

---

---

## 6 Additional Regulatory Considerations



**TABLE OF CONTENTS**

**6 ADDITIONAL REGULATORY CONSIDERATIONS.....6-1**

**6.1 CONSISTENCY WITH OTHER APPLICABLE FEDERAL, STATE, AND LOCAL PLANS, POLICIES, AND REGULATIONS.....6-1**

6.1.1 COASTAL ZONE MANAGEMENT ACT COMPLIANCE .....6-7

6.1.1.1 Washington Coastal Zone Management Program.....6-8

6.1.1.2 Oregon Coastal Management Program .....6-9

6.1.1.3 California Coastal Management Program.....6-9

6.1.1.4 Alaska Coastal Management Program.....6-10

6.1.2 MARINE PROTECTED AREAS .....6-10

6.1.2.1 Olympic Coast National Marine Sanctuary .....6-20

**6.2 RELATIONSHIP BETWEEN SHORT-TERM USE OF THE ENVIRONMENT AND MAINTENANCE AND ENHANCEMENT OF LONG-TERM PRODUCTIVITY.....6-25**

**6.3 IRREVERSIBLE OR IRRETRIEVABLE COMMITMENT OF RESOURCES .....6-25**

**6.4 ENERGY REQUIREMENTS AND CONSERVATION POTENTIAL OF ALTERNATIVES AND MITIGATION MEASURES .....6-26**

**LIST OF TABLES**

TABLE 6.1-1: SUMMARY OF ENVIRONMENTAL COMPLIANCE FOR THE PROPOSED ACTION ..... 6-2

TABLE 6.1-2: MARINE PROTECTED AREAS LOCATED WITHIN THE NORTHWEST TRAINING AND TESTING STUDY AREA ..... 6-14

**LIST OF FIGURES**

FIGURE 6.1-1: MAP OF MARINE PROTECTED AREAS IN AND NEAR THE STUDY AREA..... 6-13

This Page Intentionally Left Blank

## **6 ADDITIONAL REGULATORY CONSIDERATIONS**

In accordance with the Council on Environmental Quality (CEQ) regulations for implementing the National Environmental Policy Act (NEPA), federal agencies shall, to the fullest extent possible, integrate the requirements of NEPA with other planning and environmental review procedures required by law or by agency practice so that all such procedures run concurrently rather than consecutively. This chapter summarizes environmental compliance for the Proposed Action; consistency with other federal, state, and local plans, policies, and regulations; the relationship between short-term use of the environment and maintenance and enhancement of long-term productivity in the affected environment; irreversible or irretrievable commitments of resources; and energy requirements and conservation.

### **6.1 CONSISTENCY WITH OTHER APPLICABLE FEDERAL, STATE, AND LOCAL PLANS, POLICIES, AND REGULATIONS**

Implementation of the Proposed Action addressed in the Northwest Training and Testing (NWTT) Environmental Impact Statement (EIS)/Overseas EIS (OEIS) would comply with applicable federal laws, regulations, and executive orders (EOs), and comply, to the extent practicable, with state and local laws. The United States (U.S.) Department of the Navy (Navy) is consulting with and will continue to consult with regulatory agencies, as appropriate, during the NEPA process and prior to implementation of the Proposed Action to ensure that requirements are met. Table 6.1-1 summarizes environmental compliance requirements that were considered in preparing this EIS/OEIS (including those that may be secondary considerations in the resource evaluations). Section 3.0.1 (Regulatory Framework) provides brief excerpts of the primary federal statutes, EOs, international standards, and guidance that form the regulatory framework for the resource evaluations. Documentation of consultation and coordination with regulatory agencies is provided in Appendix C (Agency Correspondence). Formal consultation under the Endangered Species Act (ESA) started following the release of the Draft EIS/OEIS. However, the Navy began coordinating with regulatory offices prior to initiating the formal consultation. Likewise, the Navy submitted applications to the National Marine Fisheries Service (NMFS) for Marine Mammal Protection Act (MMPA) authorizations supported by this EIS/OEIS. Consultation with NMFS is currently underway. Consultation documentation is included in Appendix C (Agency Correspondence) or on the website (<https://nwtteis.com/>).

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

Laws, Executive Orders, International Standards, and Guidance	Status of Compliance
<b>Laws</b>	
Abandoned Shipwreck Act (43 U.S.C. §§ 2101–2106)	The 1987 Abandoned Shipwreck Act establishes requirements for educational and recreational access to abandoned shipwrecks, the protection of such resources through the establishment of underwater parks and protected areas, the development of specific guidelines for management and protection in consultation with various stakeholders, defines the jurisdiction and responsibility of federal and state agencies, and explicitly states that the law of salvage and the law of finds do not apply. Under the Act, the Department of the Interior and National Park Service issued guidelines in 2007 to help states manage shipwrecks in their waters. The Act defines the federal government's title to any abandoned shipwreck that meets criteria for inclusion in the National Register of Historic Places within state submerged lands, with the stipulation that title to these shipwrecks will be transferred to the appropriate state. For abandoned shipwrecks in U.S. Territorial Waters, the federal government asserts title to the resource. See Section 3.10 (Cultural Resources) for assessment and conclusion that the Proposed Action is consistent with the Act.
Act to Prevent Pollution from Ships (33 U.S.C. § 1901 et seq.)	Requirements associated with the Act to Prevent Pollution from Ships are implemented by the Navy Environmental Readiness Program Manual and related Navy guidance documents governing waste management, pollution prevention, and recycling. At sea, the Navy complies with these regulations and operates in a manner that minimizes or eliminates any adverse effects on the marine environment (U.S. Department of the Navy 2014). See Section 3.1 (Sediments and Water Quality) for the assessment.
Antiquities Act (16 U.S.C. § 431)	The Antiquities Act states that any person who shall appropriate, excavate, injure, or destroy any historic or prehistoric ruin or monument, or any object of antiquity, situated on lands owned or controlled by the Government of the United States, without the permission of the Secretary of the Department of the Government having jurisdiction over the lands on which said antiquities are situated, shall, upon conviction, be fined or be imprisoned for a period of not more than 90 days, or shall suffer both fine and imprisonment. The Proposed Action is consistent with the Act's objectives for protection of archaeological and historical sites and objects, preservation of cultural resources, and the public's access to them. See Section 3.10 (Cultural Resources) for the assessment.
Bald and Golden Eagle Protection Act (16 U.S.C. 668–668c)	This Act prohibits anyone, without a permit issued by the Secretary of the Interior, from "taking" bald eagles, including their parts, nests, or eggs. Implementation of the Proposed Action would not result in an adverse effect on Bald or Golden Eagles as their protection is defined in the Bald and Golden Eagle Protection Act. The Bald and Golden Eagle Protection Act is discussed in detail in regards to the Proposed Action in Section 3.6 (Birds).
Clean Air Act (CAA) (42 U.S.C. §§ 7401 et seq.) CAA General Conformity Rule (40 C.F.R. § 93[B]) State Implementation Plan (SIP)	The CAA is the comprehensive federal law that regulates air emissions from stationary and mobile sources. The Proposed Action would not conflict with attainment and maintenance goals established in SIPs. A CAA conformity determination will not be required because emissions attributable to the alternatives including the Proposed Action would be below <i>de minimis</i> thresholds. Representative air pollutant emissions calculations and a Record of Non-Applicability are provided in Appendix D.

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

Laws, Executive Orders, International Standards, and Guidance	Status of Compliance
<b>Laws (continued)</b>	
Clean Water Act (CWA) (33 U.S.C. 1251 et seq.)	The CWA is an act to provide for water pollution control activities in the Public Health Service of the Federal Security Agency and in the Federal Works Agency, and for other purposes. The Act's objective is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. The Proposed Action would not conflict with goals established in SIPs. No permits are required under the CWA Sections 401, 402, or 404 (b) (1).
Coastal Zone Management Act (16 C.F.R. § 1451 et seq.)	This Act established a voluntary national program within the Department of Commerce to encourage coastal states to develop and implement coastal zone management plans. The Navy evaluated the Proposed Action to determine whether it would affect the coastal uses or resources of any of the four states in the Study Area. See Section 6.1.1, below, for discussion of Navy activities and compliance with the Coastal Zone Management Act.
Endangered Species Act (ESA) (16 U.S.C. §§ 1531 et seq.)	The ESA established protection over and conservation of threatened and endangered species and the ecosystems upon which they depend. The EIS/OEIS analyzes potential effects to species listed under the ESA. In accordance with ESA requirements, The Navy is still in ongoing consultation under Section 7 of the ESA with NMFS and U.S. Fish and Wildlife Service on the potential that implementation of the Proposed Action may affect listed species. Completion of consultations will be documented in the Record of Decision.
Historic Sites Act (16 U.S.C. §§ 461–467)	The Historic Sites Act established a national policy to preserve for public use historic sites, buildings, and objects of national significance for the inspiration and benefit of the people of the United States. The Proposed Action is consistent with the national policy for the preservation of historic sites, buildings, and objects of national significance. See Section 3.10 (Cultural Resources) for the complete assessment.
Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. §§ 1801–1802)	The Magnuson-Stevens Fishery Conservation and Management Act was established to conserve and manage U.S. fishery resources. The Proposed Action has the potential to adversely affect essential fish habitat and managed species. The Navy prepared an Essential Fish Habitat Assessment and completed consultation with NMFS on affected species and their habitats.
Marine Mammal Protection Act (MMPA) (16 U.S.C. §§ 1431 et seq.)	The MMPA governs activities with the potential to harm, disturb, or otherwise "harass" marine mammals. As a result of acoustic effects associated with active sonar use, acoustic sources, and underwater detonations of explosives, implementation of the alternatives including the Proposed Action may result in potential Level A (harm or mortality) or Level B (disturbance) harassment to marine mammals. The Navy submitted an application for Letters of Authorization as well as conducted the analysis in Chapter 3 to support the determination of whether takes of marine mammals are likely. The Navy will obtain Letters of Authorization from NMFS for the proposed activities.

