



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Silver Spring, MD 20910

RECORD OF DECISION

FOR THE ISSUANCE OF AN INCIDENTAL TAKE AUTHORIZATION TO U.S. NAVY FOR TAKE OF MARINE MAMMALS INCIDENTAL TO U.S. NAVY SURVEILLANCE TOWED ARRAY SENSOR SYSTEM LOW FREQUENCY ACTIVE SONAR TRAINING AND TESTING ACTIVITIES IN THE CENTRAL AND WESTERN NORTH PACIFIC AND EASTERN INDIAN OCEANS AND ADOPTION OF U.S. NAVY FINAL ENVIRONMENTAL IMPACT STATEMENT/OVERSEAS ENVIRONMENTAL IMPACT STATEMENT

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National Oceanic and Atmospheric
Administration

National Marine Fisheries Service

Office of Protected Resources

I. INTRODUCTION AND PURPOSE

On June 4, 2018, the National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service (NMFS) received an adequate and complete application from the U.S. Navy (Navy) requesting incidental take of marine mammals in connection with training and testing activities analyzed in the 2019 Final Supplemental Environmental Impact Statement/Supplemental Overseas Environmental Impact Statement for Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) sonar (2019 SURTASS LFA FSEIS/SOEIS). NMFS received an amended version of the application on November 13, 2019. 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.). In addition, the National Environmental Policy Act (NEPA), 40 Code of Federal Regulations (CFR) Parts 1500-1508, and NOAA policy and procedures¹ require all proposals for major federal actions to be reviewed with respect to their effects on the human environment. Issuance of this ITA under the MMPA is a major federal action triggering NOAA's independent NEPA compliance obligations. When serving as a cooperating agency, NOAA may satisfy its

¹ 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.



independent NEPA obligations by either 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 explains NMFS' rationale for its determination to issue an ITA to the Navy for their proposed SURTASS LFA sonar training and testing activities (which includes the use of LFA sonar and compact LFA sonar systems) in the central and western North Pacific and eastern Indian Oceans (hereafter "Study Area"). Second, this document explains NMFS' determination to adopt the 2019 SURTASS LFA FSEIS/SOEIS for the NEPA review that is required for our consideration of whether to issue the ITA.

NMFS is issuing regulations and a Letter of Authorization (LOA) to the Navy, for SURTASS LFA sonar training and testing activities, pursuant to section 101(a)(5)(A) of the MMPA and 50 CFR Part 216². The regulations and LOA will be valid from August 13, 2019 through August 12, 2026³ and authorize Level B harassment of marine mammals incidental to the Navy conducting SURTASS LFA sonar training and testing activities (categorized as military readiness activities) in the Study Area. As explained in the 2019 SURTASS LFA FSEIS/SOEIS, 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 SURTASS LFA sonar training and testing activities in the Study Area. These activities have the potential to cause marine mammal harassment in the form of temporary threshold shift or behavioral disruption and, therefore, require authorization from NMFS. An authorization for incidental take 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 SURTASS LFA sonar training and testing activities in the Pacific and Indian Oceans and globally for nearly two decades and has prepared multiple environmental impact analyses under NEPA and Executive Order (EO) 12114 for these training and testing activities, which coincide with their requests for ITAs. 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 our 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 participates substantially and meaningfully throughout the NEPA process with the goal of ensuring that all analyses (previous analyses and the current 2019 SURTASS LFA FSEIS/SOEIS) are sufficient for NMFS to adopt to satisfy its independent NEPA obligation for its decision whether to issue the ITA and subsequent LOA to the Navy.

² The regulations governing the taking and importing of marine mammals

³ 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.

While specific SURTASS LFA sonar training and testing 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 considerably for decades. The primary reasons the Navy prepares new analyses are 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, including those for previous ITAs for SURTASS LFA sonar training and testing activities, globally are available on the Navy's SURTASS LFA sonar website (<http://www.surtass-lfa-eis.com/>).

A summary of the environmental analyses associated with NMFS' issuance of this current rule and associated LOA to the Navy for SURTASS LFA sonar training and testing activities in the Study Area is below and additional information and documents, including the 2019 SURTASS LFA FSEIS/SOEIS, are available on the SURTASS LFA FSEIS/SOEIS website (<http://www.surtass-lfa-eis.com>) and NMFS' website (<https://www.fisheries.noaa.gov/action/incidental-take-authorization-us-navy-operations-surveillance-towed-array-sensor-system-0>).

In 2017, the Navy initiated the development of an SEIS/SOEIS covering SURTASS LFA sonar training and testing activities in the central and western North Pacific and eastern Indian Oceans. As with the previous EISs/OEISs, NMFS served as a cooperating agency in the development of this SEIS/OEIS. In the 2019 SURTASS LFA FSEIS/SOEIS the Navy included updates to their 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 2017 Phase III Criteria and Thresholds for U.S. Navy Acoustic and Explosive Effects Analysis Technical Report. See Chapter 3, section 3.7 and Appendix B of the 2019 SURTASS LFA FSEIS/SOEIS and *Estimated Take of Marine Mammals* section of the final rule for more information. The 2019 SURTASS LFA FSEIS/SOEIS was finalized in June 2019.

