

DEPARTMENT OF DEFENSE

Department of the Navy

Record of Decision for the Undersea Warfare Training Range

AGENCY: Department of the Navy, Department of Defense

ACTION: Notice of Record of Decision

SUMMARY: The United States (U.S.) Department of the Navy (Navy), after carefully weighing the environmental consequences of the installation and operation of the proposed action, announces its decision to develop an undersea warfare training range (USWTR) within the Preferred Alternative Site, the Jacksonville Operating Area (JAX OPAREA). At this time the Navy is implementing only a portion of the proposed action, a decision to move forward with installation of the USWTR. Installation consists of the USWTR's planning, design, and construction. Because operation of the USWTR is not anticipated to occur until at least 2014, the analysis regarding the environmental effects from training on the USWTR in the Final Overseas Environmental Impact Statement/Environmental Impact Statement (OEIS/EIS), will be updated in a future OEIS/EIS closer in time to the date when the training will begin. The decision to implement training on USWTR will be based on the updated analysis of environmental effects in a future OEIS/EIS in conjunction with appropriate coordination and consultation with the National Marine Fisheries Service (NMFS) and after compliance with applicable laws and executive orders including the Marine Mammal Protection Act (MMPA), the Endangered Species Act (ESA), the National Environmental Policy Act (NEPA) and the Coastal Zone Management Act (CZMA) as they relate to the operation of the proposed USWTR.

Because of the anticipated four- to five-year period between now and completion of installation and the five-year limit on the period of NMFS' MMPA rulemaking, a MMPA rule related to training would likely expire before training could commence. Therefore Navy and NMFS' have determined that their resources would be better utilized by the Navy delaying its application for appropriate take authorizations under the MMPA and ESA until the Navy has identified with greater specificity the time period for commencement of training on the USWTR. Delaying the application for incidental take authorizations will also allow for incorporation of the best available science, as

required by the MMPA and ESA, at that time in the analysis of potential environmental effects.

With respect to the Record of Decision today, NMFS provided Navy with a Biological Opinion (BO) on July 28, 2009, in which it analyzed the effects of both installation and use of the USWTR. In its opinion, NMFS concluded that activities associated with the installation may affect, but are not likely to adversely affect endangered and threatened species and that the activities associated with the ASW training on USWTR are likely to adversely affect but are not likely to jeopardize the continued existence of endangered and threatened species. NMFS's BO also concluded that the activities associated with the installation and use of the USWTR may affect, but are not likely to adversely affect critical habitat for endangered or threatened species in the action area; therefore those activities are not likely to result in the destruction or adverse modification of critical habitat that has been designated for endangered or threatened species in the action area.

While both the installation phase and training phase of the USWTR are fully analyzed in the Final Overseas Environmental Impact Statement/Environmental Impact Statement (OEIS/EIS), and informs the decision as to the site selected for installation of the USWTR, this Record of Decision implements only a portion of the proposed action by authorizing the installation of the USWTR. Construction consists of the installation of undersea cables and up to 300 nodes over a 500 square-nautical-mile [nm²] area of the ocean. This location is approximately 50 nm from the northeast coast of Florida. The underwater nodes will be linked by underwater cable to a cable termination facility (CTF) located ashore on Naval Station (NS) Mayport, Florida.

The principal type of training activities on the USWTR will be anti-submarine warfare (ASW). A wide range of ships, submarines, aircraft, non-explosive exercise weapons, and other training related devices will be used during ASW training. Submarines, ships and aircraft all currently conduct ASW training in the JAX OPAREA and will be the principal users of the USWTR. Such training may involve up to three vessels and two aircraft using the range for any one training event, although events will typically involve fewer units. The proposed action will require logistical support for ASW training, including the handling (launch and recovery) of exercise torpedoes (non-explosive) and submarine target simulators.

Section 5062 of Title 10 of the U.S. Code directs the Chief of Naval Operations to train all naval forces for combat. The Chief of Naval Operations meets that direction, in part, by conducting at-sea training exercises and ensuring naval forces have access to ranges, OPAREAs and airspace where the Navy can develop and maintain skills for wartime missions and conduct Research, Development, Testing & Evaluation (RDT&E) of naval weapons systems. Construction of the USWTR improves the Navy's ability to train its naval forces to detect and defeat submarines operating in littoral environments where environmental conditions coupled with new noise reduction technologies make detection increasingly difficult.

FOR FURTHER INFORMATION: Naval Facilities Engineering Command Atlantic, Code EV22LL (USWTR OEIS/EIS Project Manager), 6506 Hampton Boulevard, Norfolk, Virginia, 23508-1278, telephone number (757) 322-4645.

