

RECORD OF DECISION  
ISSUANCE OF MARINE MAMMAL PROTECTION ACT (MMPA) REGULATIONS TO  
TAKE MARINE MAMMALS INCIDENTAL TO U.S. NAVY TRAINING AND TESTING  
ACTIVITIES IN THE HAWAII-SOUTHERN CALIFORNIA TRAINING AND TESTING  
STUDY AREA

Supported by: U.S. Navy Final Environmental Impact Statement/  
Overseas Environmental Impact Statement for Hawaii-Southern California Training and Testing

National Oceanic and Atmospheric Administration  
National Marine Fisheries Service  
Office of Protected Resources  
Silver Spring, Maryland

In accordance with the National Environmental Policy Act (NEPA) and its implementing regulations and the National Oceanic and Atmospheric Administration's (NOAA's) Administrative Order 216-6 Environmental Review Procedures for Implementing the National Environmental Policy Act, this document comprises NOAA's National Marine Fisheries Service's (NMFS) Record of Decision (ROD) for issuance of regulations pursuant to section 101(a)(5)(A) of the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1361 *et seq.*) to the U.S. Navy (Navy) for the taking of marine mammals incidental to the conduct of specified activities in the Hawaii-Southern California Training and Testing Study Area.

## **I. INTRODUCTION**

In April 2012, NMFS received an application from the Navy requesting five-year regulations and authorizations for the take of 39 species of marine mammals incidental to Navy training and testing activities to be conducted within the Navy's Hawaii-Southern California Training and Testing (HSTT) Study Area, for the period of December 2013 through December 2018. These training and testing activities may incidentally take marine mammals present within the HSTT Study Area by exposing them to sound from active sonar, underwater detonations, airguns, and/or pile driving and removal at levels that NMFS associates with the take of marine mammals as defined by the MMPA. In addition, incidental takes of marine mammals may occur from ship strikes. NMFS' issuance of MMPA regulations to the Navy governing the incidental take of marine mammals is a federal action for which NMFS is responsible for analyzing the effects on the human environment pursuant to NMFS' NEPA procedures.

NMFS participated as a cooperating agency in the development of the Navy's Final Environmental Impact Statement/Overseas Environmental Impact Statement (hereinafter, FEIS),

which contained an analysis of the effects of the Navy's activities on the human environment. NMFS worked closely with the Navy to provide information in NMFS' area of expertise to support the FEIS' effects analyses for endangered species, marine mammals, and other marine resources. In accordance with the NEPA regulations at 40 CFR 1506.3, NMFS analyzed the Draft EIS and concluded that NMFS' comments and suggestions have been addressed. NMFS adopted the Navy's FEIS in December 2013.

#### A. NAVY PROPOSED ACTION

As described in Chapter 2 of the FEIS, the Navy proposed action is to conduct training and testing activities - which may include the use of active sonar and explosives - primarily within existing range complexes and operating areas located along the coast of Southern California and around the Hawaiian Islands. The proposed action also includes activities such as sonar maintenance and gunnery exercises conducted concurrently with ship transits and which may occur outside Navy range complexes and testing ranges. The proposed action includes pierside sonar testing conducted as part of overhaul, modernization, maintenance, and repair activities at shipyards and Navy piers within the Study Area.

The Navy's proposed training activities are categorized into eight functional warfare areas (anti-air warfare; amphibious warfare; strike warfare; anti-surface warfare; anti-submarine warfare; electronic warfare; mine warfare; and naval special warfare). Testing activities may occur independently of or in conjunction with training activities. Many testing activities are conducted similarly to Navy training activities and are also categorized under one of the primary mission areas. Other testing activities are unique and described within their specific testing categories.

#### B. NMFS' MMPA DECISION AUTHORITIES

Sections 101(a)(5)(A) and (D) of the MMPA direct the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) during periods of not more than 5 consecutive years if certain findings are made and regulations are issued or, if the taking is limited to harassment and of no more than 1 year, the Secretary shall issue a notice of proposed authorization for public review.