In its capacity as a cooperating agency, NMFS provided the Navy with technical assistance and input regarding the analysis of impacts to several resources, including, but not limited to, critical habitat and threatened and endangered species pursuant to the ESA, marine mammals pursuant to the MMPA, Essential Fish Habitat (EFH) and fishery resources pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), and National Marine Sanctuaries pursuant to the National Marine Sanctuaries Act (NMSA). The descriptions of effects on marine mammals and estimates of marine mammal acoustic exposures are in Chapter 4, section 4.5.2.1.3 and Appendix B of the 2019 SURTASS LFA FSEIS/SOEIS. Other information and analysis of impacts to protected resources are described in Chapters 3 and 4 of the 2019 SURTASS LFA FSEIS/SOEIS.

NMFS published the first MMPA rule and associated LOAs for SURTASS LFA sonar, effective from August 2002 through August 2007, on July 16, 2002 (67 FR 46712); the second rule and

associated LOAs, effective from August 2007 through August 2012, on August 21, 2007 (72 FR 46846); and the third rule and associated LOAs, effective from August 2012 through August 2017, on August 20, 2012 (77 FR 50290). In 2016, the Navy submitted an application for a fourth ITA under the MMPA for the taking of marine mammals by harassment incidental to the deployment of up to four SURTASS LFA sonar systems from August 15, 2017, through August 14, 2022. NMFS published a proposed rule on April 27, 2017 (82 FR 19460). On August 10, 2017, the Deputy Secretary of Defense, after conferring with the Secretary of Commerce, determined that it was necessary for national defense reasons to exempt all military readiness activities that use SURTASS LFA sonar from compliance with the requirements of the MMPA for a period of up to two years beginning August 13, 2017, through August 12, 2019, or until such time when NMFS issues regulations and an LOA under MMPA section 101(a)(5)(A) for military readiness activities associated with the use of SURTASS LFA sonar, whichever is earlier. During the period of the National Defense Exemption (NDE) (available at http://www.surtass-lfa-eis.com/wp-content/uploads/2018/01/SURTASS_LFA_NDE_10Aug17.pdf) all military readiness activities that involve the use of SURTASS LFA sonar were required to comply with all mitigation, monitoring, and reporting measures set forth in the NDE for SURTASS LFA sonar, which were based on the measures included in NMFS' prior (2012) Final Rule (77 FR 50290; August 20, 2012) and 2017 Proposed Rule (82 FR 19460; April 27, 2017). As a result of the NDE, NMFS did not finalize its April 2017 proposed rule.

In their application, the Navy indicated they will continue to use SURTASS LFA sonar systems onboard United States Naval Ship (USNS) surveillance ships for training and testing activities conducted under the authority of the Secretary of the Navy within the western and central North Pacific Ocean and eastern Indian Ocean. The operating features of the LFA sonar will remain, and have remained the same since the 2001 SURTASS LFA FOEIS/EIS, except to note that the typical duty cycle of LFA sonar, based on historical SURTASS LFA sonar use, is 7.5 to 10 percent. The maximum duty cycle remains the same at 20 percent. For this rulemaking NMFS considered and is authorizing take of individuals of 46 species of marine mammals by Level B harassment incidental to SURTASS LFA sonar training and testing activities over the seven-year period.

III. PROPOSED ACTION AND ALTERNATIVES SUMMARY

A. Purpose and Need

The Navy's proposed action to train and test and NMFS' action to issue regulations and an associated LOA to the Navy are considered major federal actions requiring both the Navy and NMFS to analyze the effects of their actions on the human environment pursuant to NEPA and 40 CFR Parts 1500-1508. Thus, the Navy and NMFS (as a cooperating agency) coordinated from the outset and developed the 2019 SURTASS LFA FSEIS/SOEIS 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 ITA under the MMPA is different than the Navy's purpose and need regarding training and testing activities pursuant to 10 U.S.C. section 8062, the 2019 SURTASS LFA FSEIS/SOEIS 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 SURTASS LFA sonar training and testing activities.

In summary, the Navy's purpose and need for the proposed action is to ensure that the Navy meets its statutory mandates under 10 U.S.C. section 8062, which is to organize, train, and equip combat-ready naval forces capable of accomplishing American strategic objectives, deterring maritime aggression, and assuring freedom of navigation in ocean areas. This mission is achieved in part by conducting SURTASS LFA sonar training and testing activities within the Study Area in accordance with established Navy military readiness requirements. For more information about the purpose and need of the Navy's proposed action, see Chapter 1, Section 1.3 in the 2019 SURTASS LFA FSEIS/SOEIS.

The purpose of NMFS' action, which is a direct outcome of the Navy's request for authorization to take marine mammals incidental to conducting SURTASS LFA sonar training and testing activities in the Study Area, is to evaluate Navy's application pursuant to section 101(a)(5)(A) of the MMPA and 50 CFR Part 216 and issue an ITA, if appropriate. The need for NMFS' action is to consider the impacts of the Navy's activities on marine mammals and ultimately authorize 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 2019 SURTASS LFA FSEIS/SOEIS 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 LOAs under section 101(a)(5)(A) of the MMPA or (2) one-year Incidental Harassment Authorizations (IHAs) under section 101(a)(5)(D) of the MMPA when a proposed action will not result in a potential for serious injury and/or mortality or where any such potential can be negated through required mitigation measures. Because the Navy's proposed sonar training and testing activities will occur over multiple years, the Navy requested regulations and an LOA.