INTRODUCTORY STATEMENT: Pursuant to Section 4321 *et seq.* of Title 42 of the U.S. Code (Section 101 *et seq.* of NEPA); the regulations of the President's Council on Environmental Quality (CEQ) that implement NEPA procedures (40 Code of Federal Regulations [CFR] Parts 1500-1508); Department of Defense (DoD) Instruction 4715.9, Environmental Planning and Analysis; and the applicable Navy environmental regulations that implement these laws and regulations, the Navy announces its decision to develop the USWTR within the Preferred Alternative Site, the JAX OPAREA. At this time the Navy is implementing only a portion of the proposed action, a decision to move forward with installation of the USWTR. Because operation of the training range is not anticipated to occur until at least 2014, the analysis regarding the environmental effects from training on the range in the Final OEIS/EIS will be updated in a future OEIS/EIS document closer in time to the date when the training will begin. The decision to implement training on USWTR will be based on the updated analysis of environmental effects in a future OEIS/EIS. Consideration of the site selection for the USWTR encompassed the associated environmental effects from implementing the proposed action and includes both the construction and the conduct of ASW training. The Navy considered applicable executive orders, including an analysis of the environmental effects of its actions outside the U.S. or its territories under Executive Order (EO) 12114, *Environmental Effects Abroad of Major Federal Actions*, and the requirements of EO 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations*.

During the installation phase of the USWTR in the JAX OPAREA, the Navy will continue to collect data on the surrounding marine environment. For example, for the foreseeable future the Navy will utilize high-frequency acoustic recording package (HARP) buoys to gather acoustic information, including marine mammal vocalizations. Also, the Navy will conduct surveys utilizing surface vessels and aircraft throughout the year, including during the North Atlantic right whale calving season. The surveys will take place at the USWTR location and in the sea space between the eastern edge of the critical habitat for the North Atlantic right whale and the western edge of the proposed USWTR. It should be noted that the hydrophones on the USWTR themselves, once installed, will afford the ability to gather information about marine mammal presence. Three universities are assisting the Navy in this effort: Duke University; University of North Carolina - Wilmington; and University of Saint Andrews, Scotland. All of the data collected will inform the Navy's future request for incidental take authorizations under the MMPA and ESA and NEPA analysis for training on the USWTR. Finally, the Navy is committed to adaptive management and the data collection efforts discussed above will be used in the development of mitigation measures for ASW training on USWTR in consultation with the NMFS.

1. *Installation of the USWTR*

a. Instrumentation: The USWTR instrumentation is a system of underwater acoustic transducer devices, called nodes, connected by cable to each other and to a landside facility where the performance of participants in shallow water training exercises will be evaluated (a transducer is an instrument that converts one form of energy into another; e.g., sound into an electrical signal, as in a telephone). These nodes are capable of both transmitting and receiving acoustic signals from ships operating within the USWTR. The acoustic signals that are sent from the exercise participants to the range nodes allow the position of the participants to be determined and stored electronically for both real-time and future evaluation.

b. Installation: The USWTR will consist of no more than 300 nodes spread on the ocean floor over an area of approximately 500 nm² (1,713 square kilometers [km²]). The distance between nodes would vary from 1 nm to 3 nm (2 to 6 km), depending on water depth. The nodes would be connected with commercial fiber optic undersea cable such as that used by the telecommunications industry. Approximately 600 nm (1,110 km) of cable would be used between nodes. Cable installation would

use equipment and techniques commonly used by the telecommunications industry for phone and data cables. This cable would be buried, if deemed necessary, at specific locations within the range. Interconnecting cables not buried would lie on the bottom. Cabling extending above the bottom will be avoided through the design and installation process. Cable routes will be selected to avoid, if possible, ocean bottom areas with significant ridges, valleys, or rock fields. Cable will also be installed with slack of about 3-5% to ensure that the cable is not stretched taut over the bottom relief, but is able to settle to the ocean bottom.

Cables that are buried because of location in areas where activities interact with the bottom (e.g., anchoring and extensive use of bottom-dragged fishing gear) will be buried using a remotely operated cable burial vehicle. Trenching equipment would furrow, jet or plow the bottom based on bottom's condition. Modern equipment for this activity is designed to minimize disturbance of the ocean bottom. The risk of harming benthic organisms during installation would be minimized by surveying the area prior to burial. A multi-beam sonar coupled with photographs will provide accurate data on the location of existing habitats.

The trunk cable connecting the range to the shore facilities would be buried to a depth of approximately 3 feet (1 m). Nearshore, the trunk cable would be installed in a conduit via horizontal directional drilling. Trenching would be used between the landside end of the conduit and further offshore. Ocean-bottom burial equipment would be used to cut (hard bottom) or plow (soft sediment) a furrow into which the cable would be placed. The landside portion of the trunk cable would be buried and terminate in a small building, known as the CTF that would house the power supplies, system electronics, and communications gear necessary to operate the offshore range.

