), during the preparation of the 2015 MITT Final EIS/OEIS, the Navy prepared a biological assessment and submitted it to the USFWS. A Biological Opinion (BO) was issued by USFWS and remains valid. The Navy will continue to adhere to any BO terms and conditions listed therein.</p> <p>The Navy is preparing a Biological Assessment that will be submitted to NMFS as part of formal consultation. A BO may be issued by NMFS, and the Navy will adhere to any BO terms and conditions listed therein.</p> <p>In addition, the Navy will apply for a Letter of Authorization (LOA), which is expected to impose terms and conditions that, when implemented, would make ESA Section 9 prohibitions inapplicable to covered Navy activities. The MMPA LOA permit may be issued by NMFS prior to the issuance of the Record of Decision (ROD) on this SEIS/OEIS.</p>

Table 6.1-1: Summary of Environmental Compliance for the Proposed Action (continued)

Statutes, Regulations, International Standards, and Guidance	Status of Compliance
Statutes and Regulations (continued)	
<i>Historic Sites, Buildings and Antiquities Act, 1935</i> (54 U.S.C. 320101 et seq.) <i>Antiquities Act</i> (54 U.S.C. sections 320301–320303)	Status remains unchanged since the 2015 MITT Final EIS/OEIS. See Section 3.11 (Cultural Resources) for the assessment.
<i>Magnuson-Stevens Fishery Conservation and Management Act</i> (16 U.S.C. sections 1801–1882)	The Proposed Action may have potential impacts on essential fish habitat and managed species. Consultation with NMFS is conducted for affected species and their habitats (see Section 6.1.3, Magnuson-Stevens Fishery Conservation and Management Act).
<i>Marine Mammal Protection Act</i> (MMPA) (16 U.S.C. sections 1431 et seq.)	This SEIS/OEIS updates the analysis and will be the basis for a request for a new LOA permit for activities beginning in 2020.
<i>Migratory Bird Treaty Act</i> (16 U.S.C. sections 703–712)	The Proposed Action is not anticipated to result in significant adverse effects on migratory bird populations. The Navy would not need to confer with the U.S. Fish and Wildlife Service as a result of the Proposed Action.
<i>Military Munitions Rule</i>	Status remains unchanged since the 2015 MITT Final EIS/OEIS.
<i>National Fishery Enhancement Act</i> (33 U.S.C. section 2101 et seq.)	Status remains unchanged since the 2015 MITT Final EIS/OEIS. See Section 3.9 (Fishes) for the assessment.
<i>National Historic Preservation Act</i> (54 U.S.C. section 306108)	The Programmatic Agreement expires in December 2019 and the Navy is pursuing consultation to continue compliance with the National Historic Preservation Act. The Proposed Action is consistent with the national policy for the preservation of historic sites, buildings, and objects of national significance. Furthermore, the Navy will comply, as applicable, with the Section 106 consultation requirements.
<i>National Marine Sanctuaries Act</i> (16 U.S.C. sections 1431–1445c-1)	There are no National Marine Sanctuaries within the MITT Study Area.
<i>Rivers and Harbors Act</i> (33 U.S.C. section 401 et seq.)	No permit is required under the Rivers and Harbors Act because no construction in navigable waterways is proposed.
<i>The Sikes Act of 1960</i> (16 U.S.C. sections 670a-670o, as amended by the Sikes Act Improvement Act of 1997, Public Law No. 105-85), requires military installations with significant natural resources to prepare and implement Integrated Natural Resource Management Plans (INRMPs).	Status remains unchanged since the 2015 MITT Final EIS/OEIS. The Proposed Action and Alternatives will not result in a requirement for an update of INRMPs outside of their normal update schedule of every 5 years.

Table 6.1-1: Summary of Environmental Compliance for the Proposed Action (continued)

