
6 Additional Regulatory Considerations

6 ADDITIONAL REGULATORY CONSIDERATIONS

In accordance with the Council on Environmental Quality (CEQ) 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 not considered in Chapter 3 (Affected Environment and Environmental Consequences); the relationship between short-term impacts; the maintenance and enhancement of long-term productivity in the affected environment; irreversible or 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 addressed in the Gulf of Alaska (GOA) Navy Training Activities Supplemental Environmental Impact Statement (EIS)/Overseas EIS (OEIS) would comply with applicable federal, state, and local laws, regulations, and executive orders. The United States (U.S.) Department of the Navy (Navy) is consulting with and will continue to consult with regulatory agencies, as appropriate, during the NEPA process and prior to implementation of the Proposed Action to ensure that requirements are met. Table 6.1-1 summarizes environmental compliance requirements that were considered in preparing this Supplemental EIS/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. Documentation of consultation and coordination with regulatory agencies is provided in Appendix B (Agency Correspondence). Formal consultation under the Endangered Species Act started following the release of the Draft Supplemental EIS/OEIS. However, the Navy has been coordinating with regulatory offices prior to initiating the formal consultation. Likewise, the Navy submitted applications to the National Marine Fisheries Service (NMFS) for Marine Mammal Protection Act authorizations supported by this Supplemental EIS/OEIS. Consultation with NMFS is currently underway. Therefore, not all consultation documentation is included in Appendix B (Agency Correspondence) or on the website (www.goaeis.com) at this time, but all compliance will be completed prior to the signing of the Record of Decision for the Proposed Action.

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

Laws, Executive Orders, International Standards, and Guidance	Status of Compliance
Laws	
Abandoned Shipwreck Act (43 United States Code [U.S.C.] §§2101–2106)	The 1987 Abandoned Shipwreck Act establishes requirements for educational and recreational access to abandoned shipwrecks, the protection of such resources through the establishment of underwater parks and protected areas, the development of specific guidelines for management and protection in consultation with various stakeholders, defines the jurisdiction and responsibility of federal and state agencies, and explicitly states that the law of salvage and the law of finds do not apply. Under the Act, the Department of the Interior and National Park Service issued guidelines in 2007 to help states manage shipwrecks in their waters. The Act defines the federal government's title to any abandoned shipwreck that meets criteria for inclusion in the National Register of Historic Places within state submerged lands, with the stipulation that title to these shipwrecks will be transferred to the appropriate state. For abandoned shipwrecks in U.S. Territorial Waters, the federal government asserts title to the resource. See the 2011 GOA Final EIS/OEIS, Chapter 3, Section 3.10 (Cultural Resources) for the assessment and conclusion that the Proposed Action is consistent with the Act. Additionally, because the Proposed Action is not changing, the conclusions from the 2011 GOA Final EIS/OEIS are still applicable and no additional analysis is required in this Supplemental EIS/OEIS. (See Section 3.10.2.2, Regulatory Framework, of the 2011 GOA Final EIS/OEIS)
Act to Prevent Pollution from Ships (33 U.S.C. §1901 et seq.)	Requirements associated with the Act to Prevent Pollution from Ships are implemented by the Navy Environmental Readiness Program Manual and related Navy guidance documents governing waste management, pollution prevention, and recycling. At sea, the Navy complies with these regulations and operates in a manner that minimizes or eliminates any adverse effects on the marine environment (U.S. Department of the Navy 2007).
Antiquities Act (54 U.S.C. 320301 et seq.)	The Antiquities Act states that any person who shall appropriate, excavate, injure, or destroy any historic or prehistoric ruin or monument, or any object of antiquity, situated on lands owned or controlled by the Government of the United States, without the permission of the Secretary of the Department of the Government having jurisdiction over the lands on which said antiquities are situated, shall, upon conviction, be fined or be imprisoned for a period of not more than 90 days, or shall suffer both fine and imprisonment. The Proposed Action is consistent with the Act's objectives for protection of archaeological and historical sites and objects, preservation of cultural resources, and the public's access to them. See the 2011 GOA Final EIS/OEIS, Chapter 3, Section 3.10 (Cultural Resources) for the assessment. Additionally, because the Proposed Action is not changing, the conclusions from the 2011 GOA Final EIS/OEIS are still applicable and no additional analysis is required in this Supplemental EIS/OEIS. (See Section 3.10.2.2, Regulatory Framework, of the 2011 GOA Final EIS/OEIS)
Bald and Golden Eagle Protection Act (16 U.S.C. 668–668c)	This Act prohibits anyone, without a permit issued by the Secretary of the Interior, from "taking" bald eagles, including their parts, nests, or eggs. Implementation of the Proposed Action would not affect Bald and Golden Eagles as their protection is defined in the Bald and Golden Eagle Protection Act. The conclusion presented in Chapter 3, Section 3.9 (Birds) of the 2011 GOA Final EIS/OEIS indicated that military activities are not anticipated to result in the take of bald eagles and, therefore, a permit is not needed. Additionally, because the Proposed Action is not changing, the conclusions from the 2011 GOA Final EIS/OEIS are still applicable and no additional analysis is required in this Supplemental EIS/OEIS.