Installation of the USWTR will be implemented at the Preferred Alternative, Site A (JAX USWTR), as described in the Final OEIS/EIS. In selecting the JAX USWTR site, the Navy took into account the environmental effects of both the installation and operation phases of USWTR and how the range will be utilized for ASW training. The largest anticipated user of USWTR is the aviation community. It is expected that 470 exercises would occur per year on the USWTR and that 355 of these with aircraft only versus one submarine target. (See Tables 2-2 and 2-3 in the Final OEIS/EIS describing the various training scenarios that would take place on the USWTR; and, a list of the platforms,

sensors, non-explosive exercise weapons, target submarine simulators, and other associated hardware employed in each scenario respectively.) In particular, training would involve helicopters and fixed-wing aircraft based at NS Mayport and Naval Air Station (NAS) Jacksonville, Florida. The 2005 Defense Base Closure and Realignment Commission (BRAC) closure of NAS Brunswick, Maine, resulted in the relocation of P-3C Orion maritime patrol aircraft and support personnel to NAS Jacksonville. In addition, a Record of Decision was issued on December 23, 2008, to provide facilities and functions to support homebasing 12 P-8A Multi-Mission Maritime Aircraft (MMA) squadrons and one Fleet Replacement Squadron (FRS) into the U.S. Navy Fleets. The P-8A MMA will replace the current maritime patrol aircraft, the P-3C Orion, at existing maritime patrol homebases. This will result in the homebasing of five fleet squadrons (30 aircraft) and one FRS (12 aircraft) at NAS Jacksonville. Finally, all east coast ASW helicopters are based at NS Mayport and NAS Jacksonville. In terms of operational viability of USWTR, colocating the range facility in the same area as the primary user represents the greatest efficiency in applying limited resources to support training.

Actions analyzed in the Final OEIS/EIS are required to enable the Navy to meet its statutory responsibilities under Sections 5013 and 5062 of Title 10 of the U.S. Code to organize, train, equip, and maintain combat-ready naval forces and to successfully fulfill its current and future global mission of winning wars, deterring aggression, and maintaining freedom of the seas.

In the Final OEIS/EIS, the Navy responded to all public comments received on the Draft OEIS/EIS. During the public review process for the Draft OEIS/EIS, 163 comments were received: 1 from an elected official, 6 from federal agencies, 22 from state agencies, 2 from local agencies, 28 from associations/organizations, 104 from individuals, and 5,070 faxed form letters that had nearly identical comments. Responses to the comments include corrections of data inaccuracies, clarifications of and modifications to analytical approaches, inclusion of additional data or analyses, and modification of the proposed action or alternatives. Two comments received during the 30-day wait period are addressed in the later section of this document, "RESPONSES TO COMMENTS ON THE FINAL OEIS/EIS."

The Notice of Availability of the Final OEIS/EIS was published in the Federal Register on June 26, 2009 (74 *Fed. Reg.*

30569), in various newspapers, and on the project Web site at http://projects.earthtech.com/uswtr/USWTR_index.htm. This commenced the 30 day wait period. Comments received during the 30 day wait period are discussed in the section "RESPONSES TO COMMENTS ON THE USWTR FINAL OEIS/EIS" in this Record of Decision.

2. Overview of the USWTR Final OEIS/EIS

a. Today's Navy: The U.S. maintains its military forces to ensure the freedom and safety of all Americans both at home and abroad. The Preamble of the U.S. Constitution established the principle that the people of the U.S. will provide for the common defense. Article 1, Section 8 states, "The Congress shall have power to provide for the common defense . . . provide and maintain a navy," and "to make rules for the government and regulation of the land and naval forces." To implement these constitutionally mandated duties, Congress provided section 5062 of Title 10 of the U.S. Code states, "The U.S. Navy shall be organized, trained and equipped primarily for prompt and sustained combat incident to operations at sea."

The President and Secretary of Defense determine when and where naval forces will be deployed. While the Navy always has several Strike Groups deployed to provide global naval presence and engagement, the 21st century security environment has spawned more frequent requests from combatant commanders for additional Navy forces ranging in size from individual units to Strike Groups. Emergent missions have included major combat, maritime and theater security, homeland defense, support of civil authorities, maritime security/force protection and humanitarian assistance/disaster relief operations.

b. Why the Navy Trains: Section 5062 of Title 10 of the U.S. Code establishes a legal mandate for such training as would be provided by the proposed range. Title 10 directs the Chief of Naval Operations to organize, train, and equip all naval forces for combat. The Chief of Naval Operations fulfills this direction by conducting training activities during a training cycle prior to deployment for actual operations. First, personnel learn and practice basic combat skills through basic-level or unit-level training. Basic skills are then refined at the intermediate and advanced levels in progressively more difficult, complex, and larger-scale exercises conducted at increasing tempos, referred to as integrated training. When training is complete, warfighters can effectively function independently, or as part of a coordinated fighting force, can

accomplish multiple missions, and are able to fulfill the mission and readiness mandate set forth in Title 10.