NMFS' purpose is to evaluate the Navy's proposed action pursuant to NMFS' authority under the MMPA, and to make a determination whether to issue regulations and 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 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 2019 SURTASS LFA FSEIS/SOEIS addresses the environmental impacts associated with NMFS' consideration whether to issue the requested authorization to the Navy for take of marine mammals incidental to the SURTASS LFA sonar

training and testing activities within the 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 continue to conduct SURTASS LFA and compact LFA (CFLA) sonar training and testing activities in the Study Area onboard Navy surveillance ships for training and testing activities conducted under the authority of the Secretary of the Navy. The Navy proposes to continue using four surveillance ships performing training and testing activities in the central and western North Pacific and eastern Indian Oceans. The Navy may develop and field additional SURTASS LFA sonar equipped vessels, either to replace or complement the Navy's current SURTASS LFA sonar equipped fleet. The Navy is currently approved under the NDE to transmit 255 hours of LFA sonar transmission hours per vessel per year or a total of 1,020 transmission hours per year. Under Alternative 1, the Navy would transmit 360 hours of LFA sonar transmissions per year pooled across all SURTASS LFA equipped vessels, while under Alternative 2 (Navy's Preferred Alternative), the Navy would transmit 496 total hours of LFA sonar transmissions per year across all SURTASS LFA sonar equipped vessels in the first four years, and would increase usage to 592 total hours of LFA sonar transmissions in years five through seven, regardless of the number of vessels equipped with SURTASS LFA sonar. A summary of the Navy's proposed SURTASS LFA sonar training and testing activities is below and the detailed descriptions are in Chapter 2 of the 2019 SURTASS LFA FSEIS/SOEIS.

The SURTASS LFA sonar system is a long-range, all-weather LF sonar (operating between 100 and 500 Hertz (Hz)) composed of both an active and LFA sonar source array and a passive SURTASS receiver array. Though not technically part of the SURTASS LFA sonar system, in training and testing activities the Navy also will employ a High-Frequency Marine Mammal Monitoring Active Sonar to monitor for marine mammals in the mitigation zones.

LFA Active Component - The active component of the SURTASS LFA sonar system consists of up to 18 projectors suspended beneath the surveillance vessel in a vertical line array. The SURTASS LFA sonar projectors transmit in the low-frequency band (between 100 and 500 Hz) with a source level of approximately 215 dB re: 1 μ Pa at 1 m or less. The SURTASS LFA sonar acoustic transmission is an omnidirectional beam (a full 360 degrees ($^{\circ}$)) in the horizontal plane. The LFA sonar system also has a narrow vertical beam that the vessel's crew can steer above or below the horizontal plane. The typical SURTASS LFA sonar signal (ping) is not a constant tone, but rather is a transmission of various signal types that vary in frequency and duration (from 6-100 seconds, with an average length of 60 seconds). The average duty cycle for LFA sonar is normally 7.5 to 10 percent and will not exceed a maximum duty cycle of 20 percent.

Compact LFA Active Component - In addition to the LFA sonar system currently deployed on the USNS IMPECCABLE, the Navy developed a compact LFA (CLFA) sonar system, which is now deployed on its three smaller surveillance vessels (*i.e.*, the USNS ABLE, EFFECTIVE, and

VICTORIOUS). The operational characteristics of the active component for the CLFA sonar system are comparable to the LFA sonar system, however the CLFA sonar system is smaller and lighter and can be more easily deployed and serviced. The CLFA sonar system also consists of up to 18 projectors suspended beneath the surveillance vessel in a vertical line array, and the CLFA sonar system projectors transmit in the low-frequency band (also between 100 and 500 Hz) with the same duty cycle and source level as described for the LFA sonar system.

High-Frequency Marine Mammal Monitoring Active Sonar (HF/M3) – The Navy will also use a high-frequency sonar system, called the HF/M3 sonar, to detect and locate marine mammals within the SURTASS LFA sonar mitigation and buffer zones, as described in the Mitigation and Monitoring sections. This enhanced commercial fish-finding sonar, mounted at the top of the LFA sonar vertical line array, has a source level of 220 dB re: 1 μ Pa at 1 m with a frequency range of 30 to 40 kilohertz (kHz), with a three to four percent duty cycle and 40 millisecond pulse duration. The HF/M3 sonar has four transducers with 8° horizontal and 10° vertical beamwidths, which sweep a full 360° in the horizontal plane every 45 to 60 sec with a maximum range of approximately 1.2 mi (2 km).

The SURTASS LFA sonar transmission hours represent a distribution across six activities that include: contractor crew proficiency training, crew (MILCREW) proficiency training; participation in or support of naval exercises; vessel and equipment maintenance; acoustic research testing; and new SURTASS LFA sonar system testing. Each of these activities utilizes the SURTASS LFA sonar system within the operating profile described above.

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 numbers (see explanation at the end of this section regarding the definition of harassment and applicability of small numbers for military readiness activities) 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 a negligible impact⁴ 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 authorizations 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 additional 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

⁴ 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)

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].

