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## **6 Additional Regulatory Considerations**



**Gulf of Alaska Navy Training Activities  
Draft Supplemental Environmental Impact Statement/  
Overseas Environmental Impact Statement**

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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 not considered 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 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 (SEIS)/Overseas Environmental Impact Statement (OEIS) would comply with applicable federal, state, and local laws, regulations, and executive orders (EOs). 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.

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). Many of the federal statutes, regulations, executive orders, and international standards described in the 2016 GOA Final SEIS/OEIS (Table 6.1-1) remain unchanged since the publishing of the 2016 GOA Final SEIS/OEIS. Since the Proposed Action is also unchanged, the Navy's compliance regarding those statutes, regulations, executive orders, and international standards remains the same and will not be repeated in this SEIS/OEIS.

Section 3.0.2 (Regulatory Framework) in the 2016 GOA Final SEIS/OEIS provides brief excerpts of the primary federal statutes, EOs, 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 E (Agency Correspondence). Consultations with the National Marine Fisheries Service (NMFS) and U.S. Fish and Wildlife Service (USFWS) under the Endangered Species Act will begin following the release of the Draft SEIS/OEIS. However, the Navy has been coordinating with regulatory offices prior to initiating consultation. Likewise, the Navy submitted applications to the National Marine Fisheries Service (NMFS) for Marine Mammal Protection Act authorizations supported by this SEIS/OEIS. Consultation with NMFS is currently underway. Therefore, not all consultation documentation is included in Appendix E (Agency Correspondence) or on the website ([www.goaeis.com](http://www.goaeis.com)) at this time.

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

Statutes, Regulations, Executive Orders, International Standards, and Guidance	Status of Compliance
<b>Statutes and Regulations</b>	
<p>Endangered Species Act (ESA) (16 United States Code [U.S.C.] sections 1531 et seq.)</p>	<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 Code of Federal Regulations [CFR] section 402), during the preparation of the 2011 GOA Final EIS/OEIS, the Navy prepared a biological evaluation and submitted it to USFWS. The Navy received a concurrence letter from the USFWS (March 2010), which remains valid (consultation # 2010-0075 and 2010-0075-R001). On July 23, 2014, the USFWS sent an email to the Navy stating that reinitiation of consultation for the 2016 GOA Final SEIS/OEIS was not necessary as there were no changes to the actual activities, geographic parameters, or levels of activities occurring in the areas previously subject to consultation with the USFWS. There were also no new listed or proposed species in the Study Area. In accordance with 50 CFR section 402, the Navy is developing a biological assessment to reinitiate the informal consultation because of Trigger (b), new information reveals effects of the Navy’s proposed activities (the action) that may affect listed species (ESA-listed short-tailed albatross) or critical habitat in a manner or to an extent not previously considered in the 2016 GOA Final SEIS/OEIS.</p> <p>Additionally, during the preparation of the 2016 GOA Final EIS/OEIS, the Navy formally consulted with NMFS. The Navy received a Biological Opinion (BO) (April 2017) that indicated that the Navy’s actions were not likely to jeopardize the continued existence of any ESA-listed species and would not result in the destruction or adverse modification of any critical habitat. NMFS also determined that the Navy’s activities were not likely to adversely affect the following species and critical habitat: Western North Pacific Distinct Population Segment (DPS) gray whales, Mexico DPS humpback whales, Western North Pacific DPS humpback whales, critical habitat for the Steller sea lion (Western DPS), critical habitat for the North Pacific right whale; leatherback sea turtle, green sea turtle (Central North Pacific and Eastern Pacific DPSs), loggerhead sea turtle (North Pacific Ocean DPS), the olive ridley sea turtle; Chinook salmon (Puget Sound Evolutionarily Significant Unit [ESU], Upper Columbia River Spring-run ESU, Lower Columbia River ESU, Upper Willamette River ESU, Snake River Spring/Summer-run ESU, Snake River Fall-run ESU, California Coastal ESU, Central Valley Spring-run ESU, and Sacramento River Winter-run ESU), coho salmon (Southern Oregon/Northern California Coast ESU and Central California Coast ESU), sockeye salmon (Ozette Lake ESU and Snake River ESU), and steelhead trout (Northern California DPS, California Central Valley DPS, Central California Coast DPS, South Central California Coast DPS, and Southern California DPS).</p>

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

Statutes, Regulations, Executive Orders, International Standards, and Guidance	Status of Compliance
<b>Statutes and Regulations (continued)</b>	
<p>Endangered Species Act (ESA) (16 U.S.C. sections 1531 et seq.) (continued)</p>	<p>In accordance with 50 CFR section 402, the Navy is preparing another Biological Assessment that will be submitted to NMFS as part of the new 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 applied 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 Marine Mammal Protection Act (MMPA) LOA permit may be issued by NMFS prior to the issuance of the Record of Decision on this SEIS/OEIS.</p>
<p>Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. sections 1801–1882)</p>	<p>The Navy will submit a letter to NMFS in which the Navy will advise that it will not request a reinitiation of consultation. There are no changes to the type of activities or the geographic parameters; however, there are reductions to the levels of activities occurring in the areas previously subject to consultation with NMFS. Therefore, the Navy’s previous analysis of impacts on essential fish habitat within the TMAA remains valid and does not raise the requirement of supplemental consultation pursuant to 50 CFR 600.920(1). The Navy will continue to implement the conservation recommendation of coordinating with other research activities within the Gulf of Alaska to avoid displacement or effects to other activities.</p>
<p>Marine Mammal Protection Act (16 U.S.C. sections 1431 et seq.)</p>	<p>This SEIS/OEIS updates the analysis and is the basis for a request for a 7-year LOA, which is a change from the 2016 GOA Final SEIS/OEIS per the 2018 National Defense Authorization Act and the MMPA, as the NMFS permitting period has been changed from 5- to 7-year permits, to cover the Navy’s proposed activities for the 2022–2029 timeframe.</p>
<p>National Historic Preservation Act (16 U.S.C. sections 470 et seq.)</p>	<p>The proposed activities would occur more than 12 nautical miles from shore. The Navy will coordinate with the Alaska State Historic Preservation Officer.</p>
<p>National Marine Sanctuaries Act (16 U.S.C. section 1431-1445c-1)</p>	<p>The TMAA does not include any National Marine Sanctuaries; therefore, the National Marine Sanctuaries Act does not apply.</p>
<p>Submerged Lands Act of 1953 (43 U.S.C. sections 1301–1315)</p>	<p>In accordance with the State’s regulations, the Proposed Action is consistent with regulations concerning the Submerged Lands Act.</p>

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

Statutes, Regulations, Executive Orders, International Standards, and Guidance	Status of Compliance
<b>Executive Orders (EOs)</b>	
EO 13175, <i>Consultation and Coordination with Indian Tribal Governments</i>	These legal requirements have not changed since the 2016 GOA Final SEIS/OEIS. The Navy has invited federally recognized tribal governments to initiate government-to-government consultation.
EO 13547, <i>Stewardship of the Ocean, Our Coasts, and the Great Lakes</i>	This EO was revoked and replaced by EO 13840, <i>Ocean Policy to Advance the Economic, Security, and Environmental Interests of the United States</i> , since the 2016 GOA Final SEIS/OEIS.
EO 13693, <i>Planning for Federal Sustainability in the Next Decade</i>	This EO was revoked and replaced by EO 13834, <i>Efficient Federal Operations</i> , since the 2016 GOA Final SEIS/OEIS.
EO 13783, <i>On Promoting Energy Independence and Economic Growth</i>	This EO revokes EO 13653, <i>Preparing the United States for the Impacts of Climate Change</i> . The Proposed Action is consistent with the policy's goals for the safe, efficient development of domestic energy resources.
EO 13792, <i>Review of Designations Under the Antiquities Act</i>	On April 26, 2017, EO 13792 was issued and directed the Secretary of the Interior to review designations of national monuments made since 1996. The Proposed Action is consistent with this EO and considers all national monuments that are still designated as such.
EO 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 EO 13693, <i>Planning for Federal Sustainability in the Next Decade</i> .
EO 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 replaced EO 13547, <i>Stewardship of the Ocean, Our Coasts, and the Great Lakes</i> ).

Notes: EIS = Environmental Impact Statement, GOA = Gulf of Alaska, Navy = United States Department of the Navy, OEIS = Overseas Environmental Impact Statement, SEIS = Supplemental Environmental Impact Statement, TMAA = Temporary Maritime Activities Area.

### 6.1.1 Marine Protected Areas

This SEIS/OEIS has been prepared in accordance with requirements for natural or cultural resources protected under the National System of Marine Protected Areas (MPAs). While several MPAs are located within the Temporary Maritime Activities Area (TMAA), 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.



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

Marine Protected Area	Location Within the TMAA	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.

Notes: Navy = United States Department of the Navy, TMAA = Temporary Maritime Activities Area

The 2016 GOA Final SEIS/OEIS discussed MPAs that overlapped with the TMAA. Executive Order 13792, *Review of Designations Under the Antiquities Act*, authorized a review by the Secretary of Interior of certain designated National Monuments under the Antiquities Act. No changes have been made currently to any of the National Monuments in the TMAA. Figure 6.1-1 shows MPAs near the TMAA.

### **6.1.2 Fishery Management Habitat Protections**

The Magnuson-Stevens Fishery Conservation and Management Act established jurisdiction over marine fishery resources in the United States and was reauthorized and amended by the Sustainable Fisheries Act of 1996 (Public Law 104-297) to include the essential fish habitat mandate. The Sustainable Fisheries Act set forth a number of new directives for the National Marine Fisheries Service, regional Fishery Management Councils, and other federal agencies to identify and protect important marine, estuarine, and anadromous fish habitat. The TMAA is within the jurisdiction of the North Pacific Fishery Management Council, which is responsible for identifying Habitat Areas of Particular Concern (HAPC) for federally managed species. In order to protect HAPCs, certain habitat protection areas and habitat conservation zones have been designated. A habitat protection area is an area of special, rare habitat features where fishing activities that may adversely affect the habitat are restricted. HAPCs within the TMAA include designation of specific habitat protection areas to help maintain productivity of fishery resources, including seamount habitat and slope habitat protection areas.

Currently, there are 15 Alaska Seamount Habitat Protection Areas, 3 of which occur almost entirely within the TMAA and include Dall, Giacomini, and Quinn Seamounts (71 Federal Register 36703) (Figure 6.1-1), while the Kodiak Seamount and Middleton West Slope habitat protection areas are only partially located in the TMAA. These areas have restrictions prohibiting bottom trawling. Additionally, there are 10 GOA Slope Habitat Conservation Areas, including Middleton Island West and Cable that occur within the TMAA (71 Federal Register 36703) (Figure 6.1-1). These areas have restrictions prohibiting the use of bottom contact fishing gear and anchorages. Navy activities are not subject to the regulations based on the types of activities conducted in the TMAA.

