
Appendix I Regulatory Considerations

Supplemental Environmental Impact Statement/

Overseas Environmental Impact Statement

Mariana Islands Training and Testing

TABLE OF CONTENTS

<u>APPENDIX I</u>	<u>REGULATORY CONSIDERATIONS</u>	<u>I-1</u>
I.1	COMPLIANCE WITH REGULATORY CONSIDERATIONS.....	I-1
I.2	RELATIONSHIP BETWEEN SHORT-TERM USE OF THE ENVIRONMENT AND MAINTENANCE AND ENHANCEMENT OF LONG-TERM PRODUCTIVITY	I-2
I.3	IRREVERSIBLE OR IRRETRIEVABLE COMMITMENT OF RESOURCES.....	I-2

List of Figures

There are no figures in this appendix.

List of Tables

Table I-1: Summary of Regulatory Consultations for the Proposed Action.....	I-1
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APPENDIX I REGULATORY CONSIDERATIONS

In accordance with the Department of Defense National Environmental Policy Act (NEPA) Implementing Procedures, environmental documents will be prepared concurrently with and integrated with analyses and related surveys and studies required by other Federal statutes. This appendix summarizes environmental compliance for the Proposed Action; the relationship between short-term uses of man’s environment and the maintenance and enhancement of long-term productivity in the affected environment; irreversible and irretrievable commitments of federal resources.

I.1 Compliance with Regulatory Considerations

Implementation of the Proposed Action in this Supplemental Environmental Impact Statement/Overseas Environmental Impact Statement (SEIS/OEIS) would comply with applicable federal, state, and local laws, regulations, and executive orders. The Navy will consult with regulatory agencies, as appropriate, during the NEPA process and before implementing the Proposed Action. Table I-1 summarizes the regulatory consultations associated with the Proposed Action.

Table I-1: Summary of Regulatory Consultations for the Proposed Action

Statutes, Regulations	Status of Compliance
Statutes and Regulations	
<i>Coastal Zone Management Act (CZMA)</i> (16 U.S.C. sections 1451-1464)	The Navy will submit a Consistency Determination (CD) to the Guam Bureau of Statistics and Plans to address proposed military training and testing activities that may affect Guam’s coastal use or resources. The CD will be prepared in accordance with Guam’s Procedures Guide for Achieving Federal Consistency with the Guam Coastal Management Program (Guam Bureau of Statistics and Plans, 2011). Additionally, the Navy will submit a CD to the CNMI Division of Coastal Resources Management to address proposed military training and testing activities that may affect the CNMI’s coastal use or resources.
<i>Endangered Species Act (ESA)</i> (16 U.S.C. sections 1531 et seq.)	In accordance with section 7 of the ESA (50 CFR section 402), during the preparation of the 2015 EIS/OEIS, the Navy prepared a consultation package and submitted it to USFWS. A Biological Opinion (BO) was issued by USFWS and remains valid. As such, the Navy is not reinitiating ESA consultation with USFWS in support of this SEIS/OEIS because no reinitiation triggers for consultation were met, pursuant to 50 CFR section 402.16. The Navy will continue to adhere to any BO terms and conditions listed within the USFWS 2015 BO. Consultation with NMFS pursuant to section 7 of the Act is underway. See the USFWS 2015 BO for the associated effects analyses.
<i>Magnuson-Stevens Fishery Conservation and Management Act</i> (16 U.S.C. sections 1801–1882)	The Navy completed an Essential Fish Habitat (EFH) consultation with NMFS for the MITT Study Area in 2014. EFH and Habitat Areas of Particular Concern in the Study Area have not changed and the previous 2014 consultation is still valid for the proposed training and testing activities that have not changed. In 2020, the Navy conducted a supplemental EFH consultation with the NMFS Pacific Island Regional Office considering activities that were new or that have changed since the 2014 consultation. For this SEIS/OEIS, the Navy will conduct another supplemental EFH consultation with the NMFS Pacific Island Regional Office to consider activities that are new or that have changed since the 2020 EFH consultation and that have the potential to adversely affect EFH and managed species for this SEIS/OEIS.
<i>Marine Mammal Protection Act</i> (16 U.S.C. sections 1431 et seq.)	This SEIS/OEIS updates the analysis and is the basis for a request for a new Letter of Authorization (LOA) permit from NMFS for activities occurring from 2027 to 2034. The Action Proponents will apply for a LOA to be submitted to NMFS as part of the ongoing consultation under the Marine Mammal Protection Act.