The ability to train year-round is required if the Navy is to meet constitutional and statutory mandates. Navy meets these requirements and schedules through the *Fleet Response Training Plan* (F RTP) which ensures that necessary forces are ready for deployments including potential surge requirements (i.e., immediate deployment of forces). Overall, ASW training is conducted to meet deployment certification requirements as directed in the F RTP. The F RTP formalizes the traditional Navy building block approach to training in a way that brings the strike groups to the required level of combat readiness earlier in the training cycle, and sustains that readiness longer. Training proceeds on a continuum in the F RTP, advancing through four phases: Maintenance, Basic, Integrated, and Sustainment. To meet potential surge situations, the F RTP requires that the Navy have five or six carrier Strike Groups (CSGs) ready to deploy within 30 days of notification and an additional one or two CSGs ready to deploy within 90 days. To satisfy this requirement, the Navy must have access to training areas all year to ensure that a sufficient number of fully trained surface units are always prepared for deployment.

Finally, the training value of the proposed action ultimately benefits all DoD forces whose missions are in any way tied to maritime operations, homeland security, or are dependent on access to strategic littoral areas of the world. Silent submarines can be a substantial threat to U.S. forces, civilians, and materiel, and to national security. The increasing likelihood of combat in shallow, littoral areas, as opposed to the open ocean or under ice requires that the Navy be fully trained for these conditions. Such training can best be accomplished with an instrumented undersea warfare training range appropriately located in a shallow water environment.

Future training activities on the USWTR would generally consist of those conducted during the unit-level training or coordinated unit level training of the Basic phase of the F RTP. During the training exercises on the USWTR, naval forces would develop ASW skills that they would carry into subsequent phases where they learn and demonstrate the ability to conduct multiple warfare areas simultaneously.

c. Geographic Scope: The Navy has been training in the area now defined as the Jacksonville Range Complex (JAX Range Complex) for national defense purposes for over 60 years. The land, air, sea space, and undersea space of the JAX Range

Complex has provided and continues to provide a safe and realistic training and testing environment to ensure military personnel are ready to carry out assigned missions in furtherance of the Navy's constitutional and statutory duties.

The JAX Range Complex includes an offshore surface operating area extending southward generally from the Georgia-South Carolina border along the coast of Georgia and Florida for a distance of approximately 200 miles and seaward (east) from approximately 12 nautical miles off the coast for a distance of approximately 250 nautical miles. This area is commonly referred to as the JAX OPAREA.

d. Need for an USWTR: The cornerstones of effective training are conditions that mirror realistic combat scenarios and provide timely feedback of training performance to the participating units. For ASW training, current capabilities that replicate realistic combat scenarios require the use of sensors, including tactical military sonars, and the firing of non-explosive exercise weapons at both submarines and mobile targets that simulate submarines. At the same time, the Navy must provide for safety, command and control, informational feedback, and the recovery of reusable systems. This is best achieved at an instrumented range facility established specifically for training.

Instrumented training ranges have been used since the 1960s to aid in the safety, operational conduct, and recording of training exercises. They also allow shore-based operators to evaluate performance of participants in a variety of training scenarios and, through replay, to provide feedback to participants. This feedback is essential to development of effective ASW weapons, tactics, and procedures. Currently, however, the Navy's existing instrumented undersea warfare ranges do not meet the requirements for training in shallow water coastal environments.

Several alternative training concepts were considered in terms of addressing these requirements but were eliminated from further consideration for various reasons. These alternatives included existing east coast instrumented ranges used for training, portable underwater tracking ranges (PUTRs), and computer-based simulation training for the shallow water environment. See the discussion regarding alternatives on pages 2-2 through 2-5 of the Final OEIS/EIS.

Timely and accurate feedback of training performance to exercise participants and the ability to rapidly reconstruct the training event contribute significantly to the quality of this complex training. These capabilities may only be realized through the use of an instrumented, at-sea training range. At present, the only U.S. controlled operational Atlantic instrumented training range is located near the Bahamas in a deep-water environment. The Navy identified a shallow water training environment or "littoral" as depths ranging from 120 ft to 900 ft. The region is characterized by broad plateaus of water at depths less than 100 ft (30 meters [m]), with steep transition zones to the ocean's bottom, requiring that results be extrapolated to apply to the critically different conditions of shallow water; speculation and interpretation are required to evaluate crew and equipment performance, reducing the authenticity of the feedback. Therefore, it does not meet littoral ASW training requirements.

There are four fundamental reasons why the Navy needs to have an instrumented undersea warfare training range off the east coast of the U.S., these are:

(1) **Worldwide Deployment to Littoral Areas:** Atlantic Fleet units deploy worldwide, and shifts in the military strategic landscape require increased naval capability in the world's shallow, or littoral, seas, such as the Arabian Sea, the South China Sea, and the Korean Sea. Training effectively for these littoral environments requires the availability of realistic conditions in which actual potential combat situations can be adequately simulated.