As described in the Navy's application, the specified Navy activities to be conducted in the HSTT Study Area are expected to take marine mammals as defined by the MMPA, and the Navy requested incidental take authorization in accordance with Section 101(a)(5)(A) of the MMPA. In order to issue the regulations and subsequent Letters of Authorization (LOAs) under this section, NMFS must make the determination that the specified activities will result in a negligible impact on the affected species or stocks and not result in an unmitigable adverse impact on the availability of marine mammal species or stocks for taking for subsistence uses. In addition, NMFS, as part of its regulatory process, is required to prescribe the permissible methods of taking, the means of effecting the least practicable adverse impact on the species or stock and its habitat (i.e., mitigation) and to set forth requirements pertaining to monitoring and reporting of such taking.

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

The National Defense Authorization Act (NDAA) (Public Law 108-136) amended the MMPA, by removing the "small numbers" and "specified geographical region" limitations and amending the definition of "harassment" as it applies to a "military readiness activity" to read as follows (Section 3(18)(B) of the MMPA):

- (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].

The MMPA also contains a provision related to "military readiness activities" that requires NMFS, when making a determination of "least practicable adverse impact on such species or stock" to consider personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity. Before making the required determination, NMFS must consult with the Department of Defense regarding the mitigation measures and their effect on the aforementioned factors.

## **II. NMFS' DECISION AND FACTORS CONSIDERED IN THE DECISION**

### **A. THE DECISION**

NMFS' decision is to issue regulations and two 5-year LOAs (one for training and one for testing) for the unintentional take of marine mammals incidental to specified activities included within the FEIS Alternative 2, which was the preferred alternative identified in the Draft EIS and the action presented to NMFS in the Navy's LOA application (as updated). The regulations will govern the unintentional taking of marine mammals incidental to training and testing activities conducted in the HSTT Study Area for the period of December 2013 through December 2018. Alternative 2 of the FEIS includes an analysis of all of the activities for which the Navy has requested incidental take authorization pursuant to the MMPA. The regulations will prescribe the permissible methods of taking, the means of effecting the least practicable adverse impact on the species or stock and its habitat (i.e., mitigation), and will set forth requirements pertaining to monitoring and reporting of such taking for the specified activities, as described in Alternative 2.

The Navy will be authorized to take individuals of 39 species of marine mammals by Level B harassment and 24 species of marine mammals by Level A harassment or mortality. NMFS will issue a final rule that establishes a framework in which incidental take can be authorized through issuance of LOAs.

### **B. FACTORS CONSIDERED IN REACHING THE DECISION**

In the FEIS, the affected environment and environmental consequences are both discussed in Chapter 3, within subsections arranged by Resource type, including: Sediments and Water Quality; Air Quality; Marine Habitats; Marine Mammals; Sea Turtles; Seabirds; Marine Vegetation; Marine Invertebrates; Fish; Cultural Resources; Socioeconomic Resources; Public Health and Safety. Supporting technical documents contain additional information on marine mammals and the modeling used by the Navy to quantitatively evaluate impacts to marine mammals. The Marine Mammals subchapter (3.4) and supporting technical documents contain the majority of the analysis that relates to NMFS' action of issuing incidental take regulations. Other sections of the FEIS contain analyses related to potential impacts on marine mammal habitat and further support NMFS' proposed issuance of regulations and the LOAs. 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.