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

Laws, Executive Orders, International Standards, and Guidance	Status of Compliance
Laws (continued)	
Coastal Zone Management Act (16 Code of Federal Regulations [C.F.R.] §1451 et seq.)	This Act established a voluntary national program within the Department of Commerce to encourage coastal states to develop and implement coastal zone management plans. The Alaska Coastal Management Program (ACMP) ended on 1 July 2011 per state legislative action (Alaska Statute 44.66.030). The Legislature adjourned the special legislative session on 14 May 2011 without passing legislation required to extend the ACMP. Therefore, Alaska currently does not have an approved Coastal Management Plan, and the Navy has no requirements to prepare and submit a consistency determination for the Proposed Action analyzed in this Supplemental EIS/OEIS. See the 2011 GOA Final EIS/OEIS, Chapter 1, Section 1.5.5 (Coastal Zone Management Act) and Sections 3.3.2.2 (Regulatory Framework) and 3.5.2.1 (Regulatory Framework) for a discussion of Navy activities and compliance with the Coastal Zone Management Act under the previously approved Coastal Management Plan before it expired in 2011.
Clean Air Act (CAA) (42 U.S.C. §§7401 et seq.) CAA General Conformity Rule (40 C.F.R. §93[B]) State Implementation Plan (SIP)	The CAA is the comprehensive federal law that regulates air emissions from stationary and mobile sources. The Proposed Action would not conflict with attainment and maintenance goals established in SIPs. 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 2011 GOA Final EIS/OEIS, Chapter 3, Section 3.1 (Air Quality) for discussion of military service activities and compliance with the CAA. Additionally, because the Proposed Action is not changing, the conclusions from the 2011 GOA Final EIS/OEIS are still applicable and no additional analysis is required in this Supplemental EIS/OEIS. (See Section 3.1.2.2, Regulatory Framework, of the 2011 GOA Final EIS/OEIS)
Clean Water Act (CWA) (33 U.S.C. 1251 et seq.)	The CWA is an act to provide for water pollution control activities in the Public Health Service of the Federal Security Agency and in the Federal Works Agency, and for other purposes. The Act's objective is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. No permits are required under the CWA Sections 401, 402, or 404 (b) (1). (See Section 3.3.2.2, Regulatory Framework; Section 3.5.2.1, Regulatory Framework; Section 3.5.2.2, Approach to Analysis; and Section 5.1.3, Water Resources, of the 2011 GOA Final EIS/OEIS)
Historic Sites Act (54 U.S.C. 320101 et seq.)	The Historic Sites Act established a national policy to preserve for public use historic sites, buildings, and objects of national significance for the inspiration and benefit of the people of the United States. The Proposed Action is consistent with the national policy for the preservation of historic sites, buildings, and objects of national significance. See the 2011 GOA Final EIS/OEIS, Chapter 3, Section 3.10 (Cultural Resources) for the complete assessment. Additionally, because the Proposed Action is not changing, the conclusions from the 2011 GOA Final EIS/OEIS are still applicable and no additional analysis is required in this Supplemental EIS/OEIS.
Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. §§1801–1802)	The Magnuson-Stevens Fishery Conservation and Management Act was established to conserve and manage U.S. fishery resources. The Navy prepared an Essential Fish Habitat Assessment (EFHA) as a separate document for the 2011 GOA Final EIS/OEIS. The Proposed Action would not adversely affect fish populations or EFH as defined under the Magnuson-Stevens Fishery Conservation and Management Act. The Proposed Action may affect ESA-listed fish species. The Proposed Action has no effect to designated critical habitat. The Navy has no existing protective measures in place specifically for fish; however, habitats associated with fish communities benefit from measures in place to protect marine mammals and sea turtles. See the 2011 GOA Final EIS/OEIS, Chapter 5 (Mitigation Measures), and Sections 3.6.1.2 (Essential Fish Habitat), 3.6.2.1 (Regulatory Framework), and 3.12.1.1 (Existing Conditions), for the full discussion of mitigation measures. The Navy is not preparing an updated EFHA, because the EFHA and associated consultation with NMFS conducted for the 2011 GOA Final EIS/OEIS is still valid.

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

Laws, Executive Orders, International Standards, and Guidance	Status of Compliance
Laws (continued)	
<p>Endangered Species Act (ESA) (16 U.S.C. §§1531 et seq.)</p>	<p>The ESA established protection over and conservation of threatened and endangered species and the ecosystems upon which they depend. The Supplemental EIS/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). In accordance with Section 7 of the ESA (50 C.F.R. §402), during the preparation of the 2011 GOA Final EIS/OEIS, the Navy prepared a biological evaluation and submitted it to the USFWS. The Navy received a concurrence letter from USFWS (March 2010), which agreed that the Navy’s actions may affect, but were unlikely to adversely affect, the short-tailed albatross. As provided in 50 C.F.R. §402.16, re-initiation of formal consultation is normally required where discretionary Federal agency involvement or control over the action has been retained (or is authorized by law) and if: (1) the amount or extent of incidental take is exceeded, (2) new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in this opinion, (3) the agency action is subsequently modified in a manner that causes an effect to the listed species or critical habitat not considered in this opinion, or (4) a new species is listed or critical habitat designated that may be affected by the action. As there are no changes in the amount or extent of incidental take, no new information that would change the affected environment or analysis, no new Navy training activities, or no new or modified ESA status of ESA-listed short-tailed albatross in the Temporary Maritime Activities Area (TMAA), the criteria for re-initiation of formal consultation with USFWS for short-tailed albatross, as set forth in 50 C.F.R. §402.16, are not triggered. Therefore, the existing consultation continues to address the proposed action with regards to the short-tailed albatross, and the Navy will adhere to the terms of the informal USFWS consultation conducted under the 2011 GOA Final EIS/OEIS.</p> <p>Additionally, during the preparation of the 2011 GOA Final EIS/OEIS, the Navy formally consulted with NMFS regarding the Proposed Action. The Navy received a Biological Opinion (April 2011) that indicated that the Navy’s actions were not likely to jeopardize the continued existence of leatherback sea turtles. Similar to short-tailed albatross, since there are no changes in the amount or extent of incidental take, no new information that would change the affected environment or analysis, no new Navy training activities, or no new or modified ESA status of ESA-listed leatherback sea turtles in the TMAA, the criteria for re-initiation of formal consultation with NMFS for leatherback sea turtles, as set forth in 50 C.F.R. §402.16, are not triggered. Therefore, the existing consultation continues to address the proposed action with regards to leatherback sea turtles and the Navy will adhere to the terms of the formal NMFS consultation conducted under the 2011 GOA Final EIS/OEIS.</p> <p>However, the Supplemental EIS/OEIS presents new modeling information that reveals potential effects to marine mammals not covered in the previous consultation. Therefore, re-initiation of formal consultation, as set forth in 50 C.F.R. §402.16, is triggered. The Navy is currently preparing a Biological Evaluation that will be submitted to NMFS as part of the new formal consultation. A Biological Opinion (BO) will be issued by NMFS and the Navy will adhere to any BO terms and conditions listed therein.</p> <p>In addition, the Navy has applied for a Letter of Authorization (LOA) (see discussion below on the Marine Mammal Protection Act), which is expected to impose terms and conditions that, when implemented, would make ESA Section 9 prohibitions inapplicable to covered Navy activities. The new MMPA LOA permit will be issued by NMFS prior to the issuance of the Record of Decision (ROD) on this Supplemental EIS/OEIS.</p>