The NDAA for Fiscal Year 2004 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 the NMFS website (<https://www.fisheries.noaa.gov/node/23111> 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 2019 SURTASS LFA FSEIS/SOEIS, these components of the Navy 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 2019 SURTASS LFA FSEIS/SOEIS, the action alternatives (Alternatives 1 and 2) and the No Action Alternative. Both action alternatives incorporate a variety of mitigation measures, developed in consultation with NMFS, to minimize the risk or severity of adverse impacts to marine species or stocks. In addition, the action alternatives were developed to meet both the Navy’s purpose and need to train and test and NMFS’ independent purpose and need 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 or stocks, and to prescribe measures to effect the least practicable adverse impact on marine mammal species or stocks and their habitat, as well as monitoring and reporting requirements.

The **No Action Alternative** considers that the proposed action would not take place (*i.e.*, the SURTASS LFA sonar training and testing activities would not occur).

Under **Alternative 1**, the maximum number of pooled LFA sonar transmission hours would not exceed 360 hours across all SURTASS LFA sonar-equipped vessels per year. The Navy conducted an analysis to determine the minimum number of LFA sonar transmission hours per year required to meet its purpose and need, and based on that analysis, the Navy concluded the

minimum number of LFA sonar transmission hours for training and testing activities outlined in the SURTASS LFA FSEIS/SOEIS would be 360 hours pooled across SURTASS LFA sonar equipped vessels. The 360 hours per year pooled across all SURTASS LFA sonar equipped vessels for training and testing activities represent a distribution across five types of activities:

- Contractor crew proficiency training (80 hours per year);
- Military crew (MILCREW) proficiency training (64 hours per year);
- Participation or support of naval exercises (72 hours per year);
- Vessel and equipment maintenance (48 hours per year); and
- Acoustic research testing (96 hours per year).

Each of these activities utilizes the SURTASS LFA sonar system within the operating profile described above, therefore the number of hours estimated for each activity is merely for planning purposes.

Under **Alternative 2 (Preferred Alternative)**, the annual pooled LFA sonar transmission hours are increased to 496 hours total per year across all SURTASS LFA sonar-equipped vessels in the first four years of the effective period, with the number of transmission hours increasing to 592 hours across all vessels during year 5 and continuing into the foreseeable future, regardless of the number of SURTASS LFA sonar-equipped vessels. While Alternative 1 represented the minimum number of LFA sonar transmission hours required to meet the Navy's purpose and need, Alternative 2 includes the consideration of 1) increased proficiency training of Navy personnel; 2) increased participation of SURTASS LFA sonar equipped vessels in naval exercises; 3) the age of the T-AGOS vessels and the increasing need for maintenance system checks; and 4) additional support of acoustic research testing.

In year 5 and beyond, the Navy is considering and is in the beginning planning stages to add new vessels to its ocean surveillance fleet. As new vessels are developed, the onboard LFA and HF/M3 sonar systems would also need to be updated, modified, or even re-designed. As the new vessels and sonar system components are developed and constructed, at-sea testing would eventually be necessary. The Navy anticipates that new vessels or new or updated sonar system components would be ready for at-sea testing beginning in year 5. Thus, in addition to the activities described in Alternative 1, sonar hours associated with future testing of new or updated LFA sonar system components and new ocean surveillance vessels were added to the annual sonar transmission hours beginning in year 5. Though higher than the hours proposed in Alternative 1, this action alternative still represents a decrease from the currently authorized transmission hours of 1,020 per year.

The SURTASS LFA sonar transmission hours under Action Alternative 2 represent a distribution across the following six training and testing activities:

- Contractor crew proficiency training (80 hours per year);
- Military crew (MILCREW) proficiency training (96 hours per year);
- Participation or support of naval exercises (96 hours per year);
- Vessel and equipment maintenance (64 hours per year);
- Acoustic research testing (160 hours per year); and

- New SURTASS LFA sonar system testing (96 hours per year).

Each of these activities utilizes the SURTASS LFA sonar system within the operating profile described above (*i.e.*, frequency range, duty cycle, ping duration, etc.), therefore the number of hours estimated for each activity is merely for planning purposes.

Both **Alternative 1** and **Alternative 2 (Preferred Alternative)** include the use of SURTASS LFA sonar systems, with the implementation of the mitigation and monitoring measures described in Section VII.

The Navy thoroughly considered other alternatives, such as other passive and active acoustic and non-acoustic technologies, which were eliminated 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 2.3.3 in the 2019 SURTASS LFA FSEIS/SOEIS.

E. Alternatives Considered by NMFS

As noted earlier in this ROD, 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 we are responsible (*i.e.*, whether to issue regulations and subsequent LOAs to the Navy), is based on the activities described in the Navy's application for the incidental take authorization. Therefore, since the Navy selected Alternative 2 as the preferred alternative and this is the action that includes the training and testing activities described in their application, Alternative 2 along with the no action alternative is sufficient for NMFS consideration whether to issue the ITA.

No Action Alternative: For NMFS, denial of an ITA constitutes the NMFS No Action Alternative, which is consistent with our statutory obligation under the MMPA to grant or deny incidental take authorization requests and to prescribe mitigation, monitoring, and reporting with any authorizations. Under the No Action Alternative, NMFS would not issue regulations and the subsequent LOA, and the Navy would not conduct their planned SURTASS LFA sonar training and testing activities in the Study Area. The No Action Alternative served as a baseline in the 2019 SURTASS LFA FSEIS/SOEIS against which the impacts of the action alternatives 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 SURTASS LFA sonar training and testing activities.