Statutes, Regulations, International Standards, and Guidance	Status of Compliance
Statutes and Regulations (continued)	
<i>Submerged Lands Act of 1953</i> (43 U.S.C. sections 1301–1315)	The Proposed Action is consistent with the Submerged Lands Act regulations.
<i>Sunken Military Craft Act</i> (Public Law 108–375, 10 U.S.C. section 113 Note and 118 Stat. 2094–2098)	The <i>Sunken Military Craft Act</i> does not apply to actions taken by, or at the direction of, the United States.
Executive Orders	
Executive Order 11990, <i>Protection of Wetlands</i>	Implementation of the Proposed Action would not affect wetlands as defined in Executive Order 11990.
Executive Order 12114, <i>Environmental Effects Abroad of Major Department of Defense Actions</i>	The Navy prepared this SEIS/OEIS in accordance with Executive Order 12114 and Navy-implementing regulations found at 32 CFR part 187, <i>Environmental Effects Abroad of Major Department of Defense Actions</i> .
Executive Order 12898, <i>Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations</i>	Status remains unchanged since the 2015 MITT Final EIS/OEIS. See Section 3.12 (Socioeconomic Resources and Environmental Justice) for the assessment.
Executive Order 12962, <i>Recreational Fisheries</i>	Status remains unchanged since the 2015 MITT Final EIS/OEIS. See Section 3.12 (Socioeconomic Resources and Environmental Justice) for the assessment.
Executive Order 13045, <i>Protection of Children from Environmental Health Risks and Safety Risks</i>	The Proposed Action would not result in disproportionate environmental health or safety risks to children. See Section 3.0.3 (Resources and Issues Not Carried Forward for More Detailed Discussion).
Executive Order 13089, <i>Coral Reef Protection</i>	Status remains unchanged since the 2015 MITT Final EIS/OEIS.
Executive Order 13112, <i>Invasive Species</i>	Status remains unchanged since the 2015 MITT Final EIS/OEIS.
Executive Order 13158, <i>Marine Protected Areas</i>	Status remains unchanged since the 2015 MITT Final EIS/OEIS. See Section 6.1.2 (Marine Protected Areas) for more information.

Table 6.1-1: Summary of Environmental Compliance for the Proposed Action (continued)

Statutes, Regulations, International Standards, and Guidance	Status of Compliance
Executive Orders (continued)	
Executive Order 13783, <i>Promoting Energy Independence and Economic Growth</i>	The Proposed Action is consistent with the policy and immediate review of all agency actions that potentially burden the safe, efficient development of domestic energy resources. This Executive Order revokes Executive Order 13653, <i>Preparing the United States for the Impacts of Climate Change</i> .
Executive Order 13792, <i>Review of Designations Under the Antiquities Act</i>	On April 26, 2017, Executive Order 13792 was issued; it directed the Secretary of the Interior to review designations of national monuments made since 1996.
Executive Order 13834, <i>Efficient Federal Operations</i>	The Proposed Action is consistent with the federal government’s order to prioritize actions that reduce waste, cut costs, enhance the resilience of Federal infrastructure and operations, and enable more effective accomplishment of an agency’s mission. This Executive Order revokes Executive Order 13693, <i>Planning for Federal Sustainability in the Next Decade</i> .
Executive Order 13840, <i>Ocean Policy to Advance the Economic, Security, and Environmental Interests of the United States</i>	The Proposed Action is consistent with the comprehensive national policy for the <i>Ocean Policy to Advance the Economic, Security, and Environmental Interests of the United States</i> (which revoked and replaced Executive Order 13547, <i>Stewardship of the Ocean, Our Coasts, and the Great Lakes</i>).
International Standards	
International Convention for the Prevention of Pollution from Ships	Status remains unchanged since the 2015 MITT Final EIS/OEIS.

Notes: CFR = Code of Federal Regulations, EIS = Environmental Impact Statement, ESA = Endangered Species Act, MBTA = Migratory Bird Treaty Act, MIRC = Mariana Islands Range Complex, MITT = Mariana Islands Training and Testing, MMPA = Marine Mammal Protection Act, OEIS = Overseas Environmental Impact Statement, SEIS = Supplemental Environmental Impact Statement, U.S. = United States

6.1.1 Coastal Zone Management Act Compliance

The 2015 MITT Final EIS/OEIS describes the *Coastal Zone Management Act of 1972* (16 United States Code section 1451, et seq.). This description, and the definitions from the 2015 MITT Final EIS/OEIS, have not changed. See Section 4.3.5.3 (Development of Coastal Lands) in the 2015 MITT Final EIS/OEIS for additional information regarding management of the coastal zones within the MITT Study Area.

As described in the 2015 MITT Final EIS/OEIS, a Consistency Determination (CD) or a Negative Determination may be submitted for review of federal agency activities.

6.1.1.1 Guam Coastal Management Program

The Guam Coastal Management Program has not changed from its description in the 2015 MITT Final EIS/OEIS. The Navy will comply with Guam's Coastal Management Program to the maximum extent practicable. The Navy will submit a CD or Negative Determination to the Bureau of Statistics and Plans addressing the proposed training and testing activities that may affect Guam's coastal zone.

6.1.1.2 Commonwealth of the Northern Mariana Islands Coastal Zone Management Program

The Commonwealth of the Northern Mariana Islands (CNMI) Coastal Zone Management Act has not changed from its description in the 2015 MITT Final EIS/OEIS. The Navy will comply with CNMI's Coastal Management Program to the maximum extent practicable. The Navy will submit a CD or Negative Determination to the CNMI Division of Coastal Resources Management addressing the proposed training and testing activities that may affect the CNMI coastal zone.

