

6 RELATIONSHIP OF THE PROPOSED ACTION TO FEDERAL, STATE, AND LOCAL PLANS, POLICIES, AND CONTROLS

Operation of the SURTASS LFA sonar system complies with all applicable federal, state, regional, and local laws and regulations. The following environmental statutes have been considered in addition to those reviewed in the FEIS:

- National Defense Authorization Act;
- Interjurisdictional Fisheries Act;
- Executive Order 13158: Marine Protected Areas;
- Oceans Act of 2000;
- Executive Order 13178: Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve; and
- Executive Order 13196: Final Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve.

6.1 National Defense Authorization Act

The National Defense Authorization Act (NDAA) was signed into law on 24 November 2003 to improve military readiness by clarifying several provisions of environmental laws as they are applied to military training and testing activities. The provisions of this act that relate to SURTASS LFA sonar concern revisions to the MMPA, as summarized below:

- Overall – Changed the MMPA definition of “harassment,” adjusted the permitting system to better accommodate military readiness activities, and added a national defense exemption.
- Amended definition of “harassment” as it applies to military readiness activities and scientific activities conducted on behalf of the Federal government.
- Level A “harassment” defined as any act that injures or has the *significant* potential to injure a marine mammal.
- Level B “harassment” defined as any act that disturbs or is *likely to disturb* a marine mammal by causing disruption of natural behavioral patterns *to a point where the patterns are abandoned or significantly altered*. Behaviors include migration, surfacing, nursing, breeding, feeding, and sheltering.
- Secretary of Defense may invoke a national security exemption not to exceed two years for any action after conferring with the Secretary of Commerce and the Secretary of Interior, as appropriate.
- NMFS’s determination of “least practicable adverse impact on species or stock” must include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

- Eliminated the “small numbers” and “specified geographic region” requirements from the incidental take permitting process for military readiness activities.

The amended definition of “harassment” focuses authorization of military readiness and scientific research activities on biologically significant impacts to marine mammals, a science-based approach.

6.2 Interjurisdictional Fisheries Act

The Interjurisdictional Fisheries Act of 1986 provides for the management of interjurisdictional commercial fisheries. It promotes state activities in support of the management of interjurisdictional fishery resources and promotes the management of fishery resources throughout their range. The Interjurisdictional Fisheries Act applies to the individual states in the same manner that the Magnuson-Stevens Fisheries Conservation and Management Act applies to the Nation. The operation of the SURTASS LFA sonar system does not involve the alteration of essential fish habitats or reduce the productive capacity of any fish stock. Therefore, the Act is not applicable.

6.3 Executive Order 13158

Executive Order (EO) 13158, “Marine Protected Areas,” protects the 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 marine protected areas (MPAs). Because the SURTASS LFA sonar system is not operated less than 22 km (12 nm) from any coastline, including offshore islands or biologically important areas. Marine Protected Areas should not be affected by SURTASS LFA sonar system operations.

6.4 Oceans Act of 2000

The Oceans Act of 2000 created the Commission on Ocean Policy to make recommendations for coordinated and comprehensive national ocean policy that would promote:

- the protection of life and property against natural and manmade hazards;
- responsible stewardship;
- the protection of the marine environment and prevention of marine pollution;
- the enhancement of marine-related commerce and transportation;
- the expansion of human knowledge of the marine environment;
- the continued investment in and, development and improvement of the capabilities, performance, use, and efficiency of technologies for use in ocean and coastal activities; and
- close cooperation among all government agencies and departments, and the private sector.

On December 17, 2004, the Commission on Ocean Policy published the U.S. Ocean Action Plan highlighting short-term and long-term goals, such as establishing a new cabinet-level Committee

on Ocean Policy, working with regional fisheries councils to promote greater use of market-based systems for fisheries management and developing an ocean research priorities plan and implementation strategy. The Oceans Act of 2000 has no effect on the SURTASS LFA sonar system operations.

6.5 Executive Order 13178

EO 13178, “Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve,” provides a strong and lasting protection for the coral reef ecosystem of the Northwestern Hawaiian Islands. The Secretaries of Commerce and the Interior are directed to work with the State of Hawaii and consult with the Western Pacific Fishery Management Council to develop recommendations for a new, coordinated management regime to increase protection of the coral reef ecosystem of the Northwestern Hawaiian Islands and provide for sustainable use of the area. The SURTASS LFA sonar system is not operated less than 22 km (12 nm) from any coastline, including offshore islands or biologically important areas. The Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve will not be affected by the SURTASS LFA sonar system operations.

6.6 Executive Order 13196

EO 13196, “Final Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve,” permanently establishes the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve with modifications. Included in these modifications are that current levels of fishing effort and take shall be capped and regulated. The Secretary of Commerce will manage the Reserve pursuant to Executive Order 13178, as modified by this order, under the Act. The Secretary shall also initiate the process to designate the Reserve as a National Marine Sanctuary, as required by the Act. The SURTASS LFA sonar system is not operated less than 22 km (12 nm) from any coastline, including offshore islands or biologically important areas. The Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve will not be affected by the SURTASS LFA sonar system operations.

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