Within the Marine Mammals section (and supporting technical documents), the Navy's FEIS addresses potential acoustic impacts resulting from active sonar, explosive detonations, airguns, and pile driving and removal, as well as non-acoustic impacts (such as ship strikes). These sections describe in detail the acoustic thresholds that NMFS uses to indicate at what received sound levels marine mammals will be considered taken pursuant to the MMPA. The FEIS also describes in detail the analytical framework and model that the Navy uses to estimate take, based on NMFS' acoustic thresholds. Last, the Navy presents estimates (for each alternative) of the number of each species of marine mammal that will be exposed to levels of sound that NMFS has determined will result in Level A or Level B Harassment. The Navy uses these take estimates, combined with the other information included in this Chapter to conclude that none of the alternatives will result in any adverse population level effects on any of the affected species or stocks. The take estimates for the Navy's preferred alternative are the subject of the Navy's request to NMFS for MMPA Section 101(a)(5)(A) authorization.

As described above, the environmental consequences to the marine environment are of particular importance for NMFS' evaluation in reaching the decision to issue MMPA incidental take regulations. In particular, because NMFS' action is specific to authorizing unintentional take of marine mammals, the key factors considered in the decision are related to NMFS' statutory missions under the MMPA and the Endangered Species Act (ESA). The primary documents supporting this decision are the Navy's HSTT FEIS and the HSTT Biological Opinion.

As a cooperating agency, NMFS assisted the Navy by providing technical information and analyses to evaluate the effects of military readiness activities on marine mammals and their habitat. Via the MMPA process, NMFS reviewed the Navy's request to determine whether the total taking resulting from the activities would have a negligible impact on the affected species or stocks of marine mammals, would not have an unmitigable adverse impact on the availability of those species or stocks of marine mammals intended for subsistence uses, and that the permissible methods of taking and requirements pertaining to the mitigation, monitoring, and reporting of such takings are set forth. As supported by the FEIS, NMFS has made the requisite findings under the MMPA and will include these findings in a final rule.

Key relevant factors considered by NMFS in this decision include:

- Requiring mitigation. As noted above, for military readiness activities, NMFS is required to consider personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity when it makes its determination of “least practicable adverse impact.” NMFS consulted with the Navy via the MMPA process and as a NEPA cooperating agency before making the required determination. NMFS and the Navy considered numerous mitigation measures and alternatives during the MMPA rulemaking process, including after the public comment period on the proposed rulemaking, with particular emphasis on whether these measures would be beneficial, effective, and practicable.
  
- Addressing uncertainty. The FEIS acknowledges a degree of uncertainty regarding the effects of underwater sound on marine mammals. NMFS provided extensive input in the FEIS process to address these uncertainties, and has included requirements for mitigation, monitoring, and reporting by the Navy in the final rule to manage uncertainty. The key issues and the manner in which they are addressed in the final rule include:
  1. Uncertainty regarding potential effects of sound sources on marine mammals (i.e., model input values) was addressed in the FEIS via taking a conservative approach to assure that potential effects are not under-estimated. For example, based on the onset mortality and slight lung injury criteria, many animals that are counted as a mortality or are estimated to suffer slight lung injury, may actually recover from their injuries or not incur injuries at all. As another example, many explosions from munitions such as bombs and missiles will actually occur upon impact with above-water targets; however, these sources were modeled as exploding at about 1 -m depth. This overestimates the amount of explosive and acoustic energy entering the water, and therefore the effects on marine mammals.
  2. Continuing management to reduce uncertainty will be implemented via the MMPA final rule by requiring extensive monitoring and reporting by the Navy, including the establishment and implementation of a monitoring plan specific to the HSTT Study Area, an Integrated Comprehensive Monitoring Plan, and a Strategic Planning Process. The Navy will update the status of its monitoring program and funded projects through their new Navy Marine Species Monitoring web portal. The Navy’s monitoring program is designed to support NMFS’ use of adaptive management throughout rule implementation, as presented in the FEIS and further explained in the final rule. The monitoring framework was made available for comment on the NMFS website concurrent with availability of the MMPA proposed rule and NMFS will provide one public comment period on the Navy’s monitoring program during the 5-year regulations.
  3. Finally, while not a required component of the final rule, the Navy’s FEIS 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 the 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.