Statutes, Regulations	Status of Compliance
<p><i>Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703-712)</i></p>	<p>Under the military readiness rule (50 CFR section 21.42, <i>Authorization of take of migratory birds incidental to military readiness activities</i>), the DoD may take migratory birds incidental to military readiness activities described in this SEIS/OEIS provided that the DoD's actions do not result in a significant adverse effect on a population of birds protected under the MBTA. The Navy has determined that the Proposed Action would not result in a significant adverse effect on a population of a migratory bird species at sea or on FDM. If, over the course of training and testing activities, the Navy determines that a population of migratory birds would be significantly affected, the Navy would be required to confer and cooperate with the USFWS to implement appropriate conservation measures to minimize significant adverse effects. The best available science presented in Section 3.6 supports the conclusion that birds protected under the MBTA on FDM are not significantly declining. The Navy and USFWS have worked cooperatively to design targeting and munitions restrictions on the island.</p>
<p><i>National Historic Preservation Act (NHPA) (54 U.S.C. section 306108)</i></p>	<p>Following the 2020 SEIS/OEIS, two Programmatic Agreements were negotiated for military training and testing activities within the MITT Study Area; one Programmatic Agreement (PA) for military training and testing on and within the surrounding waters of the island of Guam was established between the Joint Region Marianas (JRM) Commander, and the Guam State Historic Preservation Office in 2020, and another PA for military training and testing on and within the surrounding waters of the islands of the Commonwealth of the Northern Marianas Islands (CNMI) was established between the JRM Commander and the CNMI Historic Preservation Office in 2022. For this Proposed Action, the Navy is meeting the responsibilities pursuant to Section 106 of the NHPA for the subject undertaking in accordance with the 2020 and 2022 PAs.</p> <p>The Proposed Action is consistent with the national policy for the preservation of historic sites, buildings, and objects of national significance. Furthermore, the Navy will comply with the Section 106 consultation requirements as applicable to the Proposed Action, in accordance with the established PAs.</p>

Notes: DoD = Department of Defense, EIS = Environmental Impact Statement, FDM = Farallon de Medinilla, MITT = Mariana Islands Training and Testing, OEIS = Overseas Environmental Impact Statement, SEIS = Supplemental Environmental Impact Statement

I.2 Relationship Between Short-Term Use of the Environment and Maintenance and Enhancement of Long-Term Productivity

NEPA requires the analysis of the relationship between the short-term effects on the environment and the impacts those effects may have on the maintenance and enhancement of the long-term productivity of the affected environment (42 United States Code [U.S.C.] section 4332). This analysis has not changed since it was conducted in the previous Mariana Islands Training and Testing (MITT) analyses. See Section 6.2 (Relationship Between Short-Term Use of The Environment and Maintenance and Enhancement of Long-Term Productivity) of the 2015 EIS/OEIS for more information (U.S. Department of the Navy, 2015b).

I.3 Irreversible or Irretrievable Commitment of Resources

NEPA requires that environmental analysis include identification of “any irreversible and irretrievable commitments of resources which would be involved in the Proposed Action should it be implemented” (42 U.S.C. section 4332). This analysis has not changed since it was conducted in the 2015 EIS/OEIS and 2020 SEIS/OEIS. See Section 6.3 (Irreversible or Irretrievable Commitment of Resources) of the 2015 EIS/OEIS for more information (U.S. Department of the Navy, 2015b).