Alternative 2 (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 SURTASS LFA sonar training and testing activities in the Study Area, taking into account the prescribed methods of take; mitigation measures, including means of effecting the least practicable adverse impact on marine mammal species or 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 LOAs. The primary documents underlying NMFS' analysis are the Navy's rulemaking/LOA application, the 2019 SURTASS LFA FSEIS/SOEIS, and the SURTASS LFA sonar ESA Biological Opinion.

NMFS reviewed the Navy's ITA request to determine whether the total taking resulting from the Navy SURTASS LFA sonar training and testing activities would have a negligible impact on the affected species or stocks of marine mammals within the 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 (see the *Mitigation, Monitoring, and Negligible Impact and Analyses Determination* sections).

After independent review, NMFS determined the analysis in the 2019 SURTASS LFA FSEIS/SOEIS adequately addresses the potential direct, indirect, and cumulative impacts to marine mammals and their habitat resulting from the use of SURTASS LFA sonar in the Study Area during military readiness training and testing activities, and properly addresses NOAA's comments and input.

In the 2019 SURTASS LFA FSEIS/SOEIS, the Navy analyzed possible cumulative impacts and potential impacts from exposure to SURTASS LFA sonar and other consequences associated with proposed training and testing activities. The Navy used their exposure estimates, combined with qualitative scientific information, to conclude 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 SURTASS LFA sonar has the potential to result in Level B harassment by behavioral disruption and TTS.

B. Key Factors

The environmental consequences to the marine environment and protected resources are important to 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 rulemaking/LOA application; the standards for issuing MMPA incidental take authorizations 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 LOA are explained below. The detailed explanations about the affected environment and environmental consequences are discussed in the 2019 SURTASS LFA FSEIS/SOEIS, in Chapters 3 and 4, within subsections arranged by Resource type, including: Air Quality; Marine Environment, Biological Resources, and Economic Resources. Marine Protected Areas are addressed in Chapter 6 (Other Considerations Required by NEPA). The section on Marine Mammals (Chapter 4, section 4.5.2.1.3) and Appendices B and D 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 2019 SURTASS LFA FSEIS/SOEIS 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 an impact. 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 and testing activities. Furthermore, the 2019 SURTASS LFA FSEIS/SOEIS acknowledges a degree of uncertainty regarding the effects of underwater sound on marine mammals. NMFS provided extensive input during the development of the 2019 SURTASS LFA FSEIS/SOEIS to address these uncertainties, and includes requirements for mitigation, monitoring, and reporting by the Navy in the final rule to manage uncertainty. The final rule implements continued management to reduce uncertainty by requiring extensive monitoring and reporting by the Navy. 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 2019 SURTASS LFA FSEIS/SOEIS 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 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 2019 SURTASS LFA FSEIS/SOEIS 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 2019 SURTASS LFA FSEIS/SOEIS, NMFS determined the Navy appropriately acknowledges uncertainty and provides detailed analyses on 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 and Critical Habitat. The Navy requested formal consultation with NMFS under the ESA on June 15, 2018 (and submitted a revised request on March 28, 2019) for the training and testing activities identified in the SEIS/SOEIS and ITA application. On March 27, 2019, NMFS' Office of Protected Resources Permits and Conservation Division requested initiation of formal consultation with NMFS' Office of Protected Resources ESA Interagency Cooperation Division on the proposed issuance of regulations and associated LOAs. NMFS formally initiated consultation on April 3, 2019, as it was determined the Navy and Office of Protected Resources Permits and Conservation Division had provided sufficient information to initiate formal consultation. On July 30, 2019, NMFS issued a Biological Opinion addressing Navy's proposal to conduct SURTASS LFA sonar training and testing activities in the Study Area and the Office of Protected Resources Permits and Conservation Division's issuance of regulations and an associated LOA. After reviewing the current status of the ESA-listed species, the environmental baseline within the action area, the effects of the proposed actions, any effects of interrelated and interdependent actions, and cumulative effects, it is NMFS' biological opinion that the proposed actions (Navy SURTASS LFA sonar routine training and testing activities from August 2019 and into the reasonably foreseeable future, as well as NMFS' Permits and Conservation Division's issuance of a seven-year MMPA rule and associated seven-year LOA on the take of marine mammals incidental to the Navy's SURTASS LFA sonar training and testing activities) are not likely to jeopardize the continued existence of ESA-listed species⁵. NMFS also concluded that the proposed action is not likely to destroy or adversely modify designated critical habitat for the Main Hawaiian Islands Insular Distinct Population Segment (DPS) of false killer whale and Hawaiian monk seal.

Essential Fish Habitat under the Magnuson-Stevens Fishery Conservation and Management Act. Consultation/coordination under the Magnuson-Stevens Fisheries Conservation and Management Act was conducted as part of the analyses for the 2001 SURTASS LFA FOEIS/EIS. The Navy concluded that implementation of its Proposed Action would result in no adverse effects to designated essential fish habitat. The information in these documents regarding consultations and agency coordination on the MSFCMA remains valid and nothing in the current regulatory process changes that conclusion.