(2) **Threat of Modern Diesel Submarines:** The current global proliferation of extremely quiet submarines poses a critical threat to the maritime interests of the U.S. These silent diesel submarines are easily obtainable by potential adversaries and are capable of prolonged, silent, submerged operations in confined, congested littoral regions where acoustic conditions make detection significantly more challenging than in deep water. These silent vessels can get well within 'smart' (i.e., self-guided) torpedo or anti-ship missile range of U.S. forces before there is a likelihood of their being detected by passive sonar merely "listening" for their presence. For this reason, use of, and training with, active sonar is crucial to today's ASW, U.S. operational readiness, national defense, and homeland security. Such training is critical to our ability to deliver fighting forces

overseas and to protect civilians and cargo in transit on the world's oceans.

(3) U.S. World Role: The role of the U.S. in keeping critical sea lanes open makes it imperative that U.S. military forces are the best trained, prepared, and equipped in the world. ASW is a Navy core capability and is a critical part of that mission. The Navy is the only DoD service with an ASW responsibility, and therefore it is critical that it be fully trained and capable in littoral water operations to assure access for the U.S. and our allies in strategic areas worldwide.

(4) Mission Readiness and Fulfillment: The Navy's primary mission is to maintain, train, equip, and operate combat-ready naval forces capable of resolving conflicts, deterring aggression, and maintaining freedom of the seas. Training with the actual sensors and weapons systems aboard their own ships, submarines, or aircraft, in a complex operational setting with a realistic scenario is absolutely critical to maintaining Fleet combat readiness and to survival in actual wartime conditions.

This proposed USWTR provides an environment that is consistent with real-world threat situations and where training exercises can be conducted under safe and controlled conditions with critically important real-time feedback that eliminates the need for iterative training events to validate and confirm results.

2. Procedural History and Public Involvement: As the lead agency for this action, the Navy invited the National Marine Fisheries Service (NMFS) to be a cooperating agency for the OEIS/EIS. In addition, the Navy initiated a mutual exchange of information through early and open communications with interested stakeholders during the development of the Draft OEIS/EIS.

The formal Notice of Intent (NOI) to prepare an OEIS/EIS was published in the *Federal Register* on May 13, 1996 (61 *Fed. Reg.* 22028). This initiated the scoping process. Scoping letters were sent to members of Congress and federal, state, and local agencies, as well as members of the general public, notifying them of the beginning of the OEIS/EIS process. Thirteen letters were received from the following agencies, groups, and individuals: U.S. Department of the Army, Corps of Engineers, Norfolk District; U.S. Department of the Army, Corps of Engineers, Wilmington District; U.S. Department of Commerce,

National Oceanic and Atmospheric Administration, NMFS Southeast Regional Office; U.S. Department of the Interior, Fish and Wildlife Service, Raleigh Field Office; U.S. Department of the Interior, Fish and Wildlife Service, Ecological Services; North Carolina Department of the Environment, Health and Natural Resources, Legislative and Intergovernmental Affairs; North Carolina Department of the Environment, Health and Natural Resources, Division of Parks and Recreation; North Carolina Department of Environment, Health and Natural Resources, Division of Marine Fisheries; Commonwealth of Virginia, Department of Environmental Quality; Commonwealth of Virginia, Department of Historic Resources; Hampton Roads Planning District Commission; Mr. Ernie L. Burress; and, Mr. John D. Costlow. Scoping comments fell into the following general major categories: details of the proposed action; alternatives analysis; impacts of the construction and operation on marine life and fishermen; and, acoustic impact of the sonar used during training exercises on fish and on marine mammals (The USWTR Final OEIS/EIS in section 7.1.1. on page 7-1 incorrectly stated that there were fourteen letters received during the scoping process in 1996).

In 2005, a formal Notice of Availability (NOA) was published in the *Federal Register* on October 28, 2005 (70 *Fed. Reg.* 62107). This triggered the public review period for the Draft OEIS/EIS. The Draft OEIS/EIS was distributed to officials of federal, state, and local governments, citizen groups and associations, and other interested parties. Further, the 2005 Draft OEIS/EIS was made available to the public in six public libraries. A Web site was established for the project at http://projects.earthtech.com/uswtr/USWTR_index.htm. An electronic copy of the 2005 Draft OEIS/EIS was made available for public viewing on the Web site.

Public hearings were held in Chincoteague, Virginia (November 15, 2005), Morehead City, North Carolina (November 17, 2005), and Jacksonville, Florida (November 21, 2005). The original public review period was from the date of publication of the NOA, October 28, 2005, to December 12, 2005 (70 *Fed. Reg.* 62107); however, in response to requests for an extension as well as comments to that effect, the Navy extended the public comment period to January 30, 2006, providing 90 days for comments (70 *Fed. Reg.* 77380).