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

Laws, Executive Orders, International Standards, and Guidance	Status of Compliance
Laws (continued)	
Marine Mammal Protection Act (MMPA) (16 U.S.C. §§1431 et seq.)	The MMPA governs activities with the potential to harm, disturb, or otherwise “harass” marine mammals. As a result of acoustic effects associated with active sonar use, acoustic sources, and underwater detonations of explosives, implementation of the Proposed Action may result in potential Level A (harm) or Level B (disturbance) harassment to marine mammals. Therefore, the Navy engaged in the NMFS regulatory process by conducting the analysis in Chapter 3 to determine whether incidental “takes” of marine mammals are likely, and will seek to obtain an LOA from NMFS. This Supplemental EIS/OEIS updates the marine analysis and will be the basis for a request for a new LOA 5-year permit for the 2016–2021 timeframe.
Migratory Bird Treaty Act (16 U.S.C. §§703–712)	The Migratory Bird Treaty Act prohibits the taking, killing, or possessing of migratory birds or the parts, nests, or eggs of such birds, unless permitted by regulation. The 2003 National Defense Authorization Act provides that the Armed Forces may take migratory birds incidental to military readiness activities provided that, for those ongoing or proposed activities that the Armed Forces determine may result in a significant adverse effect on a population of a migratory bird species, the Armed Forces confer and cooperate with the Service to develop and implement appropriate conservation measures to minimize or mitigate such significant adverse effects. Implementation of the Proposed Action would cause no significant adverse effect on a population of migratory bird species. See the 2011 GOA Final EIS/OEIS, Chapter 3, Section 3.9 (Birds), Sections 3.9.2.2 (Regulatory Framework), 3.9.2.4 (No Action Alternative), 3.9.2.5 (Alternative 1), 3.9.2.6, (Alternative 2), and the ROD for the assessment. Additionally, because the Proposed Action is not changing, the conclusions from the 2011 GOA Final EIS/OEIS are still applicable and no additional analysis is required in this Supplemental EIS/OEIS.
Military Munitions Rule	The Military Munitions Rule identifies when conventional and chemical military munitions are considered solid waste under the Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.). Military munitions are not considered solid waste if they are (1) used for their intended purpose, which includes training military personnel and testing of munitions, weapons, or weapon systems; or (2) subjected to materials recovery activities (40 C.F.R. §266.202(a)(1) and (2)). These two conditions cover the uses of munitions included in the Proposed Action; therefore, the Resource Conservation and Recovery Act does not apply.
Marine Protection, Research, and Sanctuaries Act (16 U.S.C. §1431 et seq. and 33 U.S.C. §1401 et seq.)	The Marine Protection, Research, and Sanctuaries Act generally prohibits (1) transportation of material from the United States for the purpose of ocean dumping, (2) transportation of material from anywhere for the purpose of ocean dumping by U.S. agencies or U.S.-flagged vessels, or (3) dumping of material transported from outside the United States into the U.S. territorial sea. A permit is required to deviate from these prohibitions. For the Navy SINKEX activities, the general permit is captioned "Transport of Target Vessels" and is published at 40 C.F.R. 229.2 (Permit). In a January 2014 agreement letter from the EPA to the Navy, the EPA determined that the activity authorized under the Permit for the SINKEX program conducted by Navy does not pose an unreasonable risk of injury to human health or the environment. SINKEX operations may continue in accordance with the requirements of the Permit, including the clarifications discussed in the January 2014 agreement letter. For additional information, see Sections 3.2.2.2 (Regulatory Framework), 3.2.2.6 (Alternative 2), 3.3.2.2 (Regulatory Framework), 3.3.2.6 (Alternative 2), and 5.2.1.2 (Measures for Specific Training Events) of the 2011 GOA Final EIS/OEIS.
National Historic Preservation Act (54 U.S.C. 300101 et seq.)	The Proposed Action would be implemented in consultation with and under programmatic agreement with the State Historic Preservation Office. For additional information, see Sections 3.10.2.2 (Regulatory Framework), 3.10.2.3 (Approach to Analysis), and 4.2.10 (Cultural Resources) of the 2011 GOA Final EIS/OEIS.