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

Laws, Executive Orders, International Standards, and Guidance	Status of Compliance
<b>Laws (continued)</b>	
Migratory Bird Treaty Act (16 U.S.C. §§ 703–712)	The Migratory Bird Treaty Act prohibits the taking, killing, or possessing of migratory birds or the parts, nests, or eggs of such birds, unless permitted by regulation. The 2003 National Defense Authorization Act provides that the Armed Forces may take migratory birds incidental to military readiness activities provided that, for those ongoing or proposed activities that the Armed Forces determine may result in a significant adverse effect on a population of a migratory bird species, the Armed Forces confer and cooperate with the Service to develop and implement appropriate conservation measures to minimize or mitigate such significant adverse effects. Implementation of the Proposed Action would cause no significant adverse effect on a population of migratory bird species. See Section 3.6 (Birds) for the assessment.
Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.)	Under the Resource Conservation and Recovery Act, the Military Munitions Rule identifies when conventional and chemical military munitions are considered solid waste. Military munitions are not considered solid waste if they are (1) used for their intended purpose, which includes training military personnel and testing of munitions, weapons, or weapon systems; or (2) subjected to materials recovery activities (40 Code of Federal Regulations [C.F.R.] § 266.202(a)(1) and (2)). These two conditions cover the uses of munitions included in the Proposed Action; therefore, the Resource Conservation and Recovery Act does not apply.
National Fishery Enhancement Act (33 U.S.C. § 2101 et seq.)	The purpose of this act is to promote and facilitate responsible and effective efforts to establish artificial reefs in the navigable waters of the United States and the waters superjacent to the Outer Continental Shelf. The Proposed Action is consistent with regulations administered by NMFS and U.S. Army Corps of Engineers concerning artificial reefs because the Proposed Action does not include the establishment of artificial reefs.
National Historic Preservation Act (16 U.S.C. §§ 470 et seq.)	The National Historic Preservation Act is intended to preserve historical and archaeological sites in the United States. Under Section 106 of the Act, Federal agencies also consult with any tribal governments on unlisted properties. The alternatives, including the Proposed Action, will be implemented and a letter of notification will be sent to the State Historic Preservation Office and to applicable Tribal governments. The Navy invited the Tribes to initiate government-to-government consultation or hold staff level consultations. Consultations with the Tribes are ongoing and a summary is provided in Appendix C (Agency Correspondence). The Navy initiated Section 106 consultation with the Washington State Historic Preservation Office (SHPO) and the Alaska SHPO. The Navy submitted the Determination of Effect and request for concurrence with a finding of No Adverse Effect on Historic Properties by letter to both SHPOs. The Alaska SHPO concurred with the Navy's finding of no adverse effect on historic properties. The Navy is continuing consultation with the Washington SHPO.



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

Laws, Executive Orders, International Standards, and Guidance	Status of Compliance
<b>Laws (continued)</b>	
National Marine Sanctuaries Act (16 U.S.C. § 1431 et seq.)	This Act authorizes the Secretary of Commerce to designate and protect areas of the marine environment with special national significance due to their conservation, recreational, ecological, historical, scientific, cultural, archeological, educational, or esthetic qualities as National Marine Sanctuaries. One National Marine Sanctuary, the Olympic Coast National Marine Sanctuary (OCNMS), is administered by the National Oceanic and Atmospheric Administration Office of National Marine Sanctuaries, and lies within the Study Area. Because a small subset of the Navy's activities occur within the OCNMS, the Navy initiated consultation with the Sanctuary. The Navy and NMFS submitted a joint Sanctuary Resource Statement to OCNMS. OCNMS has 45 days to respond with conservation recommendations for the agencies to consider. This consultation is still ongoing.
Rivers and Harbors Act (33 U.S.C. § 401 et seq.)	The Rivers and Harbors Act addresses projects and activities in navigable waters and harbor and river improvements. In accordance with U.S. Army Corps of Engineers regulations, no permit is required under the Rivers and Harbors Act because no construction in navigable waterways is proposed.
Submerged Lands Act of 1953 (43 U.S.C. §§ 1301–1315)	The Submerged Lands Act returns the title to submerged lands to the states and promotes the exploration and development of petroleum deposits in coastal waters. The Proposed Action is consistent with regulations concerning the Submerged Lands Act.
Sunken Military Craft Act (Public Law 108-375, 10 U.S.C. § 113 Note and 118 Stat. 2094-2098)	Under this Act, no person shall engage in or attempt to engage in any activity directed at a sunken military craft that disturbs, removes, or injures any sunken military craft. Although the Sunken Military Craft Act does not apply to actions taken by or at the direction of the United States, the Navy's Proposed Action would have no adverse effects on sunken U.S. military ships or aircraft within the Study Area. See Section 3.10 (Cultural Resources) for the assessment.
California Marine Life Protection Act and Marine Managed Areas Improvement Act (California Fish and Game Code §§ 2850–2863)	California Marine Life Protection Act requires California Department of Fish and Game to confer with the Navy regarding issues related to Navy activities that may affect Marine Managed Areas. Because the portion of the Study Area near California is 12 nm off the coast, activities will occur outside of the State's jurisdiction, and therefore, no impacts are expected to marine managed areas nor is consultation required.
<b>Executive Orders</b>	
Executive Order (EO) 11990, <i>Protection of Wetlands</i>	This EO was issued to avoid to the extent possible the long- and short-term adverse impacts associated with the destruction or modification of wetlands. There are no wetlands within the Study Area; therefore, the EO does not apply to the Proposed Action.

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

Laws, Executive Orders, International Standards, and Guidance	Status of Compliance
<b>Executive Orders (continued)</b>	
Executive Order 12898, <i>Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations</i>	This EO is responsible for identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Mariana Islands. The proposed activities occurring in the Inland Waters of Washington and Alaska, and open ocean would not have disproportionately high and adverse human health or environmental effects on minority populations and low-income populations. See Section 3.12 (Socioeconomic Resources) and Section 3.13 (Public Health and Safety) for the assessment.
Executive Order 12962, <i>Recreational Fisheries</i>	This EO orders Federal agencies, to the extent permitted by law and where practicable, and in cooperation with States and Tribes, to improve the quantity, function, sustainable productivity, and distribution of U.S. aquatic resources for increased recreational fishing. The Proposed Action would not affect federal agencies' ability to fulfill certain duties with regard to promoting the health and access of the public to recreational fishing areas. See Section 3.12 (Socioeconomics) for the assessment.
Executive Order 13045, <i>Protection of Children from Environmental Health Risks and Safety Risks</i>	This EO considers the risks that arise because children eat more food, drink more fluids, and breathe more air in proportion to their body weight than adults; children's size and weight may diminish their protection from standard safety features; and children's behavior patterns may make them more susceptible to accidents because they are less able to protect themselves. Although children could be present in vessels on the water, there are no sensitive receptors as defined by the EO present in the Study Area and, therefore, the Proposed Action would not result in disproportionate environmental health risks or safety risks to children. See Section 3.13 (Public Health and Safety) for the assessment.
Executive Order 13089, <i>Coral Reef Protection</i>	EO 13089 was enacted to preserve and protect the biodiversity, health, heritage, and social and economic value of U.S. coral reef ecosystems and the marine environment. The Navy has prepared this EIS/OEIS in accordance with requirements that federal agencies whose actions affect U.S. coral reef ecosystems shall provide for implementation of measures needed to research, monitor, manage, and restore them, including reducing impacts from pollution and sedimentation. See Section 3.3 (Marine Habitats) and Section 3.8 (Marine Invertebrates) for assessment.
Executive Order 13112, <i>Invasive Species</i>	This EO is to prevent the introduction of invasive species and provide for their control and to minimize the economic, ecological, and human health impacts that invasive species cause. The Proposed Action would not increase the number of or introduce new invasive species nor require the Navy to take measures to avoid introduction and spread of those species. Naval vessels are exempt from 33 C.F.R. 151 Subpart D, Ballast Water Management for Control of Nonindigenous Species in Waters of the United States. While the standards do not apply directly to Navy ships, the Navy has chosen to adopt the intent of the U.S. Coast Guard standards.