NMFS finds that the FEIS appropriately acknowledges uncertainty and provides detailed analyses as to how existing 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. The Navy consulted with NMFS pursuant to section 7 of the ESA, and NMFS also consulted internally on the issuance of LOAs under section 101(a)(5)(A) of the MMPA for training and testing activities in the HSTT Study Area. NMFS issued a Biological Opinion on the Navy's proposal to conduct training and testing activities in the HSTT Study Area from December 2013 through December 2018 and the Permits Division's proposal to issue regulations to authorize the Navy to "take" marine mammals incidental to the conduct of training and testing activities in the HSTT Study Area during the same period of time. The Biological Opinion concludes that the proposed regulations and any take associated with activities authorized by those regulations are not likely to jeopardize the continued existence of threatened or endangered species (or species proposed for listing) in the action area during any single year or as a result of the cumulative impacts of a 5-year authorization. The Biological Opinion includes an explanation of how the results of NMFS' baseline and effects analyses in Biological Opinions relate to those contained in the cumulative impact section of NEPA documents. In particular, these analyses consider the effects resulting from interactions of potential stressors, thereby augmenting the FEIS' cumulative impacts analysis.

The Biological Opinion includes a discussion of the FEIS' marine mammal take estimates, but relies on exposure and response analyses. The exposure analysis identifies the listed resources that are likely to co-occur with effects in space and time and the nature of that co-occurrence, to identify the number, age (or life stage), and gender of the individuals that are likely to be exposed to an action's effects and the populations or sub-populations those individuals represent. The take estimate approach and the exposure/response approach are appropriate under the MMPA and ESA, respectively, and both were considered in reaching this decision regarding the issuance of a rule and 5-year LOAs for the Navy activities in the HSTT Study Area. The final rule addresses the manner in which the number of takes of listed marine mammals proposed to be authorized in LOAs issued under this regulation will be aligned with the exposure analysis methodologies and subsequent Incidental Take Statements issued in association with subsequent Biological Opinions.

- Approach to assessments. NEPA, ESA, and MMPA involve differing approaches to assessing effects on those resources considered under each statute, and this combination of analyses provides a robust basis for the decision on this action. The FEIS, Biological Opinion, and final rule for HSTT present the assessments in detail, but a few salient issues and difference are highlighted here. First, both the FEIS and the Biological Opinion include analysis of the significance of the Navy activities on marine mammals (listed marine mammals in the Biological Opinion). In the FEIS, the term "significance" is as commonly used in NEPA, without additional definition of significance related to

marine mammals. The Biological Opinion describes how the use of the term is distinguished in the opinion among three different kinds of “significance,” which includes an assessment of how any “significant” physical, chemical, or biotic responses are likely to have “significant” consequence for the fitness of the individual animal. As described earlier, the MMPA uses the term “negligible impact” (defined above). For this ROD, the FEIS evaluation of the significance of impacts to species was considered as input to NMFS’ ESA and MMPA assessments; this decision is supported by the FEIS and also reached based on NMFS statutory responsibilities under the MMPA and ESA.

Coastal Zone Management Act Concerns. On January 13, 2013, the Navy submitted a Consistency Determination under 15 CFR Section 930 for the proposed action to the Hawaii Department of Business, Economic Development & Tourism. This was based on the Navy’s determination that the conduct of HSTT activities is consistent to the maximum extent practicable with the enforceable policies of the Hawaii CZM Program. The Hawaii Office of Planning, CZM Program, State of Hawaii conditionally concurred with the Consistency Determination by letter on March 20, 2013.

On January 13, 2013, the Navy also submitted a Consistency Determination for the proposed action to the California Coastal Commission. The California Coastal Commission objected to the Navy’s Consistency Determination on March 14, 2013, based on lack of sufficient information to determine the Program’s consistency to the maximum extent practicable with the marine resource protection policy and the commercial fishing policies of the California Coastal Act. The Navy disagreed with the Commission’s decision, but provided additional information to address the Commission’s concerns on March 26, 2013.