Comments fell into the following major categories: acoustic modeling process and results; sonar impacts on fish, marine mammals (particularly the North Atlantic right whale), and sea

turtles; mitigation measures; alternatives analysis; impacts of the construction of the range on marine life; socioeconomic impacts to fishermen; landside impacts; and, solid and hazardous waste issues, including debris, entanglement, and toxicity.

As a result of comments received after publication of the Draft OEIS/EIS in 2005, it was determined to add Charleston, South Carolina to the analysis of alternative sites for the USWTR. In addition, the availability of new data since the 2005 documents were published, and modification of the methodology used to analyze behavioral impacts on marine mammals led to the Navy's decision to issue a revised Draft OEIS/EIS.

The Navy published its NOI to prepare the revised OEIS/EIS and to open another scoping comment period in the *Federal Register* on September 21, 2007 (72 *Fed. Reg.* 54015). An additional public scoping period began on September 21, 2007, and concluded on October 22, 2007. There were no public meetings or hearings during this time.

As a result of the additional public scoping period, twenty letters were received from the following agencies, groups, and individuals: U.S. Department of the Interior, Fish and Wildlife Service; U.S. Department of the Interior, Minerals Management Service; North Carolina Department of Administration; North Carolina Department of Environment and Natural Resources, Division of Coastal Management; North Carolina Wildlife Resources Commission; South Carolina Department of Natural Resources; National Resources Defense Council; Seabird Pelagic Trips; Southern Environmental Law Center; Linn Barrett; J. Capozelli; Lexie Cataldo; Sandra Davidson; Kelly Farr; Dwight Hines; Janice Orion; P.J. Pillmore; Genevieve Rigsby; Tina Seastrom; and, the State of Maryland Military Department. Comments from this scoping process were considered in the preparation of the 2008 Draft OEIS/EIS. In addition, more than 12,000 form letters were received by fax after the close of the comment period. The comments provided in these letters fall into some of the same general categories as did the comments received after publication of the October 2005 Draft OEIS/EIS, most particularly pertaining to the following areas of interest: impacts to marine life; specific concerns about the North Atlantic right whale and mitigation measures; alternatives analysis; and, comments that repeated issues raised previously.

Preparation of the 2008 Draft OEIS/EIS followed the receipt of the scoping comments. Publication of the NOA in the *Federal Register* was made on September 12, 2008. This commenced a 45-

day comment period. The 2008 Draft OEIS/EIS was distributed to officials of federal, state, and local governments, citizen groups and associations, and other interested parties. Public meeting/hearings were held in Chincoteague, Virginia (September 29, 2008); Morehead City, North Carolina (October 1, 2008); North Charleston, South Carolina (October 6, 2008); and Jacksonville, Florida (October 7, 2008). The 2008 Draft OEIS/EIS was made available to the public in nine libraries and on the public web site, at http://projects.earthtech.com/uswtr/USWTR_index.htm.

In response to the 2008 Draft OEIS/EIS, 163 letters were received during the public comment period: 1 from an elected official, 6 from federal agencies, 22 from state agencies, 2 from local agencies, 28 from associations/organizations, and 104 from individuals. In addition, more than 5,070 comment letters were sent via facsimile that had nearly identical content. In total, 5,233 comment letters were received. The comments submitted were addressed via revised text in affected sections of the Final OEIS/EIS. The comments provided in these letters fell into some of the same general categories as did the comments received after publication of the October 2005 Draft OEIS/EIS, most particularly pertaining to the following areas of interest: impacts to marine life; specific concerns about the North Atlantic right whale and mitigation measures; alternatives analysis; cumulative impacts, and, compliance with the MMPA and the ESA.

The NOA for the Final OEIS/EIS was published in the Federal Register on June 26, 2009. The Final OEIS/EIS was made available to the public in nine libraries and on the public Web site: http://projects.earthtech.com/uswtr/USWTR_index.htm.

ADDITIONAL BACKGROUND AND ISSUES: The Final OEIS/EIS incorporates the Navy's training needs while ensuring compliance with applicable environmental laws, regulations, and executive orders.

1. NEPA: *Structure of the Analysis*

a. The Relationship with other U.S. Fleet Forces Command (USFF) Environmental Planning and Associated Compliance Documents: The Navy plans to complete a comprehensive Environmental Impact Statement/Overseas Environmental Impact Statement in 2014 or 2015 which will consider the potential effects of active sonar training activities by the U.S. Navy's Atlantic Fleet, other training activities the U.S. Navy conducts along the Atlantic Coast that do not employ active sonar, and

ASW training activities on the USWTR. Future biological opinions and letters of authorization to be issued by NMFS will also be informed by the results of data and other information the Navy collects to comply with MMPA permits and the incidental take statements of biological opinions that NMFS has issued in 2009 for the Atlantic Fleet Active Sonar Training (AFAST), Navy Cherry Point (NCHPT) Range Complex, JAX Range Complex and Virginia Capes (VACAPES) Range Complex.