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

Laws, Executive Orders, International Standards, and Guidance	Status of Compliance
<b>Executive Orders (continued)</b>	
Executive Order 13158, <i>Marine Protected Areas</i>	This EO is intended to provide for the protection of significant natural and cultural resources within the marine environment for the benefit of present and future generations by strengthening and expanding the Nation's system of MPAs. The Navy has prepared this EIS/OEIS in accordance with the requirements to avoid harm to the natural and cultural resources of existing national system marine protected areas. See Section 6.1.2 for more information.
Executive Order 13175, <i>Consultation and Coordination With Indian Tribal Governments</i>	This order is to establish a regular and meaningful consultation and collaboration with tribal officials in the development of federal policies that have tribal implications, to strengthen the United States government-to-government relationships with Indian tribes, and to reduce the imposition of unfunded mandates upon Indian tribes. The Proposed Action is consistent with the comprehensive national policy for the Consultation and Coordination with Indian Tribal Governments. The Navy invited the Tribes to initiate government-to-government consultation or hold staff level consultations. Consultations with the Tribes are ongoing and a summary is provided in Appendix C (Agency Correspondence).
Executive Order 13547, <i>Stewardship of the Ocean, Our Coasts, and the Great Lakes</i>	This order establishes a national policy to ensure the protection, maintenance, and restoration of the health of ocean, coastal, and Great Lakes ecosystems and resources, enhance the sustainability of ocean and coastal economies, preserve our maritime heritage, support sustainable uses and access, provide for adaptive management to enhance our understanding of and capacity to respond to climate change and ocean acidification, and coordinate with our national security and foreign policy interests. The Proposed Action is consistent with the comprehensive national policy for the Stewardship of the Ocean, Our Coasts, and the Great Lakes.
Executive Order 13693, <i>Planning for Federal Sustainability in the Next Decade</i>	This order, which was issued in March 2015 and revoked EO 13423 and EO 13514, looks to cut the Federal Government's greenhouse gas (GHG) emissions 40 percent over the next decade, relative to 2008 levels by increasing efficiency and improving environmental performance. The Proposed Action is consistent with the federal government's GHG emissions reductions and sustainability goals of this EO.
<b>International Standards</b>	
International Convention for the Prevention of Pollution from Ships	This standard prohibits certain discharges of oil, garbage, and other substances from vessels. The convention and its annexes are implemented by national legislation, including the Act to Prevent Pollution from Ships (33 U.S.C. §§ 1901–1915) and the Federal Water Pollution Control Act (33 U.S.C. §§ 1321–1322). The Navy vessels operating in the Study Area would comply with the discharge requirements established in this program, minimizing or eliminating potential impacts from discharges from ships.

Notes: BO = Biological Opinion, CAA = Clean Air Act, C.F.R. = Code of Federal Regulations, CZMA = Coastal Zone Management Act, EIS/OEIS = Environmental Impact Statement/Overseas Environmental Impact Statement, EO = Executive Order, MPA = Marine Protected Area, Navy = United States Department of the Navy, nm = nautical mile, NMFS = National Marine Fisheries Service, NWTRC = Northwest Training Range Complex, U.S. = United States, U.S.C. = United States Code

### 6.1.1 COASTAL ZONE MANAGEMENT ACT COMPLIANCE

The Coastal Zone Management Act (CZMA) of 1972 (16 U.S. Code [U.S.C.] § 1451, et seq.) encourages coastal states to be proactive in managing coastal zone uses and resources. The Act established a

voluntary coastal planning program under which participating states submit a Coastal Management Plan (CMP) to the National Oceanic and Atmospheric Administration (NOAA) for approval. Under the Act, federal actions that have an effect on a coastal use or resource are required to be consistent, to the maximum extent practicable, with the enforceable policies of federally approved CMPs.

The Act defines the coastal zone as extending “to the outer limit of State title and ownership under the Submerged Lands Act” (i.e., 3 nautical miles [nm]). The extent of the coastal zone inland varies from state to state, but the shoreward extent is not relevant to this Proposed Action. The CZMA federal consistency determination process includes a review of the Proposed Action to determine whether it has reasonably foreseeable effects on coastal zone resources or uses, an in-depth examination of any such effects, and a determination on whether those effects are consistent to the maximum extent practicable with the State's enforceable policies. Under the CZMA, the states must provide an opportunity for public comment and involvement in the federal coastal consistency determination process.

A Consistency Determination, or a Negative Determination, may be submitted for review of federal agency activities. A federal agency submits a consistency determination when it determines that its activity may have either a direct or an indirect effect on a state coastal use or resource. In accordance with 15 Code of Federal Regulations (C.F.R.) § 930.39, the consistency determination will include a brief statement indicating whether the proposed activity will be undertaken in a manner consistent to the maximum extent practicable with the enforceable policies of the management program. The consistency determination should be based on evaluation of the relevant enforceable policies of the management program. In accordance with 15 C.F.R. § 930.35, “if a Federal agency determines that there will not be coastal effects, then the Federal agency shall provide the State agencies with a negative determination for a Federal agency activity: (1) Identified by a State agency on its list, as described in § 930.34(b), or through case-by-case monitoring of unlisted activities; or (2) Which is the same as or is similar to activities for which consistency determinations have been prepared in the past; or (3) For which the Federal agency undertook a thorough consistency assessment and developed initial findings on the coastal effects of the activity.” Thus, a negative determination must be submitted to a state if the agency determines no coastal effects and one or more of the triggers above is met.

#### **6.1.1.1 Washington Coastal Zone Management Program**

The state of Washington's Coastal Zone Management Program (CZMP) was the first to be approved in 1976. The Washington CZMP is implemented by Washington Department of Ecology (DOE) and approved by NOAA. Washington's CZMP is primarily based on their Shoreline Management Act of 1971, as well as other state land use and resource management laws. Any public federal project carried out with a federal agency, or private project licensed or permitted by a federal agency, or carried out with a federal grant, must be determined to have “Federal Consistency,” which means the project is consistent with Washington's CZMP.

The coastal zone includes all lands and waters from the coastline seaward to 3 nm. The coastline along the inland marine waters is located at the seaward limit of rivers, bays, estuaries, or sound. The inland political boundaries of the counties are used as the Coastal Zone limit because they generally follow drainage divides. The Act specifically excludes from the coastal zone those lands that are subject solely by law to the discretion of or held in trust by the federal government (i.e., military reservations and other defense installations, all lands within National Parks, the Olympic Coast National Marine Sanctuary, Indian lands held in trust by the federal government, and National Forest lands and National

Recreation Areas owned or leased by the federal government) (National Oceanic and Atmospheric Administration 2001).

The federal CZMA also gives special funding to assist in making improvements to the state CZMP. Washington State participates in these voluntary Improvement Grants, otherwise known as the Section 309 Program, in order to update and amend the Shoreline Master Program Guidelines under Washington's Shoreline Management Act.

The Navy submitted a Coastal Consistency Determination to the Washington Department of Ecology and received a conditional concurrence with the determination (see Appendix C – Agency Correspondence). The Navy is continuing to work with the Washington Department of Ecology on the terms of the conditional concurrence.

#### **6.1.1.2 Oregon Coastal Management Program**

The state of Oregon has an approved CMP, administered by the Department of Land Conservation and Development. The Oregon Coastal Management Program (OCMP) knits together various state statutes for managing coastal lands and waters into a single, coordinated package. There are three basic parts of the program: the 19 Statewide Planning Goals, City and County Comprehensive Land Use Plans, and State Agencies and Natural Resource Laws. The Program coordinates and integrates programs of local, state, and federal agencies to support local planning and to protect and restore coastal natural resources. The Oregon Coastal Zone extends from the Washington border on the north to the California border on the south, seaward to 3 nm offshore, and inland to the crest of the coastal mountain range (except to the downstream end of Puget Island on the Columbia River), to Scottsburg on the Umpqua River, and to Agness on the Rogue River.

Under the CZMA, the OCMP provides guidelines and financial and technical assistance for coastal grants, public notices, shoreland processes, water quality, ocean resources, territorial sea plans, coastal access, coastal planners network meetings, public involvement, and local government partners.

As a component of the Proposed Action, the Navy completed a federal consistency process under the CZMA with the Oregon Department of Land Conservation and Development (DLCD). Previously, the Navy submitted a negative determination to the Oregon DLCD for the Northwest Training Range Complex (NWTRC) EIS/OEIS. The proposed actions for the NWTT EIS/OEIS and the NWTRC EIS/OEIS are similar within the Oregon coastal zone, the only difference being that the NWTRC Study Area overlapped with the coastal zone and the NWTT Study Area does not. Therefore, the Navy submitted a negative determination (see Appendix C – Agency Correspondence), as the NWTT Study Area stops 12 nm short of the coastline and is well outside of the 3 nm coastal zone limit, and the proposed activities will have no effect on the coastal zone. The Navy received concurrence with the negative determination from Oregon completing the CZMA process.

#### **6.1.1.3 California Coastal Management Program**

The state of California has an approved CMP, administered by the California Coastal Commission (CCC). The California Coastal Act of 1976 (California Public Resources Code, § 30000 et seq.) implements California's CMP. The California Coastal Act includes policies to protect and expand public access to shorelines, and to protect, enhance, and restore environmentally sensitive habitats, including intertidal and nearshore waters, wetlands, bays and estuaries, riparian habitat, certain woods and grasslands, streams, lakes, and habitat for rare and endangered plants and animals. The Coastal Act defines "coastal zone" as an area, extending 3 miles (mi.) seaward and inland generally 1,000 yards (yd.) (914.4 meters

[m]). In significant coastal estuarine, habitat, and recreational areas, it extends inland to a maximum of 5 mi. (8.1 kilometers [km]); in developed urban areas it generally extends inland less than 1,000 yd. (914.4 m).