Essential Fish Habitat. The Navy determined that their activities may adversely affect Essential Fish Habitat (EFH) within the HSTT Study Area and requested initiation of the Magnuson-Stevens Fishery Conservation and Management Act’s EFH consultation process with NMFS Pacific Islands Regional Office (PIRO) on February 12, 2013. NMFS PIRO considered that the proposed activities may have more than minimal adverse effects to EFH and made recommendations to avoid, minimize, and offset adverse effects on April 8, 2013. The Navy responded in writing to each of NMFS PIRO’s recommendations on April 17, 2013. Following some joint NMFS-Navy meetings, NMFS PIRO and the Navy agreed to a number of action items clarifying the Navy’s proposed activities and providing further information to NMFS.

The Navy also requested initiation of the Magnuson-Stevens Fishery Conservation and Management Act’s EFH consultation process with NMFS Southwest Regional Office (SWRO) on February 12, 2013. NMFS SWRO determined that the Navy’s activities would have an adverse impact on EFH, but that the proposed conservation measures are sufficient to avoid, minimize, or offset impacts to EFH and provided no additional EFH Conservation Recommendations on April 3, 2013.

### **III. OTHER ALTERNATIVES CONSIDERED**

The alternatives analyzed in the Navy’s FEIS and their relationship to NMFS’ alternatives are described here. NMFS’ proposed action (issuance of regulations and LOAs) would authorize

take of marine mammals incidental to a subset of the activities analyzed in the Navy's HSTT FEIS that are anticipated to result in the take of marine mammals, i.e., those activities that involve the use of active sonar, underwater detonations, airguns, and pile driving and removal. Thus, these components of the Navy's proposed action are the subject of NMFS' proposed MMPA regulatory action. (Note that, although NMFS fully (rather than partially) adopted the HSTT FEIS, the purely terrestrial activities described in the FEIS are not a component of NMFS' proposed action.) The Navy's FEIS contains a thorough analysis of the environmental consequences of their proposed action (with specific sections for MFAS/HFAS and underwater detonations) on the human environment, including a specific section on marine mammals.

#### A. SUMMARY OF THE ALTERNATIVES CONSIDERED BY THE NAVY

Three alternatives were analyzed in the FEIS, including two action alternatives (Alternatives 1 and 2) and the No Action Alternative.

No Action Alternative: The No Action Alternative is required by CEQ regulations as a baseline against which the impacts of the Proposed Action are compared. In the FEIS, the No Action Alternative is represented by baseline training and testing activities, as defined by existing Navy environmental planning documents. The baseline testing activities also include those testing events that have historically occurred in the Study Area and have been subject to previous analyses.

Alternative 1: Alternative 1 includes all ongoing Navy training associated with the No Action Alternative, and proposes an overall expansion of the Study Area plus adjustments to types and levels of activities from the baseline, as necessary to support current and planned Navy training and testing requirements. This Alternative considers analysis of areas where Navy training and testing would continue as in the past, but were not considered in previous environmental analyses. Alternative 1 would not expand the area where the Navy trains and tests, but would simply expand the area that is to be analyzed.

Alternative 2 (Preferred Alternative): Alternative 2 would include all of the activities described in Alternative 1 plus the establishment of new range capabilities, modifications of existing capabilities, and adjustments to type and levels of training and testing.

The following four alternatives were considered by the Navy, but not carried forward for analysis because, after careful consideration, the Navy determined that they did not meet the Navy's purpose and need for the Proposed Action:

- Alternative training and testing locations
- Reduced training and testing
- Mitigations including temporal or geographic constraints within the Study Area
- Simulated training and testing

#### B. SUMMARY OF ALTERNATIVES CONSIDERED BY NMFS

For all of the Navy alternatives identified above, the Navy includes an associated list of standard protective measures specifically developed to minimize adverse impacts on marine mammals.