Coastal Zone Management Act. Under the Coastal Zone Management Program Regulations and CFR 930, Federal Consistency with Approved Coastal Management Programs, the Navy determined that the employment of the SURTASS LFA sonar would be consistent to the maximum extent practicable with the relevant coastal zone management policies in the one state and two territories (Hawaii, Guam, and CNMI) that are located within the SURTASS LFA sonar Study Area. Per agreement with the State of Hawaii, the Navy has agreed to not operate SURTASS LFA sonar in waters over Penguin Bank, Hawaii to a water depth of 600 feet (183 meters) and that SURTASS LFA sonar sound pressure levels will not exceed received levels of 145 dB re 1 μ Pa rms in Hawaii State waters.

⁵ ESA-listed species: blue whale; Main Hawaiian Islands Insular DPS of false killer whale; fin whale; Western North Pacific population of gray whale; Western North Pacific DPS of humpback whale; North Pacific right whale; sei whale; sperm whale; Hawaiian monk seal; Southern DPS of spotted seal; Western DPS of Steller sea lion; North Indian DPS, East Indian-West Pacific DPS, Central West Pacific DPS, and Central North Pacific DPS of green turtle; hawksbill turtle; leatherback turtle; North Indian Ocean DPS, North Pacific Ocean DPS, and Southeast Indo-Pacific Ocean DPS of loggerhead turtle; and olive ridley turtle.

National Marine Sanctuaries Act. Federal agency actions that are likely to injure sanctuary resources are subject to consultation with the Office of National Marine Sanctuaries (ONMS) under section 304(d) of the National Marine Sanctuaries Act (NMSA). There is one national marine sanctuary in the Study Area, the Hawaiian Islands Humpback Whale National Marine Sanctuary. The Navy has determined that the planned use of SURTASS LFA sonar pursuant to this SEIS/SOEIS does not require consultation under Section 304(d) of the NMSA.

NMFS has likewise determined that consultation is not required under section 304(d) of the NMSA for its action of issuing regulations and an LOA to authorize the Navy's incidental take of marine mammals. NMFS evaluated the same Navy activities (SURTASS LFA sonar training and testing activities) in the same proximity to the sanctuary for which Navy determined that further consultation under section 304(d) is not required. Additionally, humpback whales in the Hawaiian Islands Humpback Whale National Marine Sanctuary are not anticipated to be injured as a result of the Navy's proposed activities.

V. ENVIRONMENTAL REVIEW SUMMARY AND ADOPTION

The CEQ regulations and NOAA's policy and procedures for implementing NEPA provide for NOAA to adopt another agency's FSEIS. Specifically, when NOAA, as a cooperating agency, reviews the lead agency's FSEIS and determines that it is sufficient and adequately addressed NOAA's comments and suggestions, NOAA may adopt the FEIS without recirculating it (40 CFR section 1506.3). NOAA's NMFS, as a cooperating agency, as more fully explained in the 2019 SURTASS LFA FSEIS/SOEIS, participated early, substantially, and meaningfully in the NEPA process, including preparation of the DSEIS and FSEIS, to ensure the FSEIS included adequate information and evaluation of the impacts of the Navy's actions to marine resources, including marine mammals. NOAA independently reviewed the 2019 SURTASS LFA FSEIS/SOEIS, and determined that the Navy, as the lead agency for the development of the 2019 SURTASS LFA FSEIS/SOEIS fully and adequately evaluated the direct, indirect, and cumulative impacts of their proposed action and alternatives on marine resources. This evaluation included a detailed review of impacts of the Navy's SURTASS LFA sonar training and testing activities on 46 species of marine mammals under NMFS' purview (including 11 species listed as threatened or endangered under the ESA), estimates of marine mammal acoustic exposure, and identification of standard monitoring and mitigation measures. As noted, NOAA, via NMFS, served as a cooperating agency in preparation of the 2019 SURTASS LFA FSEIS/SOEIS and was instrumental in providing information related to the occurrence of, impacts to, and mitigation for marine resources over which it exercises legal jurisdiction and has special expertise, including marine mammals. Based on our independent review, NMFS has determined that the 2019 SURTASS LFA FSEIS/SOEIS meets the requirements of 40 CFR Parts 1500-1508 and NOAA policy and procedure and that NMFS' comments and input to the 2019 SURTASS LFA FSEIS/SOEIS were adequately addressed during the NEPA process. Based on our determination of the sufficiency of the 2019 SURTASS LFA FSEIS/SOEIS and the adequacy of its incorporation of our comments and concerns, NMFS, on behalf of NOAA, has decided to adopt the document without the need for recirculation in accordance with 40 CFR section 1506.3.

NMFS has determined the 2019 SURTASS LFA FSEIS/SOEIS to be comprehensive in analyzing the scope of the Navy's training and testing activities over a large geographic 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 MMPA regulations and an LOA. NMFS independently reviewed the 2019 SURTASS LFA FSEIS/SOEIS and 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 SURTASS LFA sonar training and testing activities in the Study Area. The 2019 SURTASS LFA FSEIS/SOEIS also addresses NOAA's required components for adoption because it meets the requirements for an adequate EIS under the CEQ regulations and NOAA policy and procedures and reflects comments and expert input provided by NMFS as a cooperating agency. For example, the 2019 SURTASS LFA FSEIS/SOEIS includes:

- a discussion of the Navy's proposed action and purpose and need for the action and a discussion of the MMPA authorization process necessary to support implementation of 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 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 2019 SURTASS LFA FSEIS/SOEIS, and to whom copies of the 2019 SURTASS LFA FSEIS/SOEIS were provided.