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

Laws, Executive Orders, International Standards, and Guidance	Status of Compliance
Laws (continued)	
National Marine Sanctuaries Act (16 U.S.C. §1431 et seq.)	This Act authorizes the Secretary of Commerce to designate and protect areas of the marine environment with special national significance due to their conservation, recreational, ecological, historical, scientific, cultural, archeological, educational, or aesthetic qualities as National Marine Sanctuaries. The Study Area does not include any National Marine Sanctuaries; therefore the National Marine Sanctuaries Act does not apply.
Rivers and Harbors Act (33 U.S.C. §401 et seq.)	The Rivers and Harbors Act addresses projects and activities in navigable waters and harbor and river improvements. In accordance with U.S. Army Corps of Engineers regulations, no permit is required under the Rivers and Harbors Act because no construction in navigable waterways is proposed. See Table 6-1 of the 2011 GOA Final EIS/OEIS.
Sunken Military Craft Act (Public Law 108–375, 10 U.S.C. §113 Note and 118 Stat. 2094–2098)	Under this Act, no person shall engage in or attempt to engage in any activity directed at a sunken military craft that disturbs, removes, or injures any sunken military craft. The Proposed Action would have no adverse effects on sunken U.S. military ships and aircraft within the Study Area. If a site is determined to be eligible for the National Register of Historic Places, the State Historic Preservation Officer would be consulted to address potential effects. See the 2011 GOA Final EIS/OEIS, Chapter 3, Section 3.10 (Cultural Resources) and Chapter 3, Section 3.10 (Cultural Resources) of this Supplemental EIS/OEIS for the assessment.
Executive Orders	
Executive Order 11990, <i>Protection of Wetlands</i>	This EO was issued to avoid to the extent possible the long- and short-term adverse impacts associated with the destruction or modification of wetlands. There are no wetlands within the Study Area; therefore, the EO does not apply to the Proposed Action.
Executive Order 12898, <i>Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations</i>	This EO is responsible for identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Mariana Islands. Training activities in the TMAA (open ocean) would not have disproportionately high and adverse human health or environmental effects on minority populations and low-income populations. See the 2011 GOA Final EIS/OEIS, Chapter 3, Section 3.13 (Environmental Justice and Protection of Children) Sections 3.13.2.2 (Regulatory Framework), and 3.13.4 (Summary of Effects) of the 2011 GOA Final EIS/OEIS for the full discussion and analysis. Additionally, because the Proposed Action is not changing, the conclusions from the 2011 GOA Final EIS/OEIS are still applicable and no additional analysis is required in this Supplemental EIS/OEIS.
Executive Order 12962, <i>Recreational Fisheries</i>	This EO orders Federal agencies, to the extent permitted by law and where practicable, and in cooperation with States and Tribes, to improve the quantity, function, sustainable productivity, and distribution of U.S. aquatic resources for increased recreational fishing. The Proposed Action would not affect federal agencies' ability to fulfill certain duties with regard to promoting the health and access of the public to recreational fishing areas. See the 2011 GOA Final EIS/OEIS, Chapter 3 (Affected Environment and Environmental Consequences), Section 3.12 (Socioeconomics), and Section 3.6.2.1 (Regulatory Framework) for the full discussion and analysis. Additionally, because the Proposed Action is not changing, the conclusions from the 2011 GOA Final EIS/OEIS are still applicable and no additional analysis is required in this Supplemental EIS/OEIS.

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

Laws, Executive Orders, International Standards, and Guidance	Status of Compliance
Executive Orders (continued)	
Executive Order 13045, <i>Protection of Children from Environmental Health Risks and Safety Risks</i>	This EO considers the risks that arise because children eat more food, drink more fluids, and breathe more air in proportion to their body weight than adults; children's size and weight may diminish their protection from standard safety features; and children's behavior patterns may make them more susceptible to accidents because they are less able to protect themselves. Although children could be present in vessels on the water, there are no sensitive receptors as defined by the EO present in the GOA Supplemental EIS/OEIS Study Area and, therefore, the Proposed Action would not result in disproportionate environmental health risks or safety risks to children. See the 2011 GOA Final EIS/OEIS, Chapter 3, Section 3.13 (Environmental Justice and Protection of Children) Sections 3.13.2.2 (Regulatory Framework), and 3.13.4 (Summary of Effects) for the full discussion and assessment. Additionally, because the Proposed Action is not changing, the conclusions from the 2011 GOA Final EIS/OEIS are still applicable and no additional analysis is required in this Supplemental EIS/OEIS.
Executive Order 13175, <i>Consultation and Coordination with Indian Tribal Governments</i>	EO 13175 was created in order to establish regular and meaningful consultation and collaboration with Indian tribal governments in the development of regulatory practices on Federal matters that significantly or uniquely affect their communities; to reduce the imposition of unfunded mandates upon Indian tribal governments; and to streamline the application process for and increase the availability of waivers to Indian tribal governments. In accordance with EO 13175, and DoD and Navy policies, the Navy offered government-to-government consultation to 12 Alaska Native Tribes in the Study Area for both the 2011 GOA Final EIS/OEIS and this Supplemental EIS/OEIS. See Section 6.1.3 (Government-to-Government Consultation with Federally Recognized Alaska Native Tribes) below, and Appendix D, Section D.2.1 (Tribal Notification Letters) and Section D.4.2, (Kodiak Area Tribes Consultation Comments), of this Supplemental EIS/OEIS for additional information on tribal government-to-government consultation and Navy response to tribal comments and concerns.
Executive Order 13089, <i>Coral Reef Protection</i>	EO 13089 was enacted to preserve and protect the biodiversity, health, heritage, and social and economic value of U.S. coral reef ecosystems and the marine environment. The Navy has prepared this Supplemental EIS/OEIS in accordance with requirements that federal agencies whose actions affect U.S. coral reef ecosystems shall provide for implementation of measures needed to research, monitor, manage, and restore them, including reducing impacts from pollution and sedimentation. See the 2011 GOA Final EIS/OEIS, Chapter 3, Section 3.5 (Marine Plants and Invertebrates) for the full discussion and assessment. Additionally, because the Proposed Action is not changing, the conclusions from the 2011 GOA Final EIS/OEIS are still applicable and no additional analysis is required in this Supplemental EIS/OEIS.
Executive Order 13112, <i>Invasive Species</i>	This EO is to prevent the introduction of invasive species, provide for their control, and minimize the economic, ecological, and human health impacts that invasive species cause. The Proposed Action would not increase the number of or introduce new invasive species nor require the Navy to take measures to avoid introduction and spread of those species. Naval vessels are exempt from 33 C.F.R. 151 Subpart D, Ballast Water Management for Control of Nonindigenous Species in Waters of the United States.
Executive Order 13158, <i>Marine Protected Areas</i>	This EO is intended to provide for the protection of significant natural and cultural resources within the marine environment for the benefit of present and future generations by strengthening and expanding the Nation's system of Marine Protected Areas. The Navy has prepared this Supplemental EIS/OEIS in accordance with the requirements to avoid harm to the natural and cultural resources of existing national system MPAs. See Section 6.1.1 (Marine Protected Areas) of this Supplemental EIS/OEIS for more information.