Future training activities on the USWTR in 2014 or 2015 would generally consist of those conducted during the unit-level training phase or coordinated unit level training. During the training exercises on the USWTR, naval forces would develop ASW skills that they would carry into subsequent phases where they learn and demonstrate the ability to conduct multiple warfare capabilities simultaneously. Training activities that occur throughout the training cycle are analyzed in several other EISs/OEISs. The discussion below describes those EISs/OEISs and the program leading to their development.

(1) The Tactical Training Theater Assessment and Planning (TAP) Program: In 2002, Commander, U.S. Fleet Forces and Commander, U.S. Pacific Fleet initiated TAP to serve as the overarching Fleet training area sustainment program. TAP focuses specifically on the sustainability of range complexes, operating areas, and special use airspace that support the Fleet Response Training Plan. TAP represents the first time the Navy has managed its training areas on a range complex-wide basis. TAP will provide environmental planning documentation that assesses the potential for environmental effects associated with certain activities/actions conducted within a range complex.

Through this program, the Navy achieves and maintains Fleet readiness using the range complexes to support and conduct current, emerging, and future training and RDT&E activities; expand warfare missions supported by the range complexes; and upgrade and modernize existing range capabilities to enhance and sustain Navy training and RDT&E activities.

(2) The AFAST Final EIS/OEIS: The Final OEIS/EIS for USWTR incorporates by reference the AFAST Final EIS/OEIS, which is available at http://projects.earthtech.com/uswtr/USWTR_index.htm. Because mid-frequency active (MFA) and high-frequency active (HFA) sonar use and potential sonar effects can cross and go beyond Range Complex boundaries, the Navy comprehensively analyzed all Atlantic Fleet active sonar training in the AFAST EIS/OEIS. Active sonar training, however, is an integral component of fleet readiness training within each

Range Complex; therefore, the AFAST Final EIS/OEIS analysis and conclusions are incorporated and summarized within the USWTR Final OEIS/EIS so the direct and indirect impacts of all components of Fleet training in the JAX Range Complex can be comprehensively evaluated under NEPA and EO 12114. The AFAST Final EIS/OEIS provides a full description and analysis of active sonar activities along the East Coast and within the Gulf of Mexico. The AFAST Final EIS/OEIS was released to the public on December 12, 2008 (73 *Fed. Reg.* 75715). The Navy's consultation with NMFS pursuant to the MMPA concluded with NMFS' filing of the Final Rule for public inspection with the Office of the *Federal Register* (74 *Fed. Reg.* 4844) on January 22, 2009, and NMFS' subsequent issuance of the first annual Letter of Authorization (LOA). The Navy's consultation with NMFS, in accordance with Section 7 of the ESA, concluded when the Biological Opinion was signed on January 16, 2009, and the annual Incidental Take Statement was subsequently issued.

With respect to AFAST, the Deputy Assistant Secretary of the Navy for Environment (DASN(E)) considered the following factors: the Congressional mandates in section 5062 of Title 10 of the U.S. Code; the Navy, DoD, and other federal agencies' operational, testing, and training requirements; environmental impacts; and comments received during the EIS/OEIS process in determining whether and how to designate areas where active sonar activities would occur within and adjacent to existing OPAREAs located along the East Coast of the U.S. and in the Gulf of Mexico. After carefully weighing all of these factors and analyzing the data presented in the AFAST Final EIS/OEIS, the DASN(E) determined that the Preferred Alternative, the No Action Alternative, best meets the requirements for the proposed AFAST active sonar activities. The DASN(E) signed the Navy's Record of Decision (74 *Fed. Reg.* 5650) on January 23, 2009.

The active sonar activities described in the AFAST Final EIS/OEIS are not new and do not involve significant changes in systems, tempo, or intensity from past events. Evaluation of the potential environmental stressors indicated that no significant impact to resources and issues from AFAST activities conducted in the JAX Range Complex would be expected. A complete listing of the entire suite of mitigation measures (those for the Preferred Alternative and AFAST) is provided below.