6.1.2 Marine Protected Areas

The National System of Marine Protected Areas includes marine protected areas managed under six systems: (1) the National Marine Sanctuary System, (2) Marine National Monuments, (3) the National Wildlife Refuge System, (4) State and Local Marine Protected Areas, (5) the National Parks System, and (6) the National Estuarine Research Reserve System. The 2015 MITT Final EIS/OEIS discussed Marine Protected Areas that overlapped with the Study Area (U.S. Department of the Navy, 2015). There are no National Marine Sanctuary System or National Estuarine Research Reserve System areas in the Study Area. The Mariana Trench Marine National Monument (Proclamation No. 8335, 74 *Federal Register* 1557) is located within the Study Area, but was designated in 2009 with specific language that stated: "The prohibitions required by this proclamation shall not apply to activities and exercises of the Armed Forces (including those carried out by the United States Coast Guard)."

There are three national wildlife refuge areas within the Study Area: the Guam National Wildlife Refuge, the Mariana Arc of Fire National Wildlife Refuge, and the Mariana Trench National Wildlife Refuge. The Guam National Wildlife Refuge is the only one included in the National System of Marine Protected Areas. There are 12 state or local marine protected areas within the Study Area, none of which are included in the National System of Marine Protected Areas. Finally, the War in the Pacific National Historical Park is within the Study Area, however, it is not included in the National System of Marine Protected Areas. Activities proposed and regulations in these areas have not changed substantially since the 2015 MITT Final EIS/OEIS was published. Further analysis and discussion of Marine Protected Areas can be found in the 2015 MITT Final EIS/OEIS, Chapter 6 (Additional Regulatory Considerations), Table 6.1-2. Executive Order 13792, *Review of Designations Under the Antiquities Act*, authorized a review of certain designated National Monuments under the Antiquities Act by the Secretary of the Interior. No changes have been made currently to the National Monument in the Study Area.

6.1.3 Magnuson-Stevens Fishery Conservation and Management Act

The Magnuson-Stevens Fishery Conservation and Management Act of 1976 (16 U.S.C. section 1801–1891[d]), as amended by the 1996 Sustainable Fisheries Act (Public Law 104–297), and the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (Public Law 109-479), governs marine fisheries management in U.S. waters in order to promote long-term economic and biological sustainability for fisheries up to 200 nautical miles from shore. Its main objectives are to prevent overfishing, rebuild overfished stocks, increase long-term economic and social benefits, and ensure a safe and sustainable supply of seafood (National Oceanic and Atmospheric Administration Fisheries, 2017). The Sustainable Fisheries Act of 1996 amended the law to establish procedures that identify, conserve, and enhance Essential Fish Habitat (EFH) for species regulated under a federal fisheries management plan. Consultation with the National Oceanic and Atmospheric Administration’s National Marine Fisheries Service (NMFS) on all actions or proposed actions that may adversely affect EFH is required for federal agencies under section 305(b)(2) of the Magnuson-Stevens Act.

The Magnuson-Stevens Fishery Conservation and Management Act defines an adverse effect as,

“any impact that reduces quality and/or quantity of Essential Fish Habitat. Adverse effects may include direct or indirect physical, chemical or biological alterations of the waters or substrate and the loss of, or injury to, benthic organisms, prey species and their habitat and other ecosystem components, if such modifications reduce the quality and/or quantity of Essential Fish Habitat. Adverse effects to Essential Fish Habitat may result from actions occurring within Essential Fish Habitat or outside of Essential Fish Habitat and maybe include site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions” (50 Code of Federal Regulations 600.810).

The regional Fisheries Management Councils may also designate areas called Habitat Areas of Particular Concern (HAPC). Designated HAPCs are discrete subsets of EFH that provide extremely important ecological functions or are especially vulnerable to degradation.

The Navy completed a previous EFH consultation with NMFS for the MITT Study Area in 2014. From the 2014 consultation, it was determined that certain proposed activities would affect some elements of EFH. NMFS provided conservation recommendations and the Navy agreed to certain measures to avoid, minimize, mitigate, or offset effects. EFH and HAPC designations in the Study Area have not changed and the previous 2014 consultation is still valid for the proposed training and testing activities that have not changed. The Navy is currently conducting a supplemental EFH consultation with the NMFS Pacific Island Regional Office considering activities that are new or that have changed since the 2014 EFH consultation and that have the potential to adversely affect EFH and managed species.