NMFS worked closely with the Navy throughout the development of the FEIS to identify additional mitigation measures (for marine mammals) that the Navy should consider in their analysis. As a result of this cooperating agency role, the Navy discussed and considered additional mitigation measures in its FEIS, but determined these were not able to be implemented either because the measures were not consistent with mission requirements or were prohibitively difficult to implement, or because the Navy's analysis concluded that the measures did not provide sufficient protective benefits to marine mammals. The inclusion of the analysis of these additional mitigation measures strengthens the FEIS' support and coverage of NMFS' FEIS alternatives, which are listed below. These alternatives are not enumerated in the Navy FEIS, but are supported by the analyses in that FEIS:

- The Navy's training activities (no active sonar) would continue at baseline levels. The Navy would not request, and NMFS would not issue, an incidental take authorization for an increased level of activity (for NMFS, this constitutes the NEPA-required No Action alternative);
- NMFS promulgates regulations and issues LOAs authorizing take of marine mammals incidental to a subset of the Navy training activities (i.e., those including the use of active sonar, underwater explosives, airguns, and pile driving and removal) described in the FEIS preferred alternative (Alternative 2), with the mitigation, monitoring and reporting measures presented in Chapter 5 of the FEIS (except those considered but eliminated); or
- NMFS promulgates regulations and issues LOAs authorizing take of marine mammals incidental to a subset of the Navy training activities (i.e., those including the use of active sonar, underwater explosives, airguns, and pile driving and removal) described in the Navy's preferred alternative (Alternative 2), but with additional mitigation requirements for marine mammals, potentially including measures considered but eliminated in Chapter 5 of the FEIS or other additional measures developed by NMFS or suggested to NMFS via public comment on the proposed rule.

Based on the FEIS and additionally supported by NMFS response to public comments in the preamble to the final rule, NMFS determined that the mitigation measures identified in the FEIS (Chapter 5, except those measures considered but eliminated) will effect the least practicable adverse impact on marine mammal species or stocks and their habitat. All of the measures chosen to be included in the MMPA final rule are components of the FEIS Alternative 2 (second bullet, above). Based on NMFS' purpose and the findings made in the final rule, NMFS selected to promulgate regulations and issue LOAs authorizing take of marine mammals incidental to a subset of the Navy training activities described in the FEIS preferred alternative, with the mitigation, monitoring, and reporting measures presented in Chapter 5 of the FEIS (except those considered but eliminated).

### C. THE ENVIRONMENTALLY PREFERABLE ALTERNATIVE

The No Action Alternative described in the Navy's FEIS is the baseline level of training and testing being conducted in the HSTT Study Area, as defined by existing Navy environmental planning documents. Both Alternatives 1 and 2 (preferred alternative) include and expansion of

the Study Area and an adjustment to the types and levels of activities from the baseline. The No Action is considered the environmentally preferred alternative.

#### **IV. PUBLIC INVOLVEMENT**

Public opportunities for review and comment have occurred in support of the FEIS preparation and the consideration of MMPA rulemaking. Detailed information on the publications in which the Notice of Intent to prepare an EIS and the Draft EIS were noticed are provided in Appendix E of the FEIS, and the FEIS was similarly made available on August 30, 2013.

NMFS personnel attended the information meetings and hearings on the Draft EIS, when available, which were held at various locations in Hawaii and California. The Navy received comments on the Draft EIS from individuals, agencies, and organizations. The comments expressed interest or concern for numerous issues including: marine mammals and effects from sonar and underwater detonations, fishing and tourism, airborne noise, NEPA process, alternatives selection, military expended materials, and mitigation measures. The FEIS addressed all oral and written comments received during the Draft EIS comment period. As a cooperating agency, NMFS assisted in the analysis and consideration of public comments in NMFS' areas of jurisdiction and expertise to support the development of the FEIS. The Navy ensured the FEIS was mailed to all individuals, agencies, and organizations that requested a copy of the final document, and that the FEIS remains available on the website at [hstteis.com](http://hstteis.com).