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

Laws, Executive Orders, International Standards, and Guidance	Status of Compliance
Executive Orders (continued)	
Executive Order 13547, <i>Stewardship of the Ocean, Our Coasts, and the Great Lakes</i>	This order establishes a national policy to ensure the protection, maintenance, and restoration of the health of ocean, coastal, and Great Lakes ecosystems and resources, enhance the sustainability of ocean and coastal economies, preserve our maritime heritage, support sustainable uses and access, provide for adaptive management to enhance our understanding of and capacity to respond to climate change and ocean acidification, and coordinate with our national security and foreign policy interests. The Proposed Action is consistent with the comprehensive national policy for the Stewardship of the Ocean, Our Coasts, and the Great Lakes.
Executive Order 13693, <i>Planning for Federal Sustainability in the Next Decade</i>	This order, which was issued in March of 2015 and revoked EO 13423 and EO 13514, looks to cut the Federal Government's greenhouse gas (GHG) emissions 40 percent over the next decade, relative to 2008 levels by increasing efficiency and improving environmental performance. The Proposed Action is consistent with the federal government's GHG emissions reductions and sustainability goals of this EO.
International Standards	
International Convention for the Prevention of Pollution from Ships	This standard prohibits certain discharges of oil, garbage, and other substances from vessels. The convention and its annexes are implemented by national legislation, including the Act to Prevent Pollution from Ships (33 U.S.C. §§1901–1915) and the Federal Water Pollution Control Act (33 U.S.C. §§1321–1322). The Proposed Action does not include vessel operation and discharge from ships; however, the Navy vessels operating in the Study Area would comply with the discharge requirements established in this program, minimizing or eliminating potential impacts from discharges from ships.

Notes: BO = Biological Opinion, CAA = Clean Air Act, C.F.R. = Code of Federal Regulations, CWA = Clean Water Act, DoD = Department of Defense, EFH = Essential Fish Habitat, EIS/OEIS = Environmental Impact Statement/Overseas Environmental Impact Statement, EO = Executive Order, EPA = Environmental Protection Agency, ESA = Endangered Species Act, GOA = Gulf of Alaska, LOA = Letter of Authorization, MMPA = Marine Mammal Protection Act, MPA = Marine Protected Area, Navy = United States Department of the Navy, NMFS = National Marine Fisheries Service, ROD = Record of Decision, SINKEX = Sinking Exercise, SIP = State Implementation Plan, TMAA = Temporary Maritime Activities Area, U.S. = United States, U.S.C. = United States Code, USFWS = United States Fish and Wildlife Service

6.1.1 NATIONAL SYSTEM OF MARINE PROTECTED AREAS

Many areas of the marine environment have some level of federal, state, or local management or protection. The National System of Marine Protected Areas (MPAs) has conservation or management purposes, defined boundaries, and some legal authority to protect resources. Marine protected areas vary widely in purpose, managing agency, management approaches, level of protection, and restrictions on human uses. They have been designated to achieve objectives ranging from conservation of biodiversity, to preservation of sunken historic vessels, to protection of spawning habitats important to commercial and recreational fisheries. Executive Order (EO) 13158, *Marine Protected Areas*, was created to “strengthen the management, protection, and conservation of existing marine protected areas and establish new or expanded marine protected areas; develop a scientifically based, comprehensive national system of marine protected areas representing diverse U.S. marine ecosystems, and the nation’s natural and cultural resources; and avoid causing harm to marine protected areas through federally conducted, approved, or funded activities.”

Executive Order 13158 requires each Federal agency whose actions affect the natural or cultural resources that are protected by a national system of MPAs to identify such actions, and in taking such

actions, avoid harm to those natural and cultural resources. Pursuant to Section 5 of EO 13158, agency requirements apply only to the natural or cultural resources specifically afforded protection by the site as described by the List of MPAs. For sites that have both a terrestrial and marine area, only the marine portion and its associated protected resources are included on the List of MPAs and subject to Section 5 of EO 13158. A full list and map of areas accepted in the National System of MPAs is available from the National Marine Protected Areas Center.

The National Marine Protected Areas Center, which is federally managed through the National Oceanic and Atmospheric Administration (NOAA), is tasked with implementing EO 13158. In order to meet the qualifications for the various terms within EO 13158, the National Marine Protected Areas Center developed a Marine Protected Areas Classification system. This system uses six criteria to describe the key features of most MPAs, as follows:

1. Primary conservation focus, such as natural heritage, cultural heritage, or sustainable production
2. Level of protection (e.g., no access, no impact, no take, zoned with no-take areas, zoned multiple use, or uniform multiple use)
3. Permanence of protection
4. Constancy of protection
5. Ecological scale of protection
6. Restrictions on extraction

The National Marine Protected Areas Center utilizes these criteria to evaluate MPAs for inclusion in the National System of MPAs. Implementation of the National System of MPAs is managed by the Department of Commerce (DOC) and the Department of the Interior (DOI). Executive Order 13158 requires the DOC and the DOI to consult with other federal agencies about the inclusion of sites into the National System of MPAs, including the Department of Defense (DoD). The National System of MPAs includes MPAs managed under the following six systems:

National Marine Sanctuary System. Under the National Marine Sanctuaries Act, NOAA established national marine sanctuaries for marine areas with special conservation, recreational, ecological, historical, cultural, archaeological, scientific, educational, or aesthetic qualities. There are no National Marine Sanctuaries sites located within the TMAA (Study Area).

Marine National Monuments. Marine national monuments are designated through Presidential Proclamation under the authority of the Antiquities Act of 1906 (16 United States Code [U.S.C.] §431). Marine national monuments are often co-managed by state, federal, and local governments, in order to preserve diverse habitats and ecosystem functions. There are no Marine National Monuments within the Study Area.

National Wildlife Refuge System. The U.S. Fish and Wildlife Service manages ocean and Great Lakes refuges for the conservation, management, and, where appropriate, restoration of the fish, wildlife, and plant resources and their habitats. Three National Wildlife Refuges (Alaska Maritime, Becharof, and Kenai) that contain a marine component are located near, but outside the Study Area. These National Wildlife Refuges provide over 3 million hectares of refuge for seabirds, shorebirds, migratory waterfowl, and a diverse array of marine mammals and flora. Together with federal agencies and legislation, the operation and management of Alaska National Wildlife Refuges is also influenced by policy documents such as the Alaska National

Interest Lands Conservation Act of 1980 (Public Law 96–487). The Alaska Maritime National Wildlife Refuge Comprehensive Conservation Plan was completed in 1988. A revision of the plan was anticipated to begin in 2011. A land protection plan for the Alaska Maritime National Wildlife Refuge was released in August 2011 (U.S. Fish and Wildlife Service 2011). The interagency Kenai River Comprehensive Management Plan was developed in 1986 and revised in 1997 (Alaska Department of Natural Resources and Alaska Department of Fish and Game 1998). The Becharof (and Alaska Peninsula) National Wildlife Refuges Comprehensive Conservation Plan was completed in 1985 and revised in 2005 (U.S. Fish and Wildlife Service 2005), and then further revised in 2006 (U.S. Fish and Wildlife Service 2006). A land protection plan for the Becharof (and Alaska Peninsula) National Wildlife Refuges was released in December 2002 (U.S. Fish and Wildlife Service 2002).