As a component of the Proposed Action, the Navy completed a Federal consistency process under the CZMA with the CCC. Previously, the Navy submitted a negative determination to the CCC for the NWTRC EIS/OEIS. The proposed actions for the NWTT EIS/OEIS and the NWTRC EIS/OEIS within the California coastal zone are essentially the same, but there is a difference in the impacts assessed on species that use the California coastal zone based on advancements in science and information available for analysis, including different thresholds for hearing in marine species. Another difference between the NWTT and NWTRC studies is that the NWTRC Study Area overlapped with the coastal zone and the NWTT Study Area does not. The NWTT EIS/OEIS Study Area is 12 nm off the California coast. Therefore, the Navy submitted a negative determination (see Appendix C – Agency Correspondence), as the NWTT Study Area stops 12 nm short of the coastline and is well outside of the 3 nm coastal zone limit, and therefore activities in the Study Area will not affect the coastal zone. The Navy received concurrence with the negative determination from California, completing the CZMA process.

#### **6.1.1.4 Alaska Coastal Management Program**

The Alaska Coastal Management Program (ACMP) ended at 12:01 a.m., Alaska Standard Time on 1 July 2011 per state legislative action (AS 44.66.030). The Legislature adjourned the special legislative session 14 May 2011 without passing legislation required to extend the ACMP. Therefore, Alaska currently does not have an approved CMP, and the Navy has no requirements to prepare and submit a consistency determination.

### **6.1.2 MARINE PROTECTED AREAS**

Many areas of the marine environment have some level of federal, state, or local management or protection. Marine protected areas (MPAs) have conservation or management purposes, defined boundaries, and some legal authority to protect resources. Marine protected areas vary widely in purpose, managing agency, management approaches, level of protection, and restrictions on human uses. They have been designated to achieve objectives ranging from conservation of biodiversity, to preservation of sunken historic vessels, to protection of spawning habitats important to commercial and recreational fisheries. Executive Order 13158, *Marine Protected Areas*, was created to “strengthen the management, protection, and conservation of existing marine protected areas and establish new or expanded marine protected areas; develop a scientifically based, comprehensive national system of marine protected areas representing diverse U.S. marine ecosystems, and the nation’s natural and cultural resources; and avoid causing harm to marine protected areas through federally conducted, approved, or funded activities.”

Executive Order 13158 requires each Federal agency whose actions affect the natural or cultural resources that are protected by a national system of MPAs to identify such actions, and in taking such actions, avoid harm to those natural and cultural resources. Pursuant to Section 5 of EO 13158, agency requirements apply only to the natural or cultural resources specifically afforded protection by the site as described by the List of National System Marine Protected Areas. For sites that have both a terrestrial and marine area, only the marine portion and its associated protected resources are included on the List of National System Marine Protected Areas and subject to Section 5 of EO 13158. A full list and map of areas accepted in the National System of Marine Protected Areas is available from the National Marine Protected Areas Center.

The National Marine Protected Areas Center, which is federally managed through the NOAA, is tasked with implementing EO 13158. In order to meet the qualifications for the various terms within EO 13158, the National Marine Protected Areas Center developed a Marine Protected Areas Classification system. This system uses six criteria to describe the key features of most MPAs, as follows:

- 1) Primary conservation focus, such as natural heritage, cultural heritage, or sustainable production
- 2) Level of protection (e.g., no access, no impact, no take, zoned with no-take areas, zoned multiple use, or uniform multiple use)
- 3) Permanence of protection
- 4) Constancy of protection
- 5) Ecological scale of protection
- 6) Restrictions on extraction

The National Marine Protected Areas Center utilizes these criteria to evaluate MPAs for inclusion in the National System of MPAs. Implementation of the National System of MPAs is managed by the Department of Commerce (DOC) and the Department of the Interior (DOI). Executive Order 13158 requires the DOC and the DOI to consult with other federal agencies about the inclusion of sites into the National System of MPAs, including the Department of Defense (DoD). The National System of MPAs includes MPAs managed under the following six systems:

**National Marine Sanctuary System.** Under the National Marine Sanctuaries Act (NMSA), the NOAA establishes national marine sanctuaries for marine areas with special conservation, recreational, ecological, historical, cultural, archaeological, scientific, educational, or aesthetic qualities. Within the NWTT Study Area (Study Area) there is one National Marine Sanctuary System site, the Olympic Coast National Marine Sanctuary (OCNMS), which is included in the National System of Marine Protected Areas (Figure 6.1-1).

**Marine National Monuments.** Marine national monuments are designated through Presidential Proclamation under the authority of the Antiquities Act of 1906 (16 U.S.C. § 431). Marine national monuments are often co-managed by state, federal, and local governments, in order to preserve diverse habitats and ecosystem functions. There are no Marine National Monuments within the Study Area.

**National Wildlife Refuge System.** The U.S. Fish and Wildlife Service manages ocean and Great Lakes refuges for the conservation, management, and, where appropriate, restoration of the fish, wildlife, and plant resources and their habitats. There are nine National Wildlife Refuge areas near the Study Area: Bandon Marsh National Wildlife Refuge, Dungeness National Wildlife Refuge, Grays Harbor National Wildlife Refuge, Lewis and Clark National Wildlife Refuge, Nestucca Bay National Wildlife Refuge, Nisqually National Wildlife Refuge, Protection Island National Wildlife Refuge, Siletz Bay National Wildlife Refuge, and Willapa National Wildlife Refuge, all of which are included in the National System of MPAs (Figure 6.1-1[not discussed in Table 6.1-2 as they are not within the boundaries of the NWTT Study Area]).

**State and Local Marine Protected Areas.** State and local governments have established MPAs for the management of fisheries, nursery grounds, shellfish beds, recreation, tourism, and other uses; these areas have a diverse array of conservation focuses, from protecting ecological functions, to preserving shipwrecks, to maintaining traditional or cultural interaction with the

marine environment. In Washington there are seven state or local MPAs that are not included in the National System of Marine Protected Areas. In Oregon there is one state or local MPA that is not included in the National System of MPAs. California has four state or local MPAs that are not included in the National System of MPAs. There are three state or local eligible MPAs within the Western Behm Canal portion of the Study Area, but they are not included in the National System of Marine Protected Areas. In Washington, Oregon, and California combined, there are 26 state or local MPAs that are included in the National System of Marine Protected Areas (Table 6.1-2 [for those located within the NWTT Study Area] and Figure 6.1-1).

**National Parks System.** The National Park System contains ocean and Great Lakes parks, including some national monuments, administered by the U.S. Department of the Interior National Park Service to conserve the scenery and the natural and historic objects and wildlife contained within. There is one National Parks System site, the Olympic National Park, within the Study Area. Because the Olympic National Park has a marine component—a band of area along the Washington Coast—it is included in the National System of Marine Protected Areas (Table 6.1-2 [for those located within the NWTT Study Area] and Figure 6.1-1).

**National Estuarine Research Reserve System.** National Estuarine Research Reserve System sites protect estuarine land and water and provide essential habitat for wildlife, educational opportunities for student, teachers, and the public and living laboratories for scientists. There are no National Estuarine Research Reserve System sites within the Study Area.

This EIS/OEIS has been prepared in accordance with requirements for natural or cultural resources protected under the National System of MPAs. While several MPAs are located within the Study Area and are included in the National System of MPAs, it is important to note that through standard operating procedures, the Navy takes every precaution to train or test in these areas sparingly. Navy activities within these MPAs abide by the regulations of the individual MPA. Table 6.1-2 provides information on the individual MPA regulations and the Navy activities that occur in these areas. Additionally, the OCNMS within the Study Area receives protection under both EO 13158 and the NMSA, and is described in more detail below.