While the 2019 SURTASS LFA FSEIS/SOEIS 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 LOAs, NMFS also considered information developed through other statutory compliance processes, including the ESA, MMPA, and MSFCMA, to assess the effects of the Navy's activities on those resources. NMFS' determinations in this ROD are informed by those processes.

Per the cooperating agency commitment, the Navy provided NMFS with preliminary versions of the draft and FSEIS/SOEIS documents for review, and NMFS provided comments in support of the analysis regarding areas of NOAA's subject matter expertise and jurisdiction. NMFS also circulated the draft and final SEIS/SOEIS 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. The Navy also compared and contrasted alternatives, including effects to marine mammals and discussed all practicable means to avoid or minimize harm to marine mammals likely to be caused by Alternative 2 (Preferred

Alternative) and committed to implementing them during the conduct of SURTASS LFA sonar training and testing activities.

VI. PUBLIC INVOLVEMENT SUMMARY

During the development of the 2019 SURTASS LFA FSEIS/SOEIS the public had opportunities to comment on the scope of the SEIS/SOEIS during the 60-day scoping period starting on June 5, 2015 when the Navy published the Notice of Intent (NOI) to prepare the SEIS/SOEIS in the *Federal Register* (80 FR 32097). Although the Navy prepared and completed a FSEIS/SOEIS for SURTASS LFA sonar on June 30, 2017, and a Notice of Availability for the FSEIS/SOEIS was published in the *Federal Register* on July 7, 2017, no ROD detailing the Navy's decision, alternative selected, or mitigation and monitoring plan for the employment of SURTASS LFA sonar was issued. The Navy determined that the purposes of NEPA and EO 12114 relevant to SURTASS LFA sonar would be furthered by the preparation of this additional SEIS/SOEIS. The public had an opportunities to comment on the Draft SEIS/SOEIS during the 45-day public comment period beginning on September 7, 2018, (83 FR 45442) and during the 30-day wait period after publication of the 2019 SURTASS LFA FSEIS/SOEIS on July 5, 2019 (84 FR 32168). The Navy notified the public and appropriate federal and state government agencies and organizations as well as other interested parties of the availability of these documents for review. A list of these notified organizations and individuals and details and explanations concerning public involvement and public comments associated with the development of the SEIS/SOEIS are provided is included in Chapter 7 of the 2019 SURTASS LFA FSEIS/SOEIS. NMFS will adopt the 2019 SURTASS LFA FSEIS/SOEIS 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 July 13, 2018 (83 FR 32615), NMFS published a notice of receipt (NOR) of the Navy's application in the *Federal Register*, requesting comments and information related to the Navy's request. On March 1, 2019 NMFS published a notice of the proposed rulemaking (84 FR 7186) to solicit relevant environmental information and provide the public an opportunity to submit comments on the Navy's proposed activities and NMFS' analysis and determinations. In addition, we indicated that we believed it was appropriate to adopt the SEIS and provided a link to the Draft SEIS/SOEIS with the publication of the proposed rule.

During the public comment period for the proposed rule NMFS received comments from the public, the Marine Mammal Commission, and Non-Governmental Organizations, including the Natural Resource Defense Council, The Humane Society of the United States, and the Humane Society Legislative Fund. We considered all public comments received in response to the publication of the NOR and the proposed rule 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>).

VII. CONDITIONS –MITIGATION, MONITORING, AND REPORTING

NMFS does not authorize the SURTASS LFA sonar training and testing 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 or stocks and their habitats. NMFS' issuance of this 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 mammal species or stocks and their habitat 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 (mitigation and buffer zone) and geographic 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 or testing activity occurs in the Study Area. 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 the SURTASS LFA sonar mitigation and buffer zone), ramp-up of the active acoustics sonar system, and pre- and post-activity monitoring requirements. Chapter 5 of the 2019 SURTASS LFA FSEIS/SOEIS and the *Mitigation Measures* section in the MMPA final rule include detailed descriptions of mitigation measures in the Study Area.

The Navy will also implement mitigation measures within certain areas and/or at times to avoid or minimize potential impacts on marine mammals in areas and/or times where they are known to engage in biologically important behaviors (*i.e.*, for foraging, migration, reproduction), where the disruption of those behaviors would be more likely to result in population-level impact. The *Mitigation Measures* section in the final rule and Chapter 5 and Appendix C of the 2019 SURTASS LFA FSEIS/SOEIS include detailed descriptions of geographic mitigation measures in the Study Area (including tables and maps of the OBIAs). Depending on the area, mitigation will be implemented year-round or seasonally.

The Navy will implement the following mitigation measures:

- (1) *2,000-yd LFA sonar mitigation and buffer zone* – LFA sonar training and testing transmissions will be suspended if the Navy detects marine mammals within a distance of 2,000 yds (1.8 km; 1.1 mi; 1.0 nmi) of the LFA sonar source, which encompasses both the approximately 1-km radial distance of the 180 dB re: 1 μ Pa rms received level mitigation zone and an additional buffer, by any of the following detection methods:
 - Visual monitoring;
 - Passive acoustic monitoring; and
 - Active acoustic monitoring.