The Navy received four comment letters during the FEIS wait period and will include a summary of the comments in their ROD, when issued. NMFS was provided with and reviewed the FEIS comment letters. All of the comments on the HSTT FEIS that are related to NMFS' action (the issuance of an MMPA authorization) have been considered by NMFS in reaching this decision. The comments either (1) reiterated comments received on the Draft EIS and were already covered by Navy in the FEIS, (2) were related to mitigation and were similar to issues considered by NMFS and the Navy in the "Mitigation Measures Considered but Eliminated" section, or (3) were received as similar comments on the MMPA proposed rule and were considered in developing the final rule (these will be specifically addressed in the response to comments to be published in the preamble of the final rule).

Substantial public involvement also occurred in association with NMFS' rulemaking. On October 4, 2012 (77 FR 60678) NMFS published a notice of receipt of the application for LOAs for the Navy's training and testing activities conducted in the HSTT Study Area, with a request for comments and information open through November 5, 2012. On January 31, 2013 (78 FR 6978), NMFS published a proposed rule in response to the Navy's request to take marine mammals incidental to training and testing activities in the HSTT Study Area and requested comments, information, and suggestions concerning the request. During the 30-day public comment period, NMFS received comments from the Marine Mammal Commission, and several non-governmental organizations, including the Natural Resources Defense Council, Cascadia Research Collective, and Earthjustice (on behalf of the Center for Biological Diversity and Ocean Mammal Institute), as well as interested members of the public. The comments were considered in developing the final rule, and detailed responses to those comments are included in the preamble to the final rule. The categories of public comments addressed include additional

mitigation recommendations, mitigation effectiveness, impact analyses, monitoring and reporting, general opposition to the rulemaking, and other comments not specific to a category.

Public input was carefully considered by NMFS in developing a final rule and in reaching this decision to issue the regulations for the activities specified in FEIS Alternative 2.

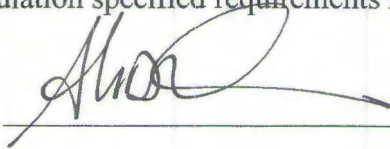
## V. MITIGATION, MONITORING AND REPORTING MEASURES

The final rule includes detailed mitigation measures that must be implemented by the Navy when conducting specified activities in the HSTT Study Area. Inclusion of these requirements ensures that NMFS' action of issuing incidental take regulations specifies and requires all practicable means to avoid or minimize impacts to marine mammals from the selection of FEIS Alternative 2. In addition, NMFS' final rule will specify the requirements for the Navy to implement a monitoring and reporting program. In addition to the requirements that will be established in the rule and required of Navy, NMFS will meet annually with the Navy to discuss the required Navy monitoring reports, Navy R&D developments, and current science and 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 (in coordination with the Navy) on an annual basis if mitigation or monitoring measures should be modified or added (or deleted) if new data suggests that such modifications are appropriate (or are not appropriate) for subsequent LOAs.

## VI. CONCLUSIONS

Through the FEIS and as documented in this ROD, NMFS has considered the goals and objectives of the NMFS' proposed action and has analyzed a reasonable range of alternatives that adequately address the objective of the proposed action. Furthermore, NMFS has analyzed the associated environmental consequences of the identified alternatives and the mitigation measures and monitoring requirements needing to be analyzed and required under the final rule and LOAs. NMFS has also considered the public comments addressed to the Navy in the FEIS and the comments addressed to NMFS during the proposed rule comment period. Consequently, NMFS has selected the alternative of issuing regulations authorizing the unintentional harassment of marine mammals incidental to Navy activities in the HSTT Study Area in accordance with Alternative 2 of the FEIS for the period December 2013 through December 2018, including in that regulation specified requirements for mitigation, monitoring and reporting.

Signed: \_\_\_\_\_



Date: \_\_\_\_\_

DEC 13 2013

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