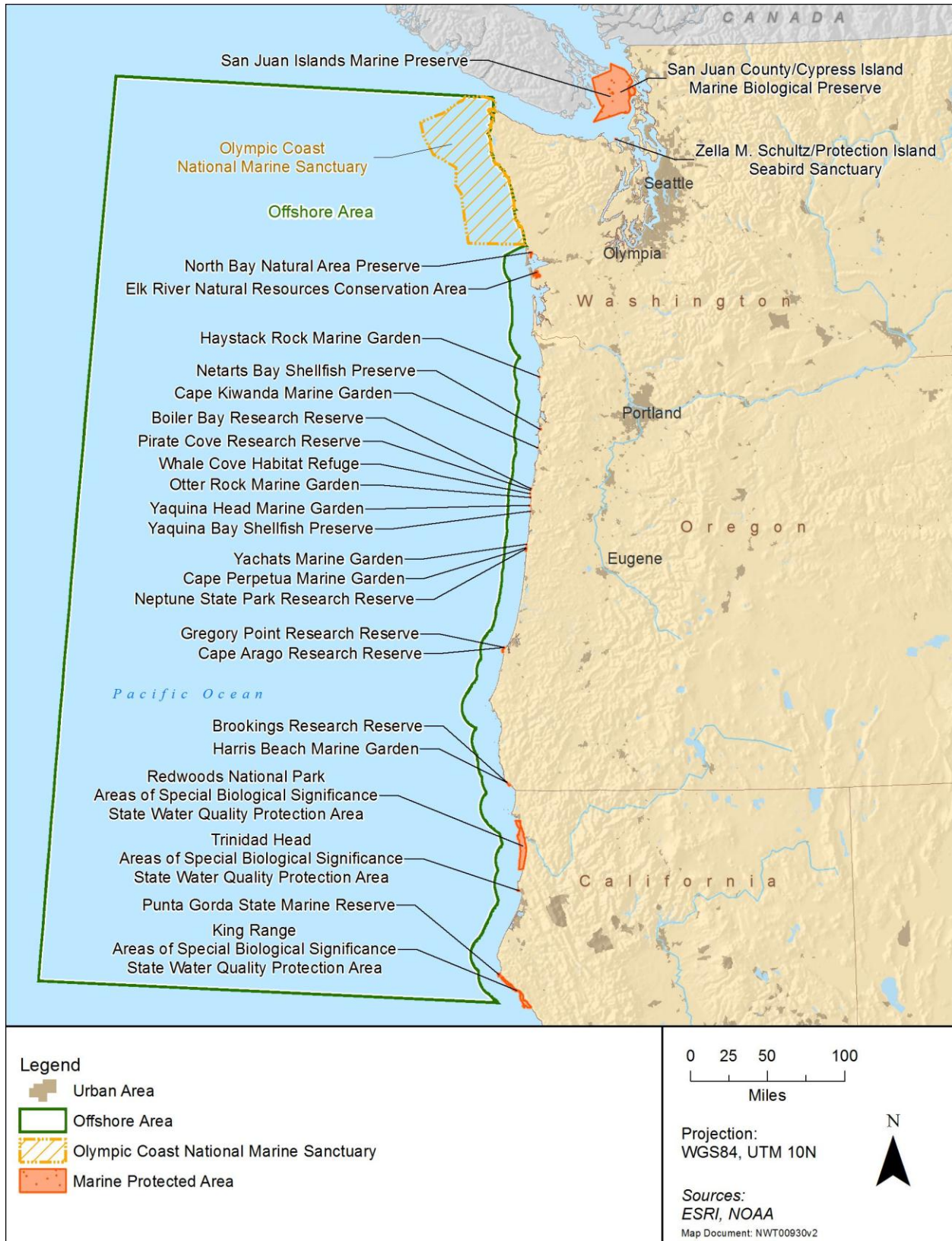


Figure 6.1-1: Map of Marine Protected Areas in and near the Study Area

**Table 6.1-2: Marine Protected Areas located within the Northwest Training and Testing Study Area**

<b>Marine Protected Area</b>	<b>Location Within the Study Area</b>	<b>Protection Focus</b>	<b>Regulations Applicable to Navy Activities</b>	<b>Navy Proposed Activities and Potential Impacts</b>
Admiralty Head Marine Preserve	Washington (Puget Sound)	Focal Resource	The recreational and commercial taking of fish, wildlife, and shellfish, except sea cucumbers and sea urchins, is prohibited.	The Navy's proposed activities in the Inland Waters portion of the Study Area, would not involve the taking of fish, wildlife, or shellfish for recreational or commercial use. The Navy's proposed activities would not occur in the Marine Preserve, and should not affect the Marine Protected Area resources in the Preserve.
Blake Island Underwater Park	Washington (Puget Sound)	Ecosystem	No applicable regulations to the Navy.	There are no applicable regulations to the Navy in this Park.
Brackett's Landing Shoreline Sanctuary Conservation	Washington (Puget Sound)	Ecosystem	Prohibits recreational and commercial fishing and the taking of all species of invertebrates and fishes.	The Navy's proposed activities in the Inland Waters would not occur within the limits of the Sanctuary, and would not involve the taking of invertebrates and fishes.
Cherry Point Aquatic Reserve	Washington (Puget Sound)	Focal Resource	Prohibits the creation of new "hard" structured shoreline armoring on State-owned aquatic lands, underwater cable or pipeline structures, or new saltwater intakes.	The Navy's proposed activities in the Inland Waters would not occur within the limits of the Reserve, and would not involve the creation of new "hard" structured shoreline.
Cypress Island Aquatic Reserve	Washington (Puget Sound)	Ecosystem	Prohibits mooring of boats more than 60 feet in length. Unless written permission is obtained from the Director of Friday Harbor Laboratories, the collection of any marine biological materials other than those taken for food, and also excepting kelp, is prohibited.	The Navy's proposed activities in the Inland Waters would not occur within the limits of the Reserve, and would not involve boat mooring or the taking of biological materials.
Deception Pass Underwater Park	Washington (Puget Sound)	Ecosystem	No applicable regulations to the Navy.	The Navy's proposed activities in the Inland waters portion of the Study Area would not occur within the limits of the Park, nor would they affect the resources of the Park. There are no applicable regulations to the Navy in this Park.
Dungeness National Wildlife Refuge	Washington (Puget Sound)	Ecosystem	Prohibits access according with spatial boundaries and seasonal closures in the refuge.	The Navy's proposed activities in the Inland Waters would not occur within the limits of the Refuge, and therefore would not violate the spatial boundaries or seasonal closures of the refuge.

**Table 6.1-2: Marine Protected Areas within the Northwest Training and Testing Study Area (continued)**

<b>Marine Protected Area</b>	<b>Location Within the Study Area</b>	<b>Protection Focus</b>	<b>Regulations Applicable to Navy Activities</b>	<b>Navy Proposed Activities and Potential Impacts</b>
Fidalgo Bay Aquatic Reserve	Washington (Puget Sound)	Ecosystem	Uses that conflict with the purpose of the reserve designation and with its habitat and species identified for conservation are prohibited.	The Navy's proposed activities in the Inland Waters would not occur within the limits of the Reserve, and would not involve uses that conflict with the purpose of the reserve.
Grays Harbor National Wildlife Refuge	Washington	Ecosystem	No applicable regulations to the Navy.	The Navy conducts no activities in or near this area.
Haro Strait Special Management Fishery Area	Washington (Puget Sound)	Focal Resource	Prohibits non-tribal commercial fishers from harvesting sea urchins and sea cucumbers.	The Navy's proposed activities in the Inland Waters would not occur within the limits of the Management Fishery Area, and would not involve the taking of sea urchins or sea cucumbers.
Maury Island Aquatic Reserve	Washington (Puget Sound)	Focal Resource	Prohibits shellfish harvesting as a consequence of polluted waters and paralytic shellfish poisoning.	The Navy's proposed activities in the Inland Waters would not occur within the limits of the Reserve, and would not involve the taking of shellfish.
Nisqually National Wildlife Refuge	Washington (Puget Sound)	Ecosystem	Prohibits consumptive uses at all times, and prohibits boating from 1 October to 31 March.	The Navy's proposed activities in the Inland Waters would not occur within the limits of the Refuge, and would not involve consumptive uses, or boating from 1 October to 31 March.
Nisqually Reach Aquatic Reserve	Washington (Puget Sound)	Ecosystem	Shellfish harvest is prohibited in shellfish beds.	The Navy conducts no activities in this area, but does conduct infrequent testing activities in the Carr Inlet Operations Area, just north of McNeil Island (see Figure 2.1-7 in Chapter 2 of this EIS/OEIS). These testing activities would not affect shellfish beds.

**Table 6.1-2: Marine Protected Areas within the Northwest Training and Testing Study Area (continued)**

Marine Protected Area	Location Within the Study Area	Protection Focus	Regulations Applicable to Navy Activities	Navy Proposed Activities and Potential Impacts
Olympic Coast National Marine Sanctuary	Washington	Ecosystem	<p>The regulations state that “all DoD activities must be carried out in a manner that avoids to the maximum extent practicable any adverse impacts on sanctuary resources and qualities.” If a DoD activity causes any destruction, loss, or injury to a Sanctuary resource then the “DoD, in coordination with the Director, must promptly prevent and mitigate further damage and must restore or replace the Sanctuary resource or quality in a manner approved by the Director.”</p>	<p>The Navy and NMFS are consulting under the National Marine Sanctuaries Act with the OCNMS as to (1) any potential for injury from Navy activities to Sanctuary resources when within the Sanctuary, and (2) NMFS authorization of marine mammal takes. The OCNMS may recommend reasonable and prudent alternatives. The Navy proposes to continue to conduct a number of activities in the Sanctuary that have not been prohibited by regulation since establishment, including transit, live firing of guns, torpedoes, chaff, and anti-submarine warfare activities and testing. However, no bombing is permitted in the Sanctuary. Regulations require all DoD military activities shall be carried out in a manner that avoids to the maximum extent practicable any adverse impacts on Sanctuary resources and qualities (see Section 6.1.2.1 [Olympic Coast National Marine Sanctuary]). As indicated in Chapter 5, the Navy is agreeing to not conduct Bombing and Missile exercises within 50 nm and thus well outside the OCNMS. And while activities with non-explosive practice munitions may occur in waters greater than 20 nm of shore, none would occur within the OCNMS. The Navy is also proposing other requirements as indicated in Section 5.3.3.</p>