(3) JAX Range Complex Final EIS/OEIS: The Final USWTR OEIS/EIS incorporates by reference the JAX Range Complex Final EIS/OEIS, which is available at <http://www.jacksonvillerrangecomplexeis.com/>. The Navy decided

to increase and modify training and RDT&E operations from previous levels in support of the Fleet Response Training Plan (FRTTP), accommodate mission requirements associated with force structure changes, including those resulting from the introduction of new platforms (aircraft and weapons systems), and implement enhanced range complex capabilities in the JAX Range Complex. The JAX Range Complex Final EIS/OEIS was released to the public on March 20, 2009 (74 *Fed. Reg.* 11943). The Navy's consultation with NMFS pursuant to the MMPA concluded with NMFS' filing of the Final Rule (74 *Fed. Reg.* 28349), and NMFS' issuance of an LOA on June 5, 2009 to authorize the incidental take of marine mammals that may result from the implementation of the activities analyzed in the JAX Final EIS/OEIS. The Navy's consultation with NMFS in accordance with Section 7 of the ESA was considered complete on June 5, 2009 when NMFS issued both the Programmatic Biological Opinion and an Annual Biological Opinion for the period from June 2009 to June 2010.

With respect to the JAX Range Complex, the Assistant Secretary of the Navy for Installations and Environment (ASN(I&E)) considered the following factors: the Congressional mandates in section 5062 of Title 10 of the U.S. Code; existing assets and capabilities of the JAX Range Complex; the Navy and DoD's operational, testing, and training requirements; environmental impacts, the training and maintenance of ships and aircraft, and training of personnel; and comments received during the EIS/OEIS process. After carefully weighing all of these factors and analyzing the data presented in the Final EIS/OEIS, the ASN(I&E) determined that the Preferred Alternative best meets the requirements for the Navy training and RDT&E activities. The ASN(I&E) signed the Navy's Record of Decision (74 *Fed. Reg.* 27778) on June 8, 2009.

PURPOSE AND NEED: The proposed action here is to place undersea cables and sensor nodes in a 500 nm² (1,713 km²) area of the ocean to create this USWTR, and to use the USWTR for antisubmarine warfare (ASW) training. Such training may involve up to three vessels and two aircraft using the range for any one training event, although events would typically involve fewer units and require logistical support to include the handling (launch and recovery) of exercise torpedoes (non-explosive) and submarine target simulators. The instrumented area will be connected to the shore via a single trunk cable.

The purpose of the proposed action is to enable the U.S. Navy to train effectively in a shallow water environment at a suitable location for Atlantic Fleet ASW-capable units. There

are four fundamental reasons why the Navy needs an instrumented range in shallow water: worldwide deployment to littoral areas of conflict; threat of modern diesel submarines; US. World role to maintain open sea lanes; and mission readiness based on realistic training. In this regard, the USWTR furthers the Navy's execution of its congressionally mandated roles and responsibilities under section 5062 of the U.S. Code Title 10.

ALTERNATIVES CONSIDERED: The Navy's approach to developing alternatives in the Final OEIS/EIS hinged on conducting training exercises to meet its obligations under Title 10 of the U.S. Code. In addition, the development of alternatives took into account the fact that currently no shallow water training range exists on the east coast of the United States. Currently, no single range complex on the east coast can accommodate the entire spectrum of Navy and Marine Corps training and testing, the need to train as we fight, and achieve the necessary levels of proficiency in weapons firing. The USWTR as proposed for the JAX OPAREA possesses the required physiography, adequacy of support infrastructure, and availability based on climatological factors that will make it an indispensable component of the Navy's east coast system of ranges. A primary consideration was that, Florida has been a Fleet concentration area since before World War II, and today has one of the largest Atlantic Fleet assemblages of ships, aircraft and personnel. Additionally, as a result of Base Realignment and Closure decision in 2005 discussed earlier on page five, more ASW fleet assets have been based at military installations in the Jacksonville, Florida, area.

The future training value of the proposed action ultimately benefits all DoD forces whose missions are in any way tied to maritime operations, homeland security, or are dependent on access to strategic littoral areas of the world. Silent submarines are an important threat to U.S. forces, civilians, and materiel, and potentially to national security. The increasing likelihood of combat in shallow, littoral areas, as opposed to the open ocean or under ice requires that the Navy is fully trained for these conditions. Such training can best be accomplished with an instrumented undersea warfare training range appropriately located in a shallow water environment.

The Navy identified a reasonable range of alternatives, based on criteria set out in the Final OEIS/EIS, which would satisfy the purpose and need. Four alternative sites located within existing operating areas, along with the No Action Alternative, were evaluated in the Final OEIS/EIS. The alternative sites are: Site A in the JAX OPAREA; Site B in the

Charleston OPAREA; Site C in the Cherry Point OPAREA; and, Site D in the VACAPES OPAREA. A detailed comparison of alternative sites can be found in Table 2-7 of the USWTR Final OEIS/EIS.

The environmentally preferred alternative is Site B in the Charleston OPAREA if the lowest number of exposures from training is the critical element. If the critical element involves potential exposures of North Atlantic right whales during training, Site C in the Cherry Point OPAREA is the environmentally preferred alternative.

1. Alternatives Eliminated from Further Consideration:

Several alternative training concepts were considered in terms of addressing these requirements, but they were eliminated from further consideration for various reasons. These alternatives included existing east coast instