



RECORD OF DECISION

For the Issuance of an Incidental Take Authorization to the U.S. Navy and Adoption of U.S. Navy Final Supplemental Environmental Impact Statement/Overseas Environmental Impact Statement

Prepared By:

Department of Commerce

National Oceanic and Atmospheric Administration

National Marine Fisheries Service

Office of Protected Resources

I. INTRODUCTION AND PURPOSE

On October 9, 2020, the National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service (NMFS) received an application from the U.S. Navy (Navy) requesting authorization to take of marine mammals incidental to training activities analyzed in the 2022 Final Supplemental Environmental Impact Statement/Overseas Environmental Impact Statement for Gulf of Alaska Study Area (2022 GOA FSEIS/OEIS). NMFS reviews applications and, if appropriate, issues Incidental Take Authorizations (ITAs) pursuant to the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*). ITAs may be issued as either: (1) regulations and associated Letters of Authorization (LOAs) under section 101(a)(5)(A) of the MMPA or (2) Incidental Harassment Authorizations (IHAs) under section 101(a)(5)(D) of the MMPA. In addition, the National Environmental Policy Act (NEPA), 40 Code of Federal Regulations (CFR) Parts 1500-1508¹, and NOAA policy and procedures² require all proposals for major federal actions to be reviewed with respect to their effects on the human environment. Issuance of an ITA to the Navy is a major federal action, triggering NOAA's independent NEPA compliance obligation. When serving as a cooperating agency, NOAA may satisfy its independent NEPA obligations either by preparing a separate NEPA analysis for its issuance of an ITA or, if appropriate, by adopting the NEPA analysis prepared by the lead agency. Therefore, the purposes of this document are twofold. First, this document

¹ The associated FSEIS/OEIS was prepared using the 1978 CEQ NEPA Regulations. NEPA reviews initiated prior to the effective date of the 2020 CEQ regulations may be conducted using the 1978 version of the regulations. The effective date of the 2020 CEQ NEPA Regulations was September 14, 2020. This review began on February 10, 2020 and the agency has decided to proceed under the 1978 regulations. Therefore, this ROD follows the 1978 CEQ regulations.

² NOAA Administrative Order (NAO) 216-6A "Compliance with the National Environmental Policy Act, Executive Orders 12114, Environmental Effects Abroad of Major Federal Actions; 11988 and 13690, Floodplain Management; and 11990, Protection of Wetlands" issued April 22, 2016 and the Companion Manual for NAO 216-6A "Policy and Procedures for Implementing the National Environmental Policy Act and Related Authorities" issued January 13, 2017.



explains NMFS' rationale for its determination to issue an ITA to the Navy for their proposed training activities in a Temporary Maritime Activities Area (TMAA) and a Western Maneuver Area (WMA) in the Gulf of Alaska (herein "GOA Study Area"). Second, this document explains NMFS' determination to adopt the 2022 GOA FSEIS/OEIS for the NEPA review that is required for NMFS' consideration of whether to issue the ITA.

NMFS is issuing regulations and an ITA in the form of an LOA to the Navy for training activities pursuant to section 101(a)(5)(A) of the MMPA and 50 CFR Part 216³. The regulations and LOA will be valid for 7 years from the date issued⁴ and authorize take by Level A harassment and Level B harassment of marine mammals incidental to the Navy conducting training activities in the GOA Study Area. As explained in the 2022 GOA FSEIS/OEIS, NMFS' proposed action and the purpose and need for that action are a direct outcome of the Navy's request for MMPA authorization in connection with conducting training activities, including the use of active acoustic sonar systems and other transducers and detonations at or above the water surface (within 10 m above the surface) in the GOA Study Area. These activities have the potential to cause harassment to marine mammals in the form of behavioral disruption, temporary threshold shift (TTS), or injury in the form of permanent threshold shift (PTS), and, therefore, require authorization from NMFS. An authorization for incidental take related to military readiness activities is granted if NMFS finds that the take will have a negligible impact on the species or stock(s), and, where relevant, will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, regulations must set forth the permissible methods of take, other means of effecting the least practicable adverse impact on the species or stocks and their habitat, and requirements pertaining to the monitoring and reporting of such take.

II. BACKGROUND

The Navy has been conducting training activities in the GOA Study Area for over a decade, and has prepared multiple environmental impact analyses under NEPA and Executive Order (EO) 12114 (that coincide with their requests for ITAs) for these training activities, which include the use of active acoustic sonar systems and explosives at or above the water surface (within 10 m above the surface). As such, the Navy is the lead agency responsible for the development of, and the scope and content of, these analyses. NMFS serves as a cooperating agency due to its legal jurisdiction and special expertise and because the scope of the Navy's proposed action and alternatives involve activities that have the potential to impact protected resources, including marine mammals. In addition, NMFS participated substantially and meaningfully throughout the NEPA process, with the goal of ensuring that all analyses (previous analyses and the current 2022 GOA FSEIS/OEIS) are sufficient for NMFS to adopt the document to satisfy its independent NEPA obligation for its decision whether to promulgate final regulations and issue a subsequent LOA to the Navy.

While specific training activities, activity levels, and geographic locations have evolved slightly over the years to meet changing threats to national security or new technology, the overall types of activities and geographic areas in which the Navy conducts training and testing activities have not changed significantly for decades. The primary reasons the Navy prepares new analyses are

³ The regulations governing the taking and importing of marine mammals.

⁴ In August 2018, the MMPA was amended (section 316 of Public Law No. 115-232) to allow incidental take rules for military readiness activities to be issued for up to seven years.

to support their requests for new ITAs when the previous ones expire and to evaluate any new information and science relevant to environmental concerns and bearing on the Navy's proposed action. Each of these analyses build upon each other and address the effects of sound on marine species along with other potential impacts to marine mammals and the marine environment from conducting training and testing activities. The Navy's environmental analyses for the GOA, including those for previous ITAs for the GOA, are available on the Navy's GOA EIS/OEIS website (<https://www.goaeis.com/>).

A summary of the environmental analyses associated with NMFS' promulgation of this current rule and the associated LOA to the Navy for training activities in the GOA Study Area is below and additional information and documents, including the 2022 GOA FSEIS/OEIS, are available on the Navy's website (<https://www.goaeis.com/>) and NMFS' website (<https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities>).

As indicated earlier in this section, the Navy has been preparing EISs/OEISs for training and testing activities that support their requests for ITAs. This will be NMFS' third in a series of rulemakings under the MMPA for Navy training activities in the GOA Study Area⁵. For this third rulemaking, the Navy is proposing to conduct activities that would be a continuation of the types and level of training activities that have been ongoing for more than a decade. While the specified activities have not changed, there are changes in the platforms and systems used in those activities, as well as changes in the bins (source classifications) used to analyze the activities. Under this third rule, NMFS considered and is authorizing take of individuals of 16 species of marine mammals, by Level A and Level B harassment, incidental to training activities involving use of active acoustic sonar systems and other transducers and detonations at or above the water surface (within 10 m above the surface). The details about NMFS' analysis and determinations under the MMPA are explained in the *Estimated Take of Marine Mammals and Analysis and Negligible Impact Determination* sections of the final rule.

Also, as indicated earlier in this section, NMFS supports and relies on the analysis in the 2022 GOA FSEIS/OEISs, in addition to analysis under the MMPA. In 2016, the Navy completed an FSEIS/OEIS analyzing the potential environmental impacts from training activities conducted in the TMAA (now expanded, with the addition of the WMA, into the GOA Study Area) and NMFS, serving as a cooperating agency and relying on the Navy's 2016 GOA FSEIS/OEIS, issued a final rule and subsequent LOA that expired in April 2022 (82 FR 19530; April 27, 2017). However, after the completion of the 2016 GOA FSEIS/OEIS, new information and data became available, including proposed changes in the Navy's training requirements. Therefore, the Navy determined that preparing a supplemental analysis to the 2016 GOA FSEIS/OEIS was appropriate and initiated the development of a supplemental impact statement by publishing a Notice of Intent (NOI) in the *Federal Register* on February 10, 2020 (85 FR 7538). In addition, because the previous MMPA regulations and LOA for training were expiring in April 2022, the 2022 GOA FSEIS/OEIS also addresses and supports the consultations, permits, and authorizations required by the MMPA and the Endangered Species Act (ESA) by using the best available science and analytical methods to reassess potential environmental impacts on species protected by these laws.

⁵ NMFS published the first rule on May 4, 2011 (76 FR 25479) which was valid for five years and the second rule on April 27, 2017 (82 FR 19530), which was also valid for five years. The third rule, if issued, will be valid for seven years.

The 2022 GOA FSEIS/OEIS considers and assesses ongoing and future activities conducted at sea, which includes updated training requirements, and incorporates new information for assessing acoustic effects on marine mammals, which includes updated marine mammal density data and updates to Navy's quantification and estimation of marine mammal takes, based on the best available scientific information compiled, interpreted, and synthesized in the 2018 NMFS' *Revised Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing* and the Navy's 2017 *Phase III Criteria and Thresholds for U.S. Navy Acoustic and Explosive Effects Analysis Technical Report*. See Chapter 3, Section 3.8 of the 2022 GOA FSEIS/OEIS and *Estimated Take of Marine Mammals* section of the final rule for more information.

III. PROPOSED ACTION AND ALTERNATIVES SUMMARY

A. Purpose and Need

The Navy's proposed action to train, and NMFS' action to issue regulations and the associated LOA to the Navy, are considered major federal actions requiring that both the Navy and NMFS analyze the effects of their actions on the human environment pursuant to NEPA and its implementing regulations (40 CFR Parts 1500-1508). Thus, the Navy and NMFS (as a cooperating agency) coordinated from the outset and developed the 2022 GOA FSEIS/OEIS to meet each agency's distinct NEPA obligations and support the decision making of both agencies. This included developing explanations pursuant to 40 CFR section 1502.13 regarding the purpose and need for both agencies' proposed actions. Since NMFS' issuance of an LOA under the MMPA is different from the Navy's purpose and need regarding training activities pursuant to 10 U.S.C. section 8062, the 2022 GOA FSEIS/OEIS recognizes NMFS' purpose and need to review and act on the Navy's request for an authorization to take marine mammals incidental to the proposed training activities.

In summary, the Navy's purpose for the proposed action is to achieve fleet readiness to support and conduct current, emerging, and future training activities, and is needed to ensure that the Navy meets their mission. The Navy's mission, under Title 10 United States Code (U.S.C.) Section 8062, is to maintain, train, and equip combat-ready military forces capable of winning wars, deterring aggression, and maintaining freedom of the seas. This mission is achieved in part by conducting training within the GOA Study Area in accordance with established military readiness requirements and policy. For more information about the purpose and need of the Navy's proposed action, see Chapter 1, Section 1.4 in the 2022 GOA FSEIS/OEIS. The purpose of NMFS' action, which is a direct outcome of the Navy's request for authorization to take marine mammals incidental to conducting the training activities in the GOA Study Area, is to evaluate the Navy's application pursuant to section 101(a)(5)(A) of the MMPA and 50 CFR Part 216 and issue an ITA (in the form of an LOA), if appropriate. The need for NMFS' action is to consider the impacts of the Navy's activities on marine mammals and meet NMFS' obligations under the MMPA by ultimately authorizing the incidental take in compliance with the MMPA if the requirements of section 101(a)(5)(A) are satisfied. NMFS' purpose and need is described in more detail below and is supported by the analysis in the 2022 GOA FSEIS/OEIS and NMFS final rule.

The Navy submitted an application to NMFS demonstrating the need and potential eligibility for an ITA under the MMPA. Thus, NMFS has a corresponding duty to determine whether and how to authorize take of marine mammals incidental to the activities described in the application. The purpose of issuing ITAs is to provide an exception to the take prohibition in the MMPA and to ensure that the action complies with the MMPA and implementing regulations. ITAs may be issued as either: (1) regulations and associated LOA under section 101(a)(5)(A) of the MMPA or (2) Incidental Harassment Authorizations (IHAs) under section 101(a)(5)(D) of the MMPA. An IHA can be issued only when there is no potential for serious injury or mortality or where any such potential can be negated through required mitigation measures, and expire after one year. No serious injury or mortality is anticipated to occur as a result of the Navy's training activities. However, the Navy requested a rulemaking and the issuance of an LOA associated with their proposed training activities given that, for military readiness activities, incidental take regulations and subsequent LOAs may be effective for up to 7 years.

NMFS' purpose is to evaluate the Navy's proposed action pursuant to NMFS' authority under the MMPA and make a determination whether to issue incidental take regulations and an LOA, including any conditions needed to comply with the MMPA. To authorize the incidental take of marine mammals, NMFS evaluates the best available scientific information to determine whether the take would have a negligible impact on the affected marine mammal species or stocks and not have an unmitigable impact on their availability for subsistence uses. NMFS must also prescribe permissible methods of taking, other "means of effecting the least practicable adverse impact" on the affected species or stocks and their habitat, and monitoring and reporting requirements. NMFS cannot issue an ITA unless it can make the required findings. The need for NMFS' action is to consider the impacts of the Navy's activities on marine mammals and meet NMFS' obligations under the MMPA. The 2022 GOA FSEIS/OEIS addresses the environmental impacts associated with NMFS' consideration of whether to issue the requested authorization to the Navy for take of marine mammals incidental to the training activities within the GOA Study Area, including a variety of mitigation measures that were considered during the MMPA authorization process. The analysis of mitigation measures considers benefits to species or stocks and their habitat and analyzes the practicability and efficacy of each measure. The analysis of mitigation measures was used to support requirements pertaining to mitigation, monitoring, and reporting that would be specified in final MMPA regulations and subsequent LOA.

B. Navy Proposed Action

The Navy proposes to conduct training activities in the GOA Study Area. These training activities include the use of active sonar and detonations at or above the water surface (within 10 m above the surface) in the Gulf of Alaska. A summary of the Navy's training activities is provided below, and the detailed descriptions are in Chapter 2, Section 2.3 and Appendix A of the 2022 GOA FSEIS/OEIS.

Proposed Training Activities: The training activities in the GOA Study Area are considered to be a major training exercise (MTE). A MTE, for purposes of this rulemaking, is comprised of several unit-level activities conducted by several units operating together, commanded and controlled by a single Commander, and potentially generating more than 100 hours of active sonar. These exercises typically employ an exercise scenario developed to train and evaluate the exercise participants in tactical and operational tasks. In a MTE, most of the activities being directed and coordinated by the Commander in charge of the exercise are identical in nature to

the activities conducted during individual, crew, and smaller unit-level training events. In a MTE, however, these disparate training tasks are conducted in concert, rather than in isolation. At most, only one MTE would occur in the GOA Study Area per year (over a maximum of 21 days). The MTE consists of a single carrier strike group (CSG) exercise. The CSG exercise is comprised of several individual training activities. The activities would occur intermittently during the 21 days and could be simultaneous and in the same general area within the TMAA or could be independent and spatially separate from other ongoing activities. Three key factors used to identify and group the exercises are the scale of the exercise, duration of the exercise, and amount of hull-mounted sonar hours modeled/used for the exercise. The training activities proposed by the Navy are described in the 2022 GOA FSEIS/OEIS in Chapter 2, Section 2.3 Tables 2 -2 and 2-3, which include the activity names, short descriptions of the activity, and the number of events annually, and Appendix A, which includes detailed descriptions of activities.

C. NMFS Proposed Action

Sections 101(a)(5)(A) and (D) of the MMPA give NMFS the authority to authorize the incidental but not intentional take of small numbers⁶ of marine mammals, provided certain determinations are made and statutory and regulatory procedures are met. As noted above, to authorize the incidental take of marine mammals, NMFS evaluates the best available scientific information to determine whether the take would have more than a negligible impact⁷ on affected species or stocks and whether the activity would have an unmitigable adverse impact on the availability of the species or stocks for subsistence use (if applicable). NMFS cannot issue an authorization if it would result in more than a negligible impact on marine mammal species or stocks or would result in an unmitigable adverse impact on the species or stocks for subsistence uses. NMFS must also prescribe the permissible methods of take and other means of effecting the least practicable adverse impact on the species or stocks of marine mammals and their habitat, paying particular attention to rookeries, mating grounds, and other areas of similar significance. All ITAs include requirements or conditions pertaining to monitoring and reporting.

In 2003, the MMPA was amended through the National Defense Authorization Act for Fiscal Year 2004 (NDAA; Public Law 108-136) to remove the “small numbers” and “specified geographical region” provisions for military readiness activities and amend the definition of “harassment” as applied to, among other things, military readiness activities. Section 3(18)(B) of the MMPA defines “harassment” for military readiness activities and scientific research by or on behalf of the federal government as:

- (i) any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or
- (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].

⁶ See explanation at the end of this section regarding the definition of harassment and applicability of small numbers for military readiness activities.

⁷ NMFS defines “negligible impact” as “an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.” (50 CFR section 216.103).

The NDAA also amended the MMPA for military readiness activities to require that NMFS, when making a determination of “least practicable adverse impact on such species or stock,” consult with the Department of Defense and consider personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Additional information about the MMPA, its implementing regulations, and the application process are available on NMFS’ website (<https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act> and <https://www.fisheries.noaa.gov/topic/laws-policies#marine-mammal-protection-act>).

Since NMFS’ proposed action would authorize take of marine mammals incidental to a subset of the activities analyzed in the 2022 GOA FSEIS/OEIS, these components of the Navy’s proposed action are the subject of NMFS’ proposed action. Therefore, NMFS’ proposed action is a direct outcome of the Navy’s request for an authorization.

D. Alternatives Considered by the Navy

The Navy, in coordination with NMFS, considered and assessed three alternatives in the 2011 GOA FSEIS/OEIS, the action alternatives (Alternatives 1 and 2) and the No Action Alternative. For the 2022 GOA FSEIS/OEIS, only two alternatives were carried forward, the No Action Alternative, and Alternative 1 (the Preferred Alternative). The action alternative incorporates a variety of mitigation measures, developed in consultation with NMFS, to minimize adverse impacts to marine species. In addition, the action alternatives were developed to meet both the Navy’s purpose and need to train and NMFS’ independent purpose to evaluate the potential impacts of the Navy’s activities, determine whether incidental take resulting from the Navy’s activities will have a negligible impact on affected marine mammal species and stocks, and if appropriate, issue an ITA with prescribed measures to effect the least practicable adverse impact on marine mammal species or stocks and their habitat, as well as monitoring and reporting requirements, and need to meet NMFS’ obligations under the MMPA.

The **No Action Alternative** considers that the proposed action would not take place (*i.e.*, the proposed training would not occur in the GOA Study Area). While the Navy identified the No Action Alternative as the environmentally preferable alternative, it fails to meet the Navy’s purpose and need for the proposed action.

Alternative 1 (Preferred Alternative) is a Status Quo Alternative based on the 2016 GOA FSEIS/OEIS, less the requirement to use a Portable Undersea Tracking Range. While the revised GOA Study Area is larger than the area analyzed in the 2020 GOA Draft SEIS/OEIS, no new or increased levels of training activities would occur, and no increases in vessel numbers, underway steaming hours, or aircraft events would occur. Alternative 1 reflects a representative year of training to account for the natural fluctuation of training cycles and deployment schedules that generally limit the maximum level of activities from occurring year after year in any 7-year period. Using a representative level of activities rather than maximum level reduces the amount of ship hull-mounted, mid-frequency active sonar estimated to meet requirements. The Navy’s entire suite of mitigation measures, including procedural and geographic mitigation measures, would be implemented under Alternative 1.

The Navy thoroughly considered several other alternatives, including Alternative 2 from the 2011 GOA FEIS/OEIS, alternative training locations, reduced training, alternative time frames, simulated training, and training without the use of active sonar, but eliminated them from further consideration because they did not meet the purpose and need of the Proposed Action. The explanation of these alternatives and why they were eliminated from further consideration is in Chapter 2, Section 2.5 in the 2022 GOA FSEIS/OEIS.

E. Alternatives Considered by NMFS

The Navy developed the range of alternatives in coordination with NMFS to include the consideration of a variety of mitigation measures for both action alternatives. However, the alternatives considered by NMFS with respect to the decision for which NMFS is responsible (*i.e.*, whether to issue regulations and a subsequent LOA to the Navy), is based on the activities described in the Navy's application for the ITA. Therefore, since the Navy selected Alternative 1 as the preferred alternative and this is the action that includes the training activities described in their application, Alternative 1, along with the no action alternative, is sufficient for NMFS consideration whether to issue the ITA.

No Action Alternative: Denial of an ITA constitutes the NMFS No Action Alternative, which is consistent with its statutory obligation under the MMPA to grant or deny ITA requests, and to prescribe mitigation, monitoring, and reporting with any authorizations. Under the No Action Alternative, NMFS would not issue incidental take regulations and a subsequent LOA, and the Navy would not conduct their planned training activities in the GOA Study Area. The No Action Alternative serves as a baseline in the 2022 GOA FSEIS/OEIS, against which the impacts of the Navy's Preferred Alternative were compared and contrasted. NMFS considers the No Action Alternative to be environmentally preferable as it would not result in adverse effects to marine resources under NMFS legal jurisdiction and special expertise as a result of the Navy's proposed training activities.

Alternative 1 (Preferred Alternative): Under the Navy's Preferred Alternative, NMFS would issue incidental take regulations and an LOA to the Navy for take by harassment of marine mammals during training activities in the GOA Study Area, taking into account the prescribed methods of take; mitigation measures, including means of effecting the least practicable adverse impact on the species and stocks and their habitat; and monitoring and reporting requirements.

IV. FINDINGS AND FACTORS CONSIDERED IN THE DECISION

A. Findings

As previously indicated, NMFS has a statutory responsibility to independently review and evaluate each request for authorization to incidentally take marine mammals pursuant to section 101(a)(5)(A) or (D) of the MMPA. Review of the environmental consequences to the marine environment is of particular importance for NMFS' evaluation in reaching a decision to issue a final rule and subsequent LOA. The primary documents underlying NMFS' analysis are the Navy's ITA application, the 2022 GOA FSEIS/OEIS, and the GOA ESA Biological Opinion.

NMFS reviewed the Navy's ITA request to determine whether the total taking resulting from the Navy training activities would have a negligible impact on the affected species or stocks of marine mammals within the GOA Study Area and to prescribe the permissible methods of taking along with requirements pertaining to mitigation, monitoring, and reporting of such takings. NMFS made the requisite findings under the MMPA and addresses these findings in the final rule.

After independent review, NMFS has determined that the analysis in the 2022 GOA FSEIS/OEIS adequately addresses the potential direct, indirect, and cumulative impacts to marine mammals and their habitat resulting from the use of active acoustic sonar systems and other transducers and detonations at or above the water surface (within 10 m above the surface) throughout the GOA Study Area during military readiness training activities, and properly addresses NMFS' comments and input.

In the 2022 GOA FSEIS/OEIS, the Navy analyzed possible cumulative impacts and potential impacts from exposure to active acoustic sources and detonations at or above the water surface (within 10 m above the surface), as well as impacts from non-acoustic sources such as vessel strike and other consequences associated with proposed training activities. The Navy used their exposure estimates, combined with qualitative scientific information and concluded that none of the alternatives will result in any adverse population level effects on any of the affected species or stocks. Based on the Navy's estimates of the number of each species of marine mammal that will be exposed to levels of sound, NMFS determined that use of active acoustic sonar systems and other transducers and detonations at or above the water surface (within 10 m above the surface) have the potential to result in Level A harassment (PTS and non-auditory injury) and Level B harassment by behavioral disruption and TTS.

B. Key Factors

The environmental consequences to the marine environment and protected resources are important for the evaluation leading to the decision to issue any given ITA. In particular, because NMFS' action is specific to authorizing incidental take of marine mammals, the key factors relevant to and considered in the decision to issue an ITA are related to NMFS' statutory mission under the MMPA. In reaching its decision under the MMPA, NMFS took into consideration all of the information submitted by the Navy in its ITA application; the standards for issuing MMPA ITAs as described above; all of the information, research, and analysis as described in the MMPA proposed and final rules; all information received during the public comment periods; and any other information relevant to the MMPA decision-making process. Key factors and findings NMFS considered in the decision whether to issue regulations and subsequent LOAs are explained below. The detailed explanations about the affected environment and environmental consequences are discussed in the 2022 GOA FSEIS/OEIS, in Chapter 3, within subsections arranged by resource type, including: Marine Mammals; Sea Turtles; Birds; Fishes; and Socioeconomic Resources and Environmental Justice. The section on Marine Mammals (Chapter 3, Section 3.8) and Appendix C contain the majority of the analysis that relates to NMFS' action of issuing MMPA incidental take regulations. In addition, Chapter 4 provides an assessment of potential cumulative impacts, including analyzing the potential for cumulatively significant impacts to the marine environment and marine mammals. Other chapters of the 2022 GOA FSEIS/OEIS contain analyses related to potential impacts on marine mammal habitat and

further support NMFS' findings and determinations for issuance of MMPA regulations and LOAs.

Mitigation and Monitoring Requirements: Both agencies are required to review and consider mitigation that minimizes or avoids impacts. Specific to NMFS' statutory obligations under the MMPA, NMFS must consider mitigation measures specific to its proposed action to achieve the least practicable adverse impact on species or stocks and their habitat. The Navy will implement several procedural mitigation measures and geographic mitigation areas as part of conducting their training activities. Furthermore, the 2022 GOA FSEIS/OEIS acknowledges a degree of uncertainty regarding the effects of underwater sound on marine mammals. NMFS provided extensive input during the development of the 2022 GOA FSEIS/OEIS to address these uncertainties, and includes requirements for mitigation, monitoring, and reporting by the Navy in the final rule to manage uncertainty. The Navy Acoustic Effects Model estimates acoustic and explosive effects without taking mitigation into account; therefore, the model overestimates predicted impacts on marine mammals within mitigation zones. To account for mitigation for marine species in the take estimates, the Navy conducts a quantitative assessment of mitigation.

The final rule implements continued management to reduce uncertainty by requiring extensive monitoring and reporting by the Navy, including the establishment and implementation of a monitoring plan specific to the GOA Study Area, an Integrated Comprehensive Monitoring Program, and a Strategic Planning Process. The Navy will update the status of its monitoring program and funded projects through the Navy Marine Species Monitoring Program website (<https://www.navymarinespeciesmonitoring.us>). The Navy's monitoring program is designed to support NMFS' use of adaptive management throughout rule implementation, as presented in the 2022 GOA FSEIS/OEIS and further explained in the final rule. NMFS and the Navy will meet to discuss the monitoring reports, Navy research and development studies, and current science and discuss whether mitigation or monitoring modifications are appropriate. The use of adaptive management allows NMFS to consider new information to determine (with input from the Navy regarding personnel safety, practicality of implementation, and impact on effectiveness of the Navy's activities) on an annual or biennial basis if mitigation or monitoring measures should be modified. Mitigation measures could be modified if new data suggests that such modifications would have a reasonable likelihood of reducing adverse effects to marine mammals and if the measures are practicable. While not a required component of the final rule, the 2022 GOA FSEIS/OEIS describes the Navy's continuing commitment to marine mammal research, in particular research related to the effects of underwater sound on marine mammals. NMFS will continue to encourage and support the Navy's research efforts. The timeframe for completing research and conducting an assessment of how that research factors into MMPA authorizations, however, does not allow NMFS to wait for the results of the research prior to authorizing the Navy's request for incidental take. Based on the review of the 2022 GOA FSEIS/OEIS, NMFS determined the Navy appropriately acknowledges uncertainty and provides detailed analyses on how the best available information is incorporated to assess effects where uncertainties exist, and to address and manage uncertainty via mitigation, monitoring, reporting, and research.

Considering Effects to ESA-listed Marine Mammals and Critical Habitat. There are eight marine mammal species under NMFS jurisdiction that are listed as endangered or threatened under the ESA (16 U.S.C. 1531 *et seq.*) with confirmed or possible occurrence in the GOA Study Area: North Pacific right whale, humpback whale (Mexico, Western North Pacific, and Central

America distinct population segments (DPSs)), blue whale, fin whale, sei whale, gray whale (Western North Pacific DPS), sperm whale, and Steller sea lion (Western DPS). The humpback whale has critical habitat recently designated under the ESA in the TMAA portion of the GOA Study Area (86 FR 21082; April 21, 2021). The Navy consulted with NMFS pursuant to section 7 of the ESA for GOA activities, and NMFS also consulted internally on the issuance of the final regulations and LOA under section 101(a)(5)(A) of the MMPA. On September 30, 2022, NMFS issued a Biological Opinion concluding that the promulgation of the rule and subsequent LOA is not likely to jeopardize the continued existence of threatened and endangered species under NMFS' jurisdiction and is not likely to result in the destruction or adverse modification of designated critical habitat in the GOA Study Area. The Biological Opinion is available at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities>.

Essential Fish Habitat under the Magnuson-Stevens Fishery Conservation and Management Act.

On June 28, 2022, the Navy submitted an Essential Fish Habitat (EFH) package to NMFS Alaska Regional Office (AKRO) to initiate supplemental EFH consultation. The supplemental consultation focused on changes in training activities since the 2011 EFH consultation and any new applicable science not already considered by the Navy. NMFS' AKRO's letter, dated August 11, 2022, provided the NMFS response to the Navy's consultation request. Based on AKRO's review of the project plans and the information provided, it agreed with the Navy's conclusion that potential adverse effects to EFH would be minimal and temporary in nature. The letter did not include additional conservation recommendations, and it concluded that additional EFH consultation was not necessary.

Coastal Zone Management Act. Alaska currently does not have an approved Coastal Management Program, and the Navy has no requirements to prepare and submit a consistency determination to Alaska.

V. ENVIRONMENTAL REVIEW SUMMARY AND ADOPTION

40 CFR 1506.3 and NOAA policy and procedures for implementing NEPA provide for NMFS to adopt a lead agency's EIS. Specifically, when NOAA, as a cooperating agency, reviews the lead agency's EIS and determines that it is sufficient and adequately addresses NOAA comments and suggestions, NOAA may adopt the EIS without recirculating it (40 CFR 1506.3(c)). Therefore, NMFS, on behalf of NOAA, served as a cooperating agency and participated substantially and meaningfully in the NEPA process, including preparation of the draft and 2022 GOA FSEIS/OEIS to ensure the 2022 GOA Final SEIS/OEIS included adequate information and evaluation of the impacts on marine resources, including marine mammals.

NMFS independently reviewed the 2022 GOA FSEIS/OEIS and determined the Navy, as the lead agency, fully and adequately evaluated the direct, indirect, and cumulative impacts of their proposed action and alternatives on marine resources. This evaluation includes a detailed review of impacts of the Navy's training activities involving active acoustic sources, detonations at or above the water surface (within 10 m above the surface), and vessel use on 16 species of marine mammals under NMFS' purview (including eight species listed as threatened or endangered under the ESA), estimates of marine mammal acoustic exposure, and identification of standard monitoring and mitigation measures. As part of its independent review, NMFS determined the

2022 GOA FSEIS/OEIS to be comprehensive in analyzing the scope of the Navy's training activities over the GOA Study Area, and that the evaluation of the direct, indirect, and cumulative impacts on the human environment, including the marine environment, is adequate to support NMFS' required evaluation for issuance of regulations and an LOA. NMFS also concludes that the impacts evaluated therein are substantially the same as the impacts that NMFS must analyze under its proposed action to authorize take of marine mammals incidental to training activities in the GOA Study Area. The 2022 GOA FSEIS/OEIS also addresses NOAA's required components for adoption because it meets the requirements for an adequate EIS per 40 CFR 1500 – 1508 and NOAA policy and procedures and reflects comments and expert input provided by NMFS as a cooperating agency. For example, the 2022 GOA FSEIS/OEIS includes:

- the scope of NMFS' proposed action, and purpose and need for the action;
- a discussion of the Navy's proposed action and purpose and need for the action;
- evaluation of a reasonable range of alternatives to the proposed action, including a no action alternative, and alternatives to mitigate adverse effects to marine mammals;
- a discussion of the MMPA authorization process necessary to support implementation of the action;
- a description of the affected environment, including the status of all marine mammal species likely to be affected;
- a description of the environmental impacts of the proposed action and alternatives, including direct, indirect, and cumulative impacts on marine mammals and projected estimates of incidental take;
- identification and evaluation of reasonable mitigation measures to avoid or minimize adverse impacts to marine mammals; and
- a listing of agencies consulted, a listing of agencies and persons who collaborated on preparation of the 2022 GOA FSEIS/OEIS, and a listing to whom copies of the 2022 GOA FSEIS/OEIS were provided.

As a cooperating agency, NMFS was instrumental in providing information related to the occurrence of impacts to marine resources over which it exercises legal jurisdiction and has special expertise, including marine mammals. Per the cooperating agency commitment, the Navy provided NMFS with preliminary versions of the draft and final SEIS/OEIS documents for review, and NMFS provided comments in support of the analysis regarding areas of NMFS's subject matter expertise and jurisdiction. NMFS also circulated the draft and final SEIS/OEIS documents to relevant NOAA offices and programs, compiled comments received, and submitted them to the Navy. Subsequently, the Navy and NMFS participated in comment resolution meetings, in which the Navy addressed NOAA-related comments or resolved any outstanding issues. Based on our determination of the sufficiency of the 2022 GOA FSEIS/OEIS and the adequacy Navy's incorporation of NOAA-related comments and concerns, NMFS, on behalf of NOAA, decided to adopt the document without the need for recirculation in accordance with 40 CFR 1506.3(c).

NMFS also reviewed the Record of Decision (ROD) prepared by the Navy. The Navy's ROD clearly states the decision being made and identifies Alternative 1 as the preferred alternative, as described in the 2022 GOA FSEIS/OEIS. The Navy also compared and contrasted alternatives, including effects to marine mammals, discussed all practicable means to avoid or minimize harm

to marine mammals likely to be caused by Alternative 1, and committed to implementing the measures during the conduct of training activities.

Finally, while the 2022 GOA FSEIS/OEIS provides detailed, sufficient, and adequate information and evaluation of NMFS trust resources to satisfy NMFS' NEPA obligations for issuance of the requested MMPA regulations and an LOA, NMFS also considered information developed through other statutory compliance processes, including the ESA, MMPA, and Magnuson-Stevens Fishery Conservation and Management Act, to assess the effects of the Navy's activities on those resources. NMFS' determinations in this ROD are informed by those processes.

VI. PUBLIC INVOLVEMENT SUMMARY

The Navy published an NOI for the preparation of the GOA SEIS/OEIS (which is a supplement to the 2016 GOA FEIS/OEIS) in the *Federal Register* (85 FR 7538) on February 10, 2020, initiating the public scoping period. A Notice of Availability published in the *Federal Register* on December 11, 2020 (85 FR 80093), and the GOA Draft SEIS/OEIS (DSEIS/OEIS) public review and comment period began with issuance of the Notice of Virtual Public Meetings (85 FR 80076; December 11, 2020). Notice of Intent to Prepare a Supplement to the GOA DSEIS/OEIS published in the *Federal Register* on February 1, 2022 (87 FR 5472). The Notice of Availability for the Supplement to the GOA DSEIS/OEIS published on March 18, 2022 (87 FR 15414). The Navy notified the public of both the scoping and comment periods using letters, postcards, press releases, project website subscriber emails, and newspaper advertisements in five newspapers in the GOA Study Area. The letters provided a description of the proposed action, address of the project website, duration of the comment period, and information on the public meetings. Comments on the scope of the analysis were provided by mail and through the project website. During the 2020 GOA DSEIS/OEIS public comment period, the Navy held two virtual public meetings, one on January 19, 2021, and one on February 3, 2021. The details and explanations concerning public involvement and public comments associated with the development of the 2022 GOA FSEIS/OEIS are provided in Appendix F of the 2022 GOA FSEIS/OEIS. NMFS will adopt the 2022 GOA FSEIS/OEIS without further public involvement or circulation in accordance with 40 CFR section 1506.3(c) since NMFS was a cooperating agency and is satisfied that the Navy adequately addressed its comments and suggestions.

In addition to the public process described above, NMFS relied on the public process pursuant to the MMPA rulemaking to develop and evaluate environmental information relevant to an analysis under NEPA. On January 8, 2021, NMFS published a notice of receipt (NOR) of the Navy's application in the *Federal Register* (86 FR 1483), requesting comments and information related to the Navy's request. On August 11, 2022, NMFS published a notice of the proposed rulemaking (87 FR 49656) to solicit relevant environmental information and provide to the public an opportunity to submit comments on the Navy's proposed activities and NMFS' analysis and determinations. In addition, NMFS indicated that it believed it was appropriate to adopt the 2022 GOA SEIS/OEIS and provided a link to the 2021 GOA DSEIS/OEIS with the publication of the proposed rule.

During the 45-day comment period, NMFS received comment letters from the Marine Mammal Commission, Friends of Animals (a non-governmental organization), and substantive comments from two members of the general public. Two days after the public comment period ended, we

received a comment letter from the Center for Biological Diversity (CBD). NMFS considered all relevant public comments received in response to the publication of the NOR and the proposed rule, including those received from CBD after the public comment period on the proposed rule ended, and used these comments to inform the analysis under the MMPA and to develop mitigation, monitoring, and other conditions for the final rule and LOA. NMFS' responses to specific comments can be found in the final rule available for review on NMFS' website (<https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities>).

Further, NMFS invited Tribes in the Gulf of Alaska region to a meeting to learn more about the proposed rule, ask questions, and provide input on the proposed rule. One Tribe, the Aleut Community of Saint Paul Island, attended the meeting on September 20, 2022, where NMFS gave a presentation on the proposed rule and requested feedback. The Tribe did not ask questions or provide comments during the meeting. NMFS requested that they provide any written comments by September 30, 2022. NMFS did not receive written comments from the Tribe.

VII. CONDITIONS –MITIGATION, MONITORING, AND REPORTING

NMFS does not authorize the training activities proposed by the Navy, however, NMFS does authorize the incidental take of marine mammals under its jurisdiction in connection with these activities and prescribes the methods of take and other means of effecting the least practicable adverse impact on the species and stocks and their habitats. NMFS' issuance of a final rule and LOA is thus conditioned upon reporting requirements and the implementation of mitigation and monitoring designed to reduce impacts (number and/or intensity of incidents of take) to marine mammals to the level of least practicable adverse impact. These conditions, summarized below and described in detail in the *Mitigation Measures* and *Monitoring* sections of the final rule, include procedural mitigation measures and mitigation areas as well as monitoring and reporting requirements, and provide that all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted.

Procedural mitigation will be implemented by the Navy whenever and wherever an applicable training activity occurs in the GOA Study Area. The Navy customizes procedural mitigation for each applicable activity category or stressor. Procedural mitigation includes, but is not limited to, the use of trained Lookouts (protected species observers) to monitor for marine mammals in mitigation zones, requirements for lookouts to immediately provide notification of sightings to the appropriate watch station, requirements for implementation of powerdown and shutdown mitigation measures (based on activity defined zones), pre- and post-monitoring requirements for explosive events, and measures to reduce the likelihood of ship strikes. Chapter 5 of the 2022 GOA FSEIS/OEIS and the *Mitigation Measures* section in the MMPA final rule include detailed descriptions of mitigation measures for each specified activity in the GOA Study Area.