State and Local Marine Protected Areas. State and local governments have established MPAs for the management of fisheries, nursery grounds, shellfish beds, recreation, tourism, and other uses; these areas have a diverse array of conservation focuses, from protecting ecological functions, to preserving shipwrecks, to maintaining traditional or cultural interaction with the marine environment. Seven sites are located within the TMAA and vicinity. Examples include the Alaska Maritime National Wildlife Refuge, Steller Sea Lion Protection Areas, Kachemak Bay Research Reserve, Katmai National Park and Preserve, and the Kodiak Island Wildlife Refuge (Figure 6.1-1).

National Park System. The National Park System contains ocean and Great Lakes parks, including some national monuments, administered by the DOI, National Park Service to conserve the scenery and the natural and historic objects and wildlife contained within. There is one National Park System site, the Kenai Fjords National Park, within the Study Area.

National Estuarine Research Reserve System. The National Estuarine Research Reserve System sites protect estuarine land and water and provides essential habitat for wildlife; educational opportunities for students, teachers, and the public; and living laboratories for scientists. There are no National Estuarine Research Reserve System sites within the Study Area.

This Supplemental EIS/OEIS has been prepared in accordance with requirements for natural or cultural resources protected under the National System of MPAs. While several MPAs are located within the Study Area, none of these MPAs are included as members in the National System of MPAs. Navy activities within these MPAs abide by the regulations of the individual MPA; Table 6.1-2 provides information on the individual MPA regulations and the Navy activities that occur in these areas.

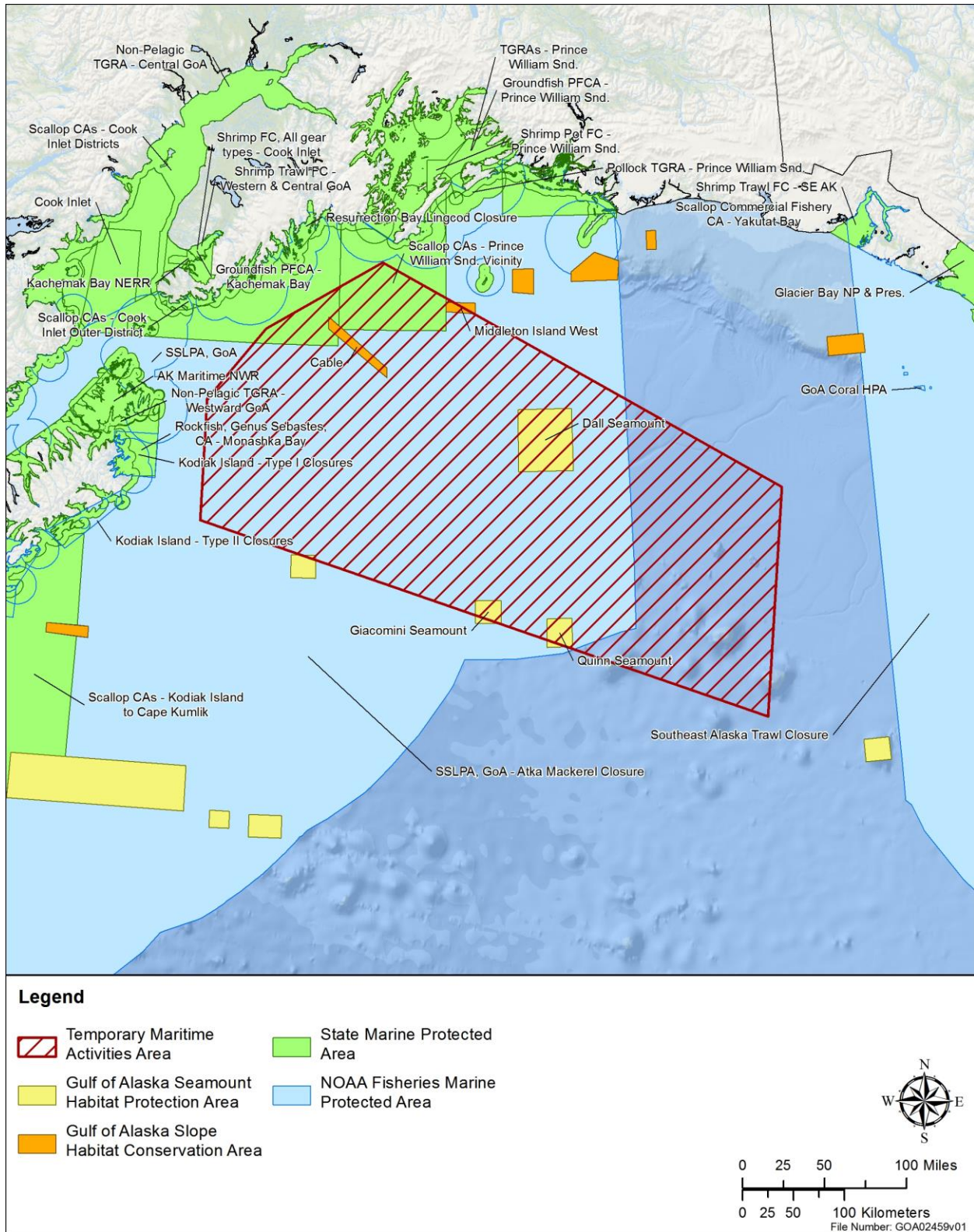


Figure 6.1-1: Map of Marine Protected Areas Near the Study Area

Table 6.1-2: Marine Protected Areas Near the Gulf of Alaska Supplemental Environmental Impact Statement/Overseas Environmental Impact Statement Study Area