**Table 6.1-2: Marine Protected Areas within the Northwest Training and Testing Study Area (continued)**

Marine Protected Area	Location Within the Study Area	Protection Focus	Regulations Applicable to Navy Activities	Navy Proposed Activities and Potential Impacts
Olympic National Park	Washington	Ecosystem	It is prohibited for vessels to create a wake or exceed 5 miles per hour, 100 yards from shoreline in undeveloped areas. Permits are required for Aircraft and air delivery, delivery/retrieval of a person/object by parachute, helicopter or other airborne means, removal of a downed aircraft. As a designated World Heritage Site, the Olympic National Park is analyzed in Appendix K (World Heritage Site Analysis).	The Navy does not conduct ship or submarine activities in Olympic National Park, but does conduct flight activities in the Olympic Military Operations Areas in national airspace above the Park. The environmental analysis for placement of mobile emitters on U.S. Forest Lands outside the Olympic National Park supporting these activities was included in the Navy's Electronic Warfare Range Environmental Assessment. The Navy is applying for special use permits from the U.S. Forest Service for placement of these emitters. Analysis of flight activities over the Olympic National Park within the MOA airspace is included in this Proposed Action. Navy completed a noise study in Appendix J (Airspace Noise Analysis for the Olympic Military Operations Areas) to support determinations made in Section 3.12 (Socioeconomic Resources) that noise impacts on the Park and its resources would be negligible.
Protection Island Aquatic Reserve	Washington (Puget Sound)	Ecosystem	Commercial trawling for finfish is prohibited.	The Navy conducts no activities in or near this area, but Navy ships may transit near or through the reserve.
Protection Island National Wildlife Refuge	Washington (Puget Sound)	Focal Resource	No regulations are applicable to the Navy.	There are no applicable regulations to the Navy in this Refuge.
San Juan Channel and Upright Channel Special Management Fishery Area	Washington (Puget Sound)	Focal Resource	Regulations for the commercial non-Indian sea urchin and sea cucumber fisheries prohibit harvest of sea urchins and sea cucumbers within the closure areas. The closure areas are also identified within sea urchin and sea cucumber harvest management plans between the State and Treaty Tribes.	The Navy's proposed activities in the Inland Waters would not occur within the limits of the Management Fishery Area, and would not involve the taking of sea urchins or sea cucumbers.

**Table 6.1-2: Marine Protected Areas within the Northwest Training and Testing Study Area (continued)**

<b>Marine Protected Area</b>	<b>Location Within the Study Area</b>	<b>Protection Focus</b>	<b>Regulations Applicable to Navy Activities</b>	<b>Navy Proposed Activities and Potential Impacts</b>
San Juan County/Cypress Island Marine Biological Preserve	Washington (Puget Sound)	Ecosystem	No person shall gather marine biological materials useful for scientific purposes, except when gathered as human food (or kelp); from the area of preserve except under permission first granted by the director of the Friday Harbor Laboratories of the University of Washington.	The Navy's proposed activities in the Inland Waters would not occur within the limits of the Preserve, and would not involve the taking of biological materials.
San Juan Islands Marine Preserve (Argyle Lagoon)	Washington (Puget Sound)	Ecosystem	Prohibits commercial and recreational fishing for bottomfish and classified shellfish.	The Navy's proposed activities in the Inland Waters would not occur within the limits of the Preserve, and would not involve the taking of fish, or shellfish.
San Juan Islands Marine Preserve (False Bay)	Washington (Puget Sound)	Ecosystem	Commercial and recreational fishing for bottomfish and classified shellfish is prohibited. Recreational and commercial fishing may occur for the harvesting of salmon, trout, and forage fishes except commercial fishing for Pacific herring.	The Navy's proposed activities in the Inland Waters would not occur within the limits of the Preserve, and would not involve the taking of fish, or shellfish.
San Juan Islands Marine Preserve (Friday Harbor)	Washington (Puget Sound)	Ecosystem	Commercial and recreational fishing for bottomfish and classified shellfish is prohibited. Recreational and commercial fishing may occur for the harvesting of salmon, trout, and forage fishes except commercial fishing for Pacific herring.	The Navy's proposed activities in the Inland Waters would not occur within the limits of the Preserve, and would not involve the taking of fish, or shellfish.
San Juan Islands Marine Preserve (Shaw Island)	Washington (Puget Sound)	Ecosystem	Commercial and recreational fishing for bottomfish and most classified shellfish is prohibited.	The Navy's proposed activities in the Inland Waters would not occur within the limits of the Preserve, and would not involve the taking of fish, or shellfish.
San Juan Islands Marine Preserve (Yellow and Low Islands)	Washington (Puget Sound)	Ecosystem	Commercial and recreational fishing for bottomfish and most classified shellfish is prohibited.	The Navy's proposed activities in the Inland Waters would not occur within the limits of the Preserve, and would not involve the taking of fish, wildlife, or shellfish.
Smith and Minor Island Aquatic Reserve	Washington (Puget Sound)	Ecosystem	Prohibits commercial trawling of finfish. A 200-yard (183-meter) buffer surrounding Smith and Minor Islands prohibits boating activity in that zone.	The Navy's proposed activities in the Inland Waters would not occur within the limits of the Reserve, and would not involve the taking of fish.

**Table 6.1-2: Marine Protected Areas within the Northwest Training and Testing Study Area (continued)**

<b>Marine Protected Area</b>	<b>Location Within the Study Area</b>	<b>Protection Focus</b>	<b>Regulations Applicable to Navy Activities</b>	<b>Navy Proposed Activities and Potential Impacts</b>
South Puget Sound Wildlife Area	Washington (Puget Sound)	Ecosystem	No regulations are applicable to the Navy.	The Navy conducts infrequent testing activities in the Carr Inlet Operations Area, just north of McNeil Island (see Figure 2.1-7 in Chapter 2 of this EIS/OEIS). There are no regulations applicable to the Navy in this Wildlife Area.
Sund Rock Conservation Area	Washington (Puget Sound)	Focal Resource	Prohibits commercial and recreational fishing, and taking of all species of invertebrates and fishes.	The Navy's proposed activities in the Inland Waters would not occur within the limits of the Conservation Area, and would not involve the taking of fish, wildlife, or shellfish.
Zella M. Schultz/Protection Island Seabird Sanctuary	Washington (Puget Sound)	Focal Resource	Access by the public is prohibited.	The Navy's proposed activities in the Inland Waters would not occur within the limits of the Seabird Sanctuary, and would not violate the Sanctuary's regulation that restricts access to the public.

Notes: ASBS = Area of Special Biological Significance, C.F.R. = Code of Federal Regulations, DoD = Department of Defense, EIS/OEIS = Environmental Impact Statement/Overseas Environmental Impact Statement, Navy = United States Department of the Navy, nm = nautical miles, NMFS = National Marine Fisheries Service, OCNMS = Olympic Coast National Marine Sanctuary, U.S. = United States, U.S.C. = United States Code, USFS = U.S. Forest Service

### 6.1.2.1 Olympic Coast National Marine Sanctuary

The OCNMS consists of an area of 2,408 square nautical miles of marine waters and the submerged lands there off the Olympic Peninsula Coastline of Washington State (see Figure 6.1-1). The sanctuary extends 25–50 mi. (40.2–80.5 km) seaward, covering much of the continental shelf and several major submarine canyons. The boundaries of the sanctuary as defined in the OCNMS regulations (15 C.F.R. 922[O]) extend from Koitlah Point, due north to the United States/Canada international boundary, and seaward to the 100-fathom isobath (approximately 180 m in depth). The seaward boundary of the sanctuary follows the 100-fathom isobath south to a point due west of Copalis River, and cuts across the tops of Nitinat, Juan de Fuca, and the Quinault Canyons. The shoreward boundary of the sanctuary is at the mean lower low-water line when adjacent to American Indian lands and state lands, and includes the intertidal areas to the mean higher high-water line when adjacent to federally managed lands. When adjacent to rivers and streams, the sanctuary boundary cuts across the mouths but does not extend up river or up stream. The offshore portion of the NWTT Study Area encompasses the OCNMS. All DoD military activities currently are and would continue to be carried out in a manner that avoids to the maximum extent practicable any adverse impacts on Sanctuary resources and qualities.

Key habitats within the sanctuary include kelp forest, surfgrass, seafloor (sand and silt, gravel and cobbles), deep-sea coral and sponge gardens, rocky reefs, intertidal zone, nearshore subtidal, deepwater benthic, and water column habitat. The diversity of habitats, and the nutrient-rich upwelling zone (which exhibits the greatest volume of upwelling in North America) that drives high primary productivity in this province, contribute to the high species diversity in the OCNMS, with 309 species of fish, more than 56 species of seabirds and 24 species of shorebirds, occurring in the sanctuary (Office of National Marine Sanctuaries 2008). Twenty-nine species of marine mammals reside in or migrate through the OCNMS, including toothed and baleen whales, seals and sea lions, and sea otters (Office of National Marine Sanctuaries 2008).

Due to the Juan de Fuca Eddy ecosystem created from localized currents at the entrance to the Strait of Juan de Fuca, and the diversity of bottom habitats, the OCNMS supports a variety of marine life. Decimation of razor clam populations, due to pathogen infestations and other natural calamities in the early 1980s, has significantly impacted commercial harvests; however, the Pacific oyster, ocean pink shrimp, and Dungeness crab are all large fisheries supported by the sanctuary's ecosystem. See Section 3.4 (Marine Mammals), Section 3.5 (Sea Turtles), Section 3.6 (Birds), Section 3.7 (Marine Vegetation), Section 3.8 (Marine Invertebrates), and Section 3.9 (Fish) for additional information on these species.