The Navy will also implement mitigation measures within certain areas (Mitigation Areas) and/or at times to avoid or minimize potential impacts on marine mammals in areas and/or times where/when they are known to engage in biologically important behaviors (*i.e.*, foraging, migration), where the disruption of those behaviors would be more likely to result in population-level impact. The *Mitigation Measures* section in the final rule includes detailed descriptions of geographic mitigation measures in the GOA Study Area. Maps and tables of the mitigation areas

can be found in Chapter 5 of the 2022 GOA FSEIS/OEIS. Depending on the area, mitigation will be implemented year-round or seasonally during applicable activities involving active sonar, detonations at or above the water surface (within 10 m above the surface), and physical disturbance and strike stressors.

As part of the final rule (and described in the proposed rule) the Navy will implement a North Pacific Right Whale Mitigation Area, in which, from June 1–September 30, Navy personnel will not use surface ship hull-mounted MF1 mid-frequency active sonar during training. The Navy will also implement a Continental Shelf and Slope Mitigation Area in which, during training, Navy personnel will not detonate explosives below 10,000 ft. altitude (including at the water surface) in the Continental Shelf and Slope Mitigation Area, which extends over the continental shelf and slope out to the 4,000 m depth contour within the TMAA. Last, the Navy will issue pre-event awareness messages to alert vessels and aircraft participating in training activities within the TMAA to the possible presence of concentrations of large whales on the continental shelf and slope. Occurrences of large whales may be higher over the continental shelf and slope relative to other areas of the TMAA. To maintain safety of navigation and to avoid interactions with marine mammals, the Navy will instruct personnel to remain vigilant to the presence of large whales that may be vulnerable to vessel strikes or potential impacts from training activities. Additionally, Navy personnel will use the information from the awareness notification messages to assist their visual observation of applicable mitigation zones during training activities and to aid in the implementation of procedural mitigation.

There have been no changes made to the mitigation requirements since publication of the proposed rule.

In addition, the Navy has agreed to procedural mitigation measures that will reduce the probability and/or severity of impacts expected to result from acute exposure to acoustic sources and detonations at or above the water surface (within 10 m above the surface), such as hearing impairment, more severe behavioral disturbance, as well as the probability of vessel strike. Specifically, the Navy will use a combination of delayed starts, powerdowns, and shutdowns to avoid mortality or serious injury, minimize the likelihood or severity of PTS or other injury, and reduce instances of TTS or more severe behavioral disturbance caused by acoustic sources or explosives. The Navy will also implement two time/area restrictions that will reduce take of marine mammals (as well as impacts on marine mammal habitat) in areas where or at times when they are known to engage in important behaviors, such as feeding, where the disruption of those behaviors would have a higher probability of resulting in impacts on reproduction or survival of individuals that could lead to population-level impacts.

The Navy will submit annual training activity reports and incident reports. In its annual training and reports, the Navy will describe the level of training conducted during the reporting period (*e.g.*, date that the exercise began and ended, location, number and types of active and passive sonar sources used in the exercise, number and types of vessels and aircraft that participated in the exercise, *etc.*). If any occur, the Navy will report incidents involving marine mammal vessel strikes, observed injuries or mortalities to marine mammals during training, and observed injuries or mortalities to marine mammals or ESA-listed species after the use of explosives. The Navy will also implement a Notification and Reporting Plan for dead, live stranded, or marine mammals struck by a vessel.

NMFS and the Navy have developed a robust monitoring plan to improve understanding of marine mammals in the GOA Study Area and the potential environmental impacts of Navy training activities. NMFS and the Navy will use the information contained within monitoring, research, activity, and incident reports when evaluating the effectiveness and practicability of mitigation measures. Additional information on the monitoring plan can be found in the *Monitoring* section of the final rule. In addition to the requirements established in the final rule, NMFS will meet annually with the Navy to discuss the required monitoring reports, Navy research and development efforts, and current science as well as whether mitigation or monitoring modifications are appropriate. This use of adaptive management via the MMPA process will allow NMFS to consider new data from different sources to determine, on an annual basis, (in coordination with the Navy) if mitigation or monitoring measures should be modified or added if new data suggests that such modifications are appropriate.

VIII. DECISIONS AND CONCLUSIONS

Based on the information presented herein, along with the Navy’s ITA application and analysis in the 2022 GOA FSEIS/OEIS prepared by the Navy, NMFS’ decision is to issue regulations and an LOA to the Navy, consistent with the Navy’s Preferred Alternative (Alternative 1). Since the issuance of an authorization would allow for the taking of marine mammals, consistent with provisions under the MMPA and incidental to the Navy’s lawful activities, NMFS, in accordance with 40 CFR section 1506.3 is adopting the 2022 GOA FSEIS/OEIS associated with the decision to grant the Navy’s request for authorization pursuant to section 101(a)(5)(A) of the MMPA.

Through participating as a cooperating agency during the development of the 2022 GOA FSEIS/OEIS, NMFS considered the goals and objectives of NMFS’ proposed action and determined the Navy analyzed a reasonable range of alternatives that adequately addresses the scope of NMFS’ proposed action. Furthermore, NMFS analyzed the associated environmental consequences of the identified alternatives and the mitigation and monitoring measures required under the final rule and LOA. Taking all these factors into account, the actions conducted under the preferred alternative effectively meet NMFS’ mandates under the MMPA and ESA while minimizing potential environmental impacts from the proposed action. For the foregoing reasons, this ROD documents NMFS’ decision to adopt the 2022 GOA FSEIS/OEIS to support its NEPA obligations for issuance of MMPA incidental take regulations and an LOA. It also satisfies the requirements of 40 CFR section 1505.2 by identifying the alternatives considered in the 2022 GOA FSEIS/OEIS and addressing that all practicable means to avoid or minimize environmental harm from implementation of the selected alternative were adopted.

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Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.