Marine Protected Area	Location Within the Study Area	Protection Focus	Regulations Applicable to Navy Activities	Navy Proposed Activities and Potential Impacts
Alaska Maritime National Wildlife Refuge	Borders the Gulf of Alaska and Pacific Ocean	Natural Heritage	Commercial and recreational fishing restricted.	The Navy's proposed activities near the Refuge would not involve the taking of fish, wildlife, or shellfish.
Becharof National Wildlife Refuge	Southwestern Alaska	Ecosystem	Commercial and recreational fishing restricted.	The Navy's proposed activities near the Refuge would not involve the taking of fish, wildlife, or shellfish.
Kenai National Wildlife Refuge	Kenai Peninsula of Alaska	Ecosystem	Commercial and recreational fishing restricted.	The Navy's proposed activities near the Refuge would not involve the taking of fish, wildlife, or shellfish.
Steller Sea Lion Protection Areas (including the Atka Mackerel Closure)	Gulf of Alaska	Natural Heritage	Commercial fishing restricted; Atka Mackerel, Groundfish, Pollock, and Pacific Cod Closures	The Navy's proposed activities near the protected areas would not involve the taking of fish, wildlife, or shellfish.
Kachemak Bay National Estuarine Research Reserve	Western coast of the Kenai Peninsula in Alaska	Natural Heritage	No restrictions.	The Navy's proposed activities near the Reserve would not involve the taking of fish, wildlife, or shellfish.
Katmai National Park and Preserve	Southern Alaska	Natural Heritage	Commercial and recreational fishing restricted.	The Navy's proposed activities near the Preserve would not involve the taking of fish, wildlife, or shellfish.
Kodiak Island Wildlife Refuge	Alaska South Coast	Sustainable Production	Commercial fishing restricted.	The Navy's proposed activities near the Refuge would not involve the taking of fish, wildlife, or shellfish.
Southeast Alaska Trawl Closure	Southeastern Alaska	Sustainable Protection	Commercial fishing restricted.	The Navy's proposed activities near the protected area would not involve the taking of fish, wildlife, or shellfish.

Note: Navy = United States Department of the Navy

6.1.2 FISHERY MANAGEMENT HABITAT PROTECTIONS

Under the North Pacific Fishery Management Council, there are habitat protection areas designated to help maintain productivity of fishery resources. Currently, there are 15 Alaska Seamount Habitat Protection Areas (ASHPAs), 3 of which occur almost entirely within the TMAA (Dall, Giacomini, and Quinn Seamounts [See Figure 6.1-1]), while others, such as the Kodiak Seamount and Middleton West Slope habitat protection area, are partially located in the TMAA. These areas have restrictions prohibiting bottom trawling. Additionally, there are 10 Gulf of Alaska Slope Habitat Conservation Areas, 2 of which occur within the TMAA (Middleton Island West and Cable [see Figure 6.1-1]). These areas

have restrictions prohibiting the use of bottom contact fishing gear and anchorages. Navy activities within these areas abide by the regulations of the individual habitat protection area.

6.1.3 GOVERNMENT-TO-GOVERNMENT CONSULTATION WITH FEDERALLY RECOGNIZED ALASKA NATIVE TRIBES

On October 21, 1998, the DoD promulgated its American Indian and Alaska Native Policy, emphasizing the importance of respecting and consulting with tribal governments on a government-to-government basis (explanatory text was added on November 21, 1999). The policy requires an assessment, through consultation, of the effects of proposed DoD actions that may have the potential to significantly affect protected tribal resources, tribal rights, and Indian Lands before decisions are made by the DoD services.

In 2005, the Navy updated its policy for consultation with federally recognized Indian tribes. Secretary of the Navy Instruction (SECNAVINST) 11010, *Department of the Navy Policy for Consultation with Federally Recognized Indian Tribes*, implements DoD policy within the Department of the Navy and encourages ongoing consultation. Subsequent updates to SECNAVINST 5090.8a (*Policy for Environmental Protection, Natural Resources, and Cultural Resources Programs*, 2006) also mandates American Indian and Alaska Native tribal consultation.

In 2009, Commander, Navy Region Northwest issued its *Policy for Consultation with Federally Recognized American Indian and Alaska Native Tribes* (Instruction 11010.14 of November 10, 2009) which sets forth policy, procedures, and responsibilities for consultations with federally recognized American Indian and Alaska Native tribes in the Navy Region Northwest area of responsibility. The goal of the policy is to establish permanent working relationships built upon respect, trust, and openness with tribal governments.

Under these policies, the Navy is required to consider tribal comments and concerns prior to making a final Navy decision on proposed action. However, reaching formal agreement with a tribe or obtaining tribal approval prior to a Navy final decision is not required.

In accordance with DoD and Navy policies, the Navy invites government-to-government consultation with federally recognized tribal governments when a proposed action has the potential to significantly affect tribal rights, protected resources, or Indian lands. The Navy invited government-to-government consultation with twelve (12) federally recognized Alaska Native Tribes that use resources in the vicinity of the Study Area (See Appendix D, Section D.2.1 [Tribal Notification Letters]).

In May of 2015, government-to-government consultation was held with an Alaska Native Tribe in Cordova regarding the Proposed Action. Also, in July 2016, government-to-government consultation was held with five (5) Alaska Native Tribes in the Kodiak area regarding tribal comments and concerns of the Proposed Action. The Navy considered the concerns of the five Tribes regarding fishery resources and agreed to include a mitigation that precludes the use of ordnance in the Portlock Bank area. Additionally, at the request of these five Tribes, the Navy included responses to their written comments (tribal electronic mail of June 17, 2016) and concerns in this SEIS/OEIS (See Appendix D [Public Participation], Table D-4.7).