Regulations for the OCNMS prohibit the following (15 C.F.R. § 922.152):

(a) Except as specified in paragraphs (b) through (g) of this section, the following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted:

- (1) Exploring for, developing or producing oil, gas or minerals within the Sanctuary.
- (2) (i) Discharging or depositing, from within or into the Sanctuary, other than from a cruise ship, any material or other matter except:
  - (A) Fish, fish parts, chumming materials or bait used in or resulting from lawful fishing operations in the Sanctuary;



(B) Biodegradable effluent incidental to vessel use and generated by marine sanitation devices approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended, (FWPCA), 33 U.S.C. 1322 *et seq.*;

(C) Water generated by routine vessel operations (e.g., cooling water, deck wash down, and graywater as defined by section 312 of the FWPCA) excluding oily wastes from bilge pumping;

(D) Engine exhaust; or

(E) Dredge spoil in connection with beach nourishment projects related to the Quillayute River Navigation Project.

(ii) Discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter, except those listed in paragraphs (a)(2)(i)(A) through (E) of this section, that subsequently enters the Sanctuary and injures a Sanctuary resource or quality.

(3) Discharging or depositing, from within or into the Sanctuary, any materials or other matter from a cruise ship except clean vessel engine cooling water, clean vessel generator cooling water, clean bilge water, engine exhaust, or anchor wash.

(4) Moving, removing or injuring, or attempting to move, remove or injure, a Sanctuary historical resource. This prohibition does not apply to moving, removing or injury resulting incidentally from lawful fishing operations.

(5) Drilling into, dredging or otherwise altering the submerged lands of the Sanctuary; or constructing, placing or abandoning any structure, material or other matter on the submerged lands of the Sanctuary, except as an incidental result of:

(i) Anchoring vessels;

(ii) Lawful fishing operations;

(iii) Installation of navigation aids;

(iv) Harbor maintenance in the areas necessarily associated with the Quillayute River Navigation Project, including dredging of entrance channels and repair, replacement or rehabilitation of breakwaters and jetties, and related beach nourishment;

(v) Construction, repair, replacement or rehabilitation of boat launches, docks or piers, and associated breakwaters and jetties; or

(vi) Beach nourishment projects related to harbor maintenance activities.

(6) Taking any marine mammal, sea turtle or seabird in or above the Sanctuary, except as authorized by the MMPA, as amended, 16 U.S.C. 1361 *et seq.*, the Endangered Species Act, as amended, (ESA), 16 U.S.C. 1531 *et seq.*, and the Migratory Bird Treaty Act, as amended, (MBTA), 16 U.S.C. 703 *et seq.*, or pursuant to any Indian treaty with an Indian tribe to which the

United States is a party, provided that the Indian treaty right is exercised in accordance with the MMPA, ESA, and MBTA, to the extent that they apply.

(7) Flying motorized aircraft at less than 2,000 ft. (609.6 m) both above the Sanctuary within 1 nm of the Flattery Rocks, Quillayute Needles, or Copalis National Wildlife Refuge, or within one nm seaward from the coastal boundary of the Sanctuary, except for activities related to tribal timber operations conducted on reservation lands, or to transport persons or supplies to or from reservation lands as authorized by a governing body of an Indian tribe.

(8) Possessing within the Sanctuary (regardless of where taken, moved or removed from) any historical resource, or any marine mammal, sea turtle, or seabird taken in violation of the MMPA, ESA, or MBTA, to the extent that they apply.

(9) Interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of the Act or any regulation or permit issued under the Act.

(b) The prohibitions in paragraph (a)(2) through (5), (7), and (8) of this section do not apply to activities necessary to respond to emergencies threatening life, property, or the environment.

(c) The prohibitions in paragraphs (a)(2) through (5), (7), and (8) of this section do not apply to activities necessary for valid law enforcement purposes.

(d) (1) All Department of Defense military activities shall be carried out in a manner that avoids to the maximum extent practicable any adverse impacts on Sanctuary resources and qualities.

(i) Except as provided in paragraph (d)(2) of this section, the prohibitions in paragraphs (a)(2) through (8) of this section do not apply to the following military activities performed by the Department of Defense in W-237A, W-237B, and Military Operating Areas Olympic A and B in the Sanctuary:

(A) Hull integrity tests and other deep water tests;

(B) Live firing of guns, missiles, torpedoes, and chaff;

(C) Activities associated with the Quinault Range including the in-water testing of non-explosive torpedoes; and

(D) Anti-submarine warfare operations.

(ii) New activities may be exempted from the prohibitions in paragraphs (a)(2) through (8) of this section by the Director after consultation between the Director and the Department of Defense. If it is determined that an activity may be carried out such activity shall be carried out in a manner that avoids to the maximum extent practicable any adverse impact on Sanctuary resources and qualities. Civil engineering and other civil works projects conducted by the U.S. Army Corps of Engineers are excluded from the scope of this paragraph (d).

(2) The Department of Defense is prohibited from conducting bombing activities within the Sanctuary.

(3) In the event of threatened or actual destruction of, loss of, or injury to a Sanctuary resource or quality resulting from an untoward incident, including but not limited to spills and groundings caused by the Department of Defense, the Department of Defense shall promptly coordinate with the Director for the purpose of taking appropriate actions to respond to and mitigate the harm and, if possible, restore or replace the Sanctuary resource or quality.

(e) The prohibitions in paragraphs (a)(2) through (8) of this section do not apply to any activity executed in accordance with the scope, purpose, terms and conditions of a National Marine Sanctuary permit issued pursuant to §§ 922.48 and 922.153 or a Special Use permit issued pursuant to section 310 of the Act.

(f) Members of a federally recognized Indian tribe may exercise aboriginal and treaty-secured rights, subject to the requirements of other applicable law, without regard to the requirements of this part. The Director may consult with the governing body of a tribe regarding ways the tribe may exercise such rights consistent with the purposes of the Sanctuary.

(g) The prohibitions in paragraphs (a)(2) through (8) of this section do not apply to any activity authorized by any lease, permit, license, or other authorization issued after July 22, 1994, and issued by any Federal, State or local authority of competent jurisdiction, provided that the applicant complies with § 922.49, the Director notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization, and the applicant complies with any terms and conditions the Director deems necessary to protect Sanctuary resources and qualities. Amendments, renewals and extensions of authorizations in existence on the effective date of designation constitute authorizations issued after the effective date.

(h) Notwithstanding paragraphs (e) and (g) of this section, in no event may the Director issue a National Marine Sanctuary permit under §§ 922.48 and 922.153 or a Special Use permit under section 310 of the Act authorizing, or otherwise approve: The exploration for, development or production of oil, gas or minerals within the Sanctuary; the discharge of primary-treated sewage within the Sanctuary; the disposal of dredged material within the Sanctuary other than in connection with beach nourishment projects related to the Quillayute River Navigation Project; or bombing activities within the Sanctuary. Any purported authorizations issued by other authorities after July 22, 1994 for any of these activities within the Sanctuary shall be invalid.

According to the National Marine Sanctuary Program Regulations for the OCNMS (15 C.F.R. § 922.152), the prohibitions "...in paragraphs (a)(2) through (8) of this section do not apply to the following military activities performed by the Department of Defense in W-237A, W-237B, and Military Operating Areas Olympic A and B in the Sanctuary: (A) Hull integrity tests and other deep water tests; (B) Live firing of guns, missiles, torpedoes, and chaff; (C) Activities associated with the Quinault Range including the in-water testing of non-explosive torpedoes; and (D) Anti-submarine warfare operations." However, "New activities may be exempted from the prohibitions in paragraphs (a)(2) through (8) of this section by the Director after consultation between the Director and the Department of Defense. If it is determined that an activity may be carried out such activity shall be carried out in a manner that avoids to the maximum extent practicable any adverse impact on Sanctuary resources and qualities." If a DoD activity causes any destruction, loss, or injury to a sanctuary resource, then they "shall promptly coordinate with the

Director for the purpose of taking appropriate actions to respond to and mitigate the harm and, if possible, restore or replace the Sanctuary resource or quality.”

In general, most Armed Forces activities are exempt from the OCNMS requirement to obtain an Olympic National Marine Sanctuary permit. However, bombing is explicitly prohibited in the OCNMS. If the Navy conducts new activities affected by the prohibitions, those activities may be exempted from the prohibitions within the OCNMS after consultation with the Sanctuary. In addition, the Navy is required to consult with the OCNMS pursuant to the National Marine Sanctuary Act section 304(d), for activities within or outside the Sanctuary that may be likely to destroy, cause loss of, or injure any sanctuary resource. Nevertheless, all DoD military activities shall be carried out in a manner that avoids to the maximum extent practicable any adverse impacts on Sanctuary resources and qualities.

The Navy and NMFS jointly are still in ongoing consultation with the OCNMS regarding the effects of the Proposed Action on Sanctuary resources. The Navy concludes its activities are not likely to result in the loss, destruction, or adverse changes to the viability of Sanctuary resources. Several points support this determination:

- Less than two percent of proposed training and 15 percent of proposed testing activities would occur within or immediately adjacent to the OCNMS.
- The NWTT Final EIS/OEIS shows that training and testing activities have minimal temporary impacts on the quantity or quality of the Study Area’s physical environment, and minor to no impacts on marine or shore birds, fish, sea turtles, or invertebrate marine life.
- Although explosives have the potential to affect physical and biological resources, the Navy does not use explosives within the OCNMS, and bombing and missile exercises with high explosives occur 50 nm from shore, well outside the OCNMS.
- OCNMS resources with the most potential to be affected by the Proposed Action are marine mammals, from underwater sound propagation associated with the Navy’s very infrequent use of active sonar which could cause temporary behavioral impacts. However, the Navy concludes any marine mammal behavioral reactions to NWTT training and testing activities would be transitory, infrequent, and non-cumulative. Impacts are not expected to decrease overall individual fitness, or result in long-term population-level impacts on any given population, and consequently will not result in any adverse changes to the sanctuary.