(2) *Geographic restrictions* – SURTASS LFA sonar training and testing will be conducted such that:

- The received level of SURTASS LFA sonar transmissions will not exceed 180 dB re: 1 μ Pa rms within the Coastal Standoff Zone (22 km (12 nmi) from any land);
- The received level of SURTASS LFA sonar transmissions during training and testing events will not exceed 180 dB re: 1 μ Pa rms within 1 km seaward of any OBIA boundary, during the indicated periods of biological importance;
- No more than 25 percent of the authorized amount (transmission hours) of SURTASS LFA sonar for training and testing activities will be conducted within 10 nmi (18.5 km) of any single OBIA during any year;
- No activities with the SURTASS LFA sonar system will occur within territorial seas of foreign nations, which are areas up to 12 nmi from shore, depending on the distance that individual nations claim;
- No activities with the SURTASS LFA sonar system will occur within the waters of Penguin Bank, Hawaii to the 600-ft (183-m) isobath, and ensonification of Hawaii state waters (out to 3 nmi) will not exceed 145 dB re: 1 μ Pa rms; and
- The received level of SURTASS LFA sonar transmissions will not exceed 145 dB re: 1 μ Pa rms at known recreational and commercial dive sites.

The Navy will submit annual training and testing activity reports and incident reports. In each annual report, the Navy will include a summary of all training and testing activities, including dates, times, and location of each vessel during each activity, information on sonar transmissions (hours) during each activity, and results of the marine mammal monitoring program. If they occur, the Navy will report incidents involving marine mammal vessel strikes, observed injuries or mortalities to marine mammals during training or testing activities. The Navy will also implement a Notification and Reporting Plan for dead, live stranded, or marine mammals struck by a vessel. Each annual report would build on the previous annual report to provide a cumulative overview of the level of SURTASS LFA sonar training and testing transmission hours per year. At the end of the seven-year effective period of the LOA, the final annual report would be a cumulative, comprehensive report of SURTASS LFA sonar activities conducted during the MMPA regulation period.

NMFS and the Navy have developed a robust monitoring plan to improve our understanding of marine mammals in the Study Area and the potential environmental impacts of Navy SURTASS LFA sonar training and testing 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 (in coordination with the Navy) on an annual basis if mitigation or monitoring measures should be modified or added if new data suggests that such modifications are appropriate.

VIII. PARTIAL WAIVER OF THE WAIT PERIOD

NMFS determined there is good cause to partially waive the 30-day “wait period” in 40 CFR 1506.10(b), under which agencies are generally required to wait at least 30 days from the *Federal Register* notice of the filing of the final EIS before making a final decision on a proposed action. This 30-day wait period may be waived by an agency engaged in rulemaking under the Administrative Procedure Act or other statute for the purpose of protecting the public health or safety. The *Federal Register* notice of availability of the Navy’s 2019 SURTASS LFA sonar FSEIS/SOEIS published on July 5, 2019 (84 FR 32168), although it was available online (<http://www.surtass-lfa-eis.com/>) on June 28, 2019. The Navy requested that the final rule take effect on or by August 13, 2019, so as to prevent a disruption in training and testing activities when the NDE expires on August 12, 2019. The Navy has a compelling national security reason to continue military readiness activities without interruption to the SURTASS LFA sonar activities. Suspension or interruption of the Navy’s ability to conduct those activities disrupts adequate and realistic military readiness, proper operations, and suitability for combat essential to national security. NMFS’ final rule for Navy’s SURTASS LFA sonar training and testing activities is too large for the typical preparation time needed by the Office of the *Federal Register*; therefore, NMFS is unable to accommodate the full 30-day wait period due to the additional time required by the Office of the *Federal Register* to prepare this final rule for publication.⁶ The partial (6-day) waiver of the 30-day waiting period will ensure that the MMPA final rule and LOA are in place by the time the NDE expires while still observing a substantial portion of the wait period. Any delay in finalizing the rule would result in either: (1) A suspension of planned naval training and testing, which would disrupt vital training and testing essential to national security; or (2) absent another NDE, the potential for unauthorized takes of marine mammals by Navy (should the Navy conduct training and testing without an LOA). NMFS has determined that these circumstances warrant partial waiver of the wait period.

IX. DECISIONS AND CONCLUSIONS

Based on the information presented herein along with the Navy’s application (as updated) and analysis in the 2019 SURTASS LFA FSEIS/SOEIS prepared by the Navy, NMFS’ decision is to issue regulations and an LOA covering a seven year period to the Navy, consistent with the Navy’s Preferred Alternative (Alternative 2). 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 this FSEIS/SOEIS associated with the decision to grant 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 2019 SURTASS LFA FSEIS/SOEIS, NMFS considered the goals and objectives of the 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

⁶ The Office of the *Federal Register* requires additional time to prepare lengthy documents for publishing in the *Federal Register*.

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 2019 SURTASS LFA FSEIS/SOEIS to support its NEPA obligations for issuance of MMPA incidental take regulations and LOAs. It also satisfies the requirements of 40 CFR section 1505.2 by identifying the alternatives considered in the 2019 SURTASS LFA FSEIS/SOEIS, and addressing that all practicable means to avoid or minimize environmental harm from implementation of the selected alternative were adopted.

Signed:  Date: 7/31/19

Samuel D. Rauch III,
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