6.2 RELATIONSHIP BETWEEN SHORT-TERM USE OF THE ENVIRONMENT AND MAINTENANCE AND ENHANCEMENT OF LONG-TERM PRODUCTIVITY

In accordance with the CEQ regulations (Part 1502), this Supplemental EIS/OEIS analyzes of 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. Impacts that narrow the range of beneficial uses of the environment are of particular concern. This means that choosing one option may reduce future flexibility in pursuing other options, or that committing a resource to a certain use may often eliminate the possibility for other uses of that resource. The Navy, in partnership with NMFS, is committed to furthering the understanding of marine resources and developing ways to lessen or eliminate the impacts Navy training and testing activities may have on these resources. For example, the Navy and NMFS collaborate on the Integrated Comprehensive Monitoring Program for marine species to assess the impacts of Navy activities on marine species and investigate population-level trends in marine species distribution, abundance, and habitat use in various range complexes and geographic locations where Navy training and testing occurs.

The Proposed Action could result in both short- and long-term environmental impacts. However, these are not expected to result in any impacts that would reduce environmental productivity, permanently narrow the range of beneficial uses of the environment, or pose long-term risks to health, safety, or general welfare of the public. The Navy is committed to sustainable military range management, including co-use of the Study Area with the general public, tribal, and commercial and recreational interests. This commitment to co-use of the Study Area will maintain long-term accessibility of the GOA Supplemental EIS/OEIS training area. Sustainable range management practices, which are applicable to all Navy training areas, are specified in range complex management plans under the Navy's Tactical Training Theater Assessment and Planning Program. Among other benefits, these practices protect and conserve natural and cultural resources and preserve access to training areas for current and future training requirements while addressing potential encroachments that threaten to impact range and training area capabilities.

6.3 IRREVERSIBLE OR IRRETRIEVABLE 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 U.S.C. §4332). Irreversible and irretrievable resource commitments are related to the use of nonrenewable resources and the effects that the uses of these resources have on future generations. Irreversible effects primarily result from the use or destruction of a specific resource (e.g., energy or minerals) that cannot be replaced within a reasonable time frame. Irretrievable resource commitments involve the loss in value of an affected resource that cannot be restored as a result of the action (e.g., the disturbance of a cultural site).

For the Proposed Action, most resource commitments would be neither irreversible nor irretrievable. Most impacts would be short term and temporary, or long lasting but within historical or desired conditions. Because there would be no building or facility construction, the consumption of material typically associated with such construction (e.g., concrete, metal, sand, fuel) would not occur. Energy typically associated with construction activities would not be expended and irretrievably lost.

Implementation of the Proposed Action would require fuels used by aircraft and vessels, and would be the only irreversible and irretrievable resource commitment. However, since the Navy is not proposing any new or increased activities for fixed- and rotary-wing aircraft or ship activities, total fuel use would

not increase relative to the baseline. Therefore, total fuel consumption would not increase under the Proposed Action (Section 6.4, Energy Requirements and Conservation Potential of the Proposed Action and Mitigation Measures), and this nonrenewable resource would not be considered irretrievably lost (see Chapter 4, Cumulative Impacts, and the following discussion on the Navy's Climate Change Roadmap).

6.4 ENERGY REQUIREMENTS AND CONSERVATION POTENTIAL OF THE PROPOSED ACTION AND MITIGATION MEASURES

The federal government consumes 2 percent of the total U.S. energy share (Jean 2010). Of that 2 percent, the DoD consumes 93 percent. The Navy consumes one-fourth of the total DoD share. The Navy consumes 1.2 billion to 1.6 billion gallons of fuel each year. The Navy expects an overall 25 percent increase in fuel consumption for the entire U.S. fleet, in the future because of new ships coming into the fleet and the growth in mission areas (Jean 2010).

Energy requirements would be subject to any established energy conservation practices. By policy, the Navy minimizes the use of energy sources wherever possible without compromising safety or training activities. Additionally, as stated above, the Proposed Action in this Supplemental EIS/OEIS is the same as the implemented Preferred Alternative in the 2011 GOA Final EIS/OEIS. Implementation of the Proposed Action for this Supplemental EIS/OEIS would not result in an increase in energy use. The use of energy sources has been minimized wherever possible without compromising safety or training activities. No additional conservation measures related to direct energy consumption by the proposed activities are identified.

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. The Navy Climate Change Roadmap identifies actions the Environmental Readiness Division is taking to implement the directives in EO 13653, *Preparing the United States for the Impacts of Climate Change*. This effort will continue as the Environmental Readiness Division looks to ensure future Navy actions are in accordance with EO 13693, *Planning for Federal Sustainability in the Next Decade*. The Navy's Task Force Energy is responding to the Secretary of the Navy's Energy Goals through energy security initiatives that reduce the Navy's carbon footprint.

Additionally, two Navy programs—the Incentivized Energy Conservation (i-ENCON) Program and the Naval Sea Systems Command's (NAVSEA's) Fleet Readiness, Research and Development Program (FRR&DP)—are helping the fleet conserve fuel via improved operating procedures and long-term initiatives. The i-ENCON 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 NAVSEA's FRR&DP includes the High-Efficiency Heating, Ventilating, and Air Conditioning and the Hybrid Electric Drive for DDG-51 class ships, which are improvements to existing shipboard technologies that will both help with fleet readiness and decrease the ships' energy consumption and greenhouse gas emissions. These initiatives are expected to greatly reduce the consumption of fossil fuels. Furthermore, to offset the impact of its expected near-term increased fuel demands and achieve its goals to reduce fossil fuel consumption and greenhouse gas emissions, the Navy plans to deploy, throughout the U.S. operating areas, a green strike group by 2016 (a "great green fleet"), composed of nuclear vessels and ships powered by biofuel in local operations and with aircraft flying only with biofuels (Jean 2010).

In recognition of the Navy's efforts and commitment to energy security and environmental stewardship, Congresswoman Marcy Kaptur (Democrat, Ohio, and senior-most woman in the U.S. House of Representatives) commended Navy leadership on efforts to create a greener, more energy-efficient force at an 8 May 2013 gathering of the House of Representatives committee on appropriations. Congresswoman Kaptur stated, "I can honestly say your branch of the military has had more aggressive interest in this than some of the others that I had expected more of. I want to compliment you on that. I want to thank you for being focused on the future, not the past."

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