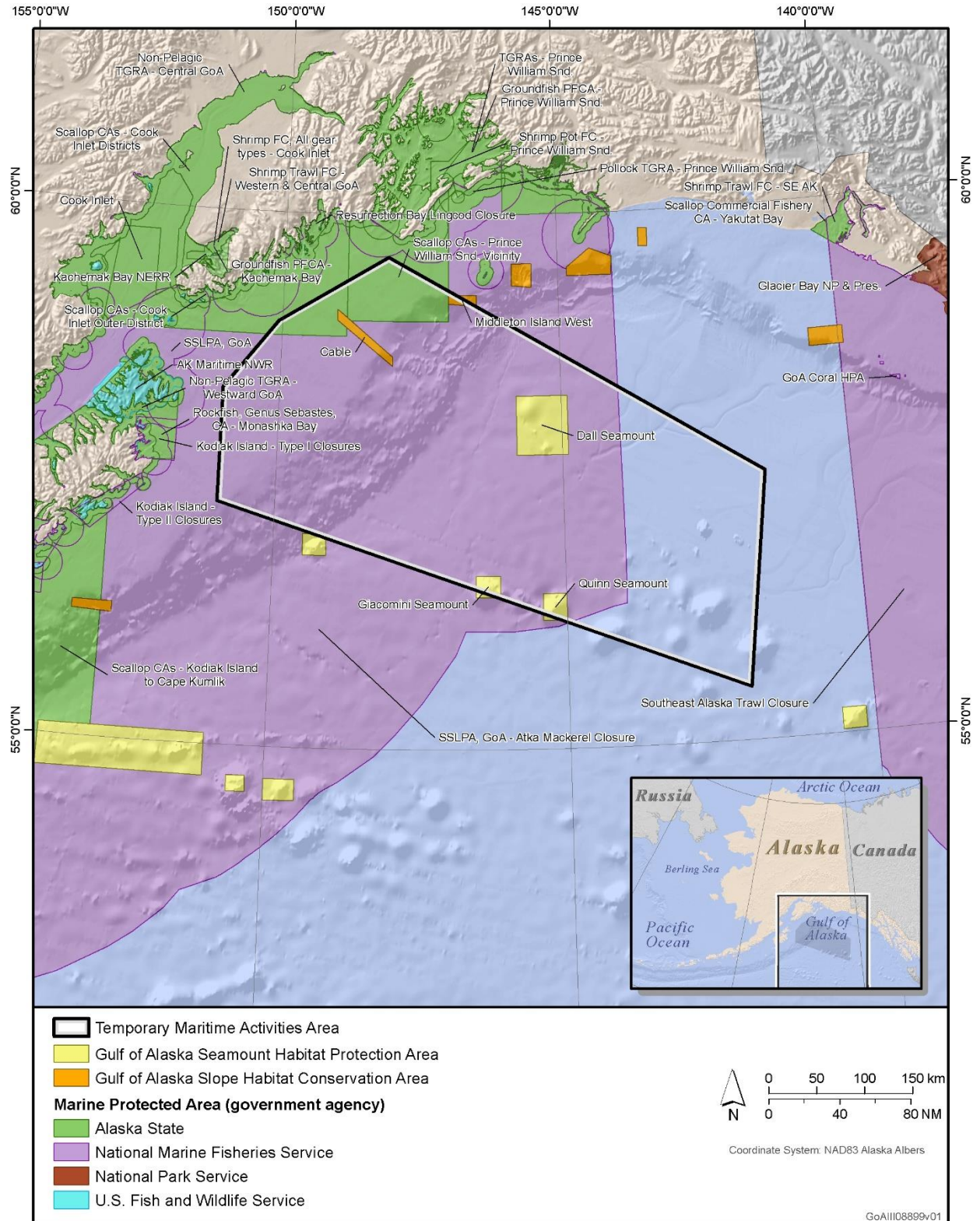


Figure 6.1-1: Map of Marine Protected Areas Near the TMAA

### **6.1.3 Government-to-Government Consultation with Federally Recognized Alaska Native Tribes**

The Navy will continue government-to-government communications with several tribes in Alaska in accordance with Secretary of the Navy Instruction 11010.14B, *Department of the Navy Policy for Consultation with Federally Recognized Indian Tribes, Alaska Native Tribal Entities, and Native Hawaiian Organizations*; Commander, Navy Region Northwest Instruction 11010.14, *Policy for Consultation with Federally-Recognized American Indian and Alaska Native Tribes* (April 10, 2020); EO 13175, *Consultation and Coordination with Indian Tribal Governments*; EO 13007, *Indian Sacred Sites*; the Presidential Memorandum dated April 29, 1994, *Government-to-Government Relations with Native American Governments*; the National Historic Preservation Act of 1966 as amended in 2006; the American Indian Religious Freedom Act of 1978, and Navy consultation policies as needed.

In accordance with Department of Defense (DoD) and Navy policies, the Navy has invited federally recognized tribal governments to initiate government-to-government consultation because the proposed action has the potential to significantly affect tribal rights, protected resources, or Indian lands.

## **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 2016 GOA Final SEIS/OEIS. See Section 6.2 (Relationship Between Short-Term Use of the Environment and Maintenance and Enhancement of Long-Term Productivity) of the 2016 GOA Final SEIS/OEIS for more information (U.S. Department of the Navy, 2016).

## **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 the analysis conducted in the 2016 GOA Final SEIS/OEIS. See Section 6.3 (Irreversible or Irrecoverable Commitment of Resources) of the 2016 GOA Final SEIS/OEIS for more information (U.S. Department of the Navy, 2016).

## **6.4 Energy Requirements and Conservation Potential of the Proposed Action**

Under the operational strategy report in 2011, the DoD published an implementation plan to integrate operational energy considerations and transformation into existing programs, processes, and institutions (U.S. Department of Defense, 2012). 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.

This strategy 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 *Fiscal Year 2019 Operational Energy Budget Certification Report* (Department of Defense, 2018) satisfies the requirements in section 2925(b) of title 10 United States Code for fiscal year 2018 and includes information on operational energy demands, progress in implementing the *Operational Energy Strategy* (2016a), alternative fuels investments, and contingency operations support. The DoD consumed approximately 85 million barrels of fuel to power ships, aircraft, combat vehicles, and contingency bases in fiscal year 2018 (Department of Defense, 2018). The Navy consumes approximately 26 percent of the total DoD share (Department of Defense, 2018).

As stated previously, the Proposed Action in this SEIS/OEIS is consistent with that which was implemented in the 2016 GOA Final SEIS/OEIS. Implementation of the Proposed Action for this SEIS/OEIS would not result in an increase in energy use. Energy requirements would be subject to any established energy conservation practices. The use of energy sources has been minimized wherever possible without compromising safety or training activities. Additionally, energy requirements would be subject to any established energy conservation practices. No additional conservation measures related to direct energy consumption by the proposed activities are identified.

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 (U.S. Department of the Navy, n.d.). 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. Examples of Navy-wide greenhouse gas reduction projects include energy-efficient construction, thermal and photovoltaic solar systems, geothermal power plants, and the generation of electricity with wind energy. The Navy continues to promote and install new renewable energy projects.

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 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.

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