Therefore, proposed activities are consistent with those described in the sanctuary’s designation document and in Section 6.4.5 (Department of Defense Activities) of the *Olympic Coast National Marine Sanctuary Final Management Plan and Environmental Assessment* (2011), authored and published by the NOAA, and would continue to be exempt from the prohibitions identified in the Sanctuary’s regulations. The extensive mitigation developed for MMPA/ESA impacts (see Chapter 5, Standard Operating Procedures, Mitigation, and Monitoring) would be applied to all activities occurring near or within the Sanctuary. Further, the Navy would continue to regulate which activities occur within the Sanctuary based on existing requirements, as discussed below.

To ensure compliance with the National Marine Sanctuary Program Regulations and the interagency consultation requirements of National Marine Sanctuaries Act section 304(d), the Navy considered all proposed training and testing activities to determine whether they have the potential to destroy, cause the loss of, or injure sanctuary resources, or result in adverse impacts on sanctuary resources or qualities. As consultation with OCNMS is still ongoing, OCNMS may provide reasonable and prudent

alternatives for Navy and NMFS consideration. The Navy has also already considered some additional mitigations as indicated in Chapter 5.

## **6.2 RELATIONSHIP BETWEEN SHORT-TERM USE OF THE ENVIRONMENT AND MAINTENANCE AND ENHANCEMENT OF LONG-TERM PRODUCTIVITY**

In accordance with the CEQ regulations (Part 1502), this EIS/OEIS analyzes of the relationship between the short-term impacts on the environment and the effects those impacts may have on the maintenance and enhancement of the long-term productivity of the affected environment. Impacts that narrow the range of beneficial uses of the environment are of particular concern. This means that choosing one option may reduce future flexibility in pursuing other options, or that committing a resource to a certain use may often eliminate the possibility for other uses of that resource. The Navy, in partnership with NMFS, is committed to furthering the understanding of marine resources and developing ways to lessen or eliminate the impacts Navy training and testing activities may have on these resources. For example, the Navy and NMFS collaborate on the Integrated Comprehensive Monitoring Program for marine species to assess the impacts of Navy activities on marine species and investigate population-level trends in marine species distribution, abundance, and habitat use in various range complexes and geographic locations where Navy training and testing occurs. Another example, the Navy is a member of the OCNMS Advisory Council whose members are federal, state, local governments, non-governmental entities, and American Indian Tribes and Nations. The Sanctuary and members of the council conduct cooperative reviews of all activities in the Sanctuary to minimize short- and long-term impacts.

The Proposed Action could result in both short- and long-term environmental impacts. However, these are not expected to result in any impacts that would reduce environmental productivity, permanently narrow the range of beneficial uses of the environment, or pose long-term risks to health, safety, or general welfare of the public. The Navy is committed to sustainable military range management, including co-use of the Study Area with tribal, the general public, and commercial and recreational interests. This commitment to co-use of the Study Area will maintain long-term accessibility of the NWTT EIS/OEIS training and testing areas. Sustainable range management practices are specified in range complex management plans under the Navy's Tactical Training Theater Assessment and Planning Program. Among other benefits, these practices protect and conserve natural and cultural resources and preserve access to training areas for current and future training requirements while addressing potential encroachments that threaten to impact range and training area capabilities.

## **6.3 IRREVERSIBLE OR IRRETRIEVABLE COMMITMENT OF RESOURCES**

The 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. § 4332). Irreversible and irretrievable resource commitments are related to the use of nonrenewable resources and the effects that the uses of these resources have on future generations. Irreversible effects primarily result from the use or destruction of a specific resource (e.g., energy or minerals) that cannot be replaced within a reasonable time frame. Irretrievable resource commitments involve the loss in value of an affected resource that cannot be restored as a result of the action (e.g., the disturbance of a cultural site).

For the Proposed Action, most resource commitments would be neither irreversible nor irretrievable. Most impacts would be short term and temporary, or long lasting but within historical or desired conditions. Because there would be no building or facility construction, the consumption of material

typically associated with such construction (e.g., concrete, metal, sand, fuel) would not occur. Energy typically associated with construction activities would not be expended and irretrievably lost.

Implementation of the Proposed Action would require fuels used by aircraft and vessels, and would be the only irreversible and irretrievable resource commitment. Since fixed- and rotary-wing aircraft and ship activities could increase relative to the baseline, total fuel use would increase. Therefore, total fuel consumption would increase under the Proposed Action (Section 6.4), and this nonrenewable resource would be considered irretrievably lost (see Chapter 4, Cumulative Impacts, and the following discussion on the Navy's Climate Change Roadmap).

#### **6.4 ENERGY REQUIREMENTS AND CONSERVATION POTENTIAL OF ALTERNATIVES AND MITIGATION MEASURES**

The federal government consumes 2 percent of the total U.S. energy share (Jean 2010). Of that 2 percent, the DoD consumes 93 percent. The Navy consumes one-fourth of the total DoD share. The Navy consumes 1.2 billion to 1.6 billion gallons of fuel each year. The Navy expects an overall 25 percent increase in fuel consumption for the entire U.S. fleet, in the future because of new ships coming into the fleet and the growth in mission areas including, but not limited to, the NWTT Study Area (Jean 2010).

Increased training and testing activities within the Study Area would result in an increase in energy demand over the No Action Alternative. The increased energy demand would arise from an increase in fuel consumption, mainly from aircraft and vessels participating in training and testing. Details of fuel consumption by training and testing activities on an annual basis are set forth in the air quality emissions calculation spreadsheets available on the project website. This EIS/OEIS assesses the impacts of an additional 5.0 million gallons per year of fuel consumption beyond what the Navy has previously assessed. Conservative assumptions were made in developing the estimates, and therefore the actual amount of fuel consumed during training and testing events may be less than estimated. Nevertheless, the demand for fuel consumption would increase from baseline levels, given the proposed increases in training and testing activities.

Energy requirements would be subject to any established energy conservation practices. By policy, the Navy minimizes the use of energy sources wherever possible without compromising safety, training, or testing activities. No additional conservation measures related to direct energy consumption by the proposed activities are identified.

The Navy is committed to improving energy security and environmental stewardship by reducing its reliance on fossil fuels. The Navy is actively developing and participating in energy, environmental, and climate change initiatives that will increase use of alternative energy and help conserve the world's resources for future generations. The Navy Climate Change Roadmap identifies actions the Environmental Readiness Division is taking to implement the directives in EO 13653, *Preparing the United States for the Impacts of Climate Change*. The Navy's Task Force Energy is responding to the Secretary of the Navy's Energy Goals through energy security initiatives that reduce the Navy's carbon footprint.

Two Navy programs—the Incentivized Energy Conservation (i-ENCON) Program and the Naval Sea Systems Command's (NAVSEA's) Fleet Readiness, Research and Development Program (FRR&DP)—are helping the fleet conserve fuel via improved operating procedures and long-term initiatives. The i-ENCON Program encourages the operation of ships in the most efficient manner while conducting their mission and supporting the Secretary of the Navy's efforts to reduce total energy consumption on naval

ships. The NAVSEA's FRR&DP includes the High-Efficiency Heating, Ventilating, and Air Conditioning and the Hybrid Electric Drive for DDG-51 class ships, which are improvements to existing shipboard technologies that will both help with fleet readiness and decrease the ships' energy consumption and greenhouse gas emissions. These initiatives are expected to greatly reduce the consumption of fossil fuels (see Section 3.2, Air Quality). Furthermore, to offset the impact of its expected near-term increased fuel demands and achieve its goals to reduce fossil fuel consumption and greenhouse gas emissions, the Navy plans to deploy, throughout the U.S. OPAREAs, by 2016 a green strike group (a "great green fleet") composed of nuclear vessels and ships powered by biofuel in local operations and with aircraft flying only with biofuels (Jean 2010).

## **REFERENCES**

- Jean, G. V. (2010). Navy's energy reform initiatives raise concerns among shipbuilders. *National Defense Business and Technology Magazine*. Retrieved from <http://www.nationaldefensemagazine.org/archive/2010/April/Pages/NavyEnergyReformRaiseConcerns.aspx> as accessed on 16 September 2011.
- National Oceanic and Atmospheric Administration. (2001). Managing Washington's Coast; Washington's Coastal Zone Management Program. Washington State Department of Ecology. 00-06-029.
- Office of National Marine Sanctuaries. (2008). Olympic Coast National Marine Sanctuary Condition Report 2008. U.S. Department of Commerce, National Oceanic and Atmospheric Administration, Office of National Marine Sanctuaries, Silver Spring, MD. 72 pp.
- U.S. Department of the Navy. (2014). Environmental Readiness Program Manual OPNAV Instruction 5090.1D. (pp. 996). Prepared by Chief of Naval Operations.