6.2 Relationship Between Short-Term Use of the Environment and Maintenance and Enhancement of Long-Term Productivity

In accordance with the Council on Environmental Quality regulations (Part 1502), this SEIS/OEIS analyzes the relationship between the short-term impacts on the environment and the effects those impacts may have on the maintenance and enhancement of the long-term productivity of the affected environment. This analysis has not changed since the analysis conducted in the 2015 MITT Final EIS/OEIS. See Section 6.2 (Relationship Between Short-Term Use of The Environment and Maintenance and

Enhancement of Long-Term Productivity) of the 2015 MITT Final EIS/OEIS for more information (U.S. Department of the Navy, 2015).

6.3 Irreversible or Irrecoverable Commitment of Resources

NEPA requires that environmental analysis include identification of “any irreversible and irretrievable commitments of resources which would be involved in the Proposed Action should it be implemented” (42 United States Code section 4332). This analysis has not changed since it was conducted in the 2015 MITT Final EIS/OEIS. See Section 6.3 (Irreversible or Irrecoverable Commitment of Resources) of the 2015 MITT Final EIS/OEIS for more information (U.S. Department of the Navy, 2015).

6.4 Energy Requirements and Conservation Potential of Alternatives

Under the operational strategy report in 2011, the Department of Defense (DoD) published an implementation plan to integrate operational energy considerations and transformation into existing programs, processes, and institutions (U.S. Department of Defense, 2012). The Navy consumes approximately 26 percent of the total DoD usage of petroleum between all branches (U.S. Department of Defense, 2016a). In Fiscal Year 2015, the Navy reduced its petroleum consumption by 25.1 percent compared to the Fiscal Year 2005 baseline (U.S. Department of Defense, 2016b). In 2016, the DoD published a new Operational Energy Strategy (U.S. Department of Defense, 2016a) to update the 2011 strategy and transform the way energy is consumed in military operations. The 2011 strategy set the overall direction for operational energy security (U.S. Department of Defense, 2011). The 2016 strategy shifts focus towards three objectives: (1) increasing future warfighting capability by including energy throughout future force development, (2) identifying and reducing logistic and operational risks from operational energy vulnerabilities, and (3) enhancing the force’s mission effectiveness through updated equipment and improvements in training, exercises, and operations (U.S. Department of Defense, 2016a). These documents guide the DoD in how to better use energy resources and transform the way we power current and future forces.

Training and testing activities within the Study Area would increase energy demand over the No Action Alternative. The energy demand would arise from fuel (e.g., gasoline, diesel) consumption, mainly from aircraft and vessels participating in training and testing. Details of fuel consumption by training and testing activities on an annual basis are outlined in the air quality emissions calculation spreadsheets available on the project website. Calculations from the air quality analysis in this SEIS/OEIS found that aircraft fuel consumption is estimated to decrease by approximately 5 percent per year under both Alternative 1 and Alternative 2, when compared to current annual rates of aircraft fuel consumption. Vessel fuel consumption is estimated to increase by approximately 8 percent per year under both Alternative 1 and Alternative 2, when compared to current annual rates of vessel fuel consumption. Conservative assumptions were made in developing the estimates, and therefore the actual amount of fuel consumed during training and testing events may be less than estimated. The alternatives could result in a net cumulative reduction in the global energy (fuel) supply.

Energy requirements would be subject to any established energy conservation practices. The use of energy sources has been minimized wherever possible without compromising safety, training, or testing activities. No additional conservation measures related to direct energy consumption by the proposed activities are identified. The Navy’s energy vision given in the Operational Energy Strategy report (U.S. Department of Defense, 2016a) is consistent with energy conservation practices and states that the Navy values energy as a strategic resource, understands how energy security is fundamental to executing our mission afloat and ashore and is resilient to any potential energy future.

The Navy is committed to improving energy security and environmental stewardship by reducing its reliance on fossil fuels. The Navy is actively developing and participating in energy, environmental, and climate change initiatives that will increase use of alternative energy and help conserve the world's resources for future generations. Two Navy programs—the Incentivized Energy Conservation Program and the Naval Sea Systems Command's Fleet Readiness, Research, and Development Program—are helping the Fleet conserve fuel via improved operating procedures and long-term initiatives. The Incentivized Energy Conservation Program encourages the operation of ships in the most efficient manner while conducting their mission and supporting the Secretary of the Navy's efforts to reduce total energy consumption on naval ships. The Naval Sea Systems Command's Fleet Readiness, Research, and Development Program includes the High-Efficiency Heating, Ventilating, and Air Conditioning which are improvements to existing shipboard technologies that will both help with Fleet readiness and decrease the ships' energy consumption and greenhouse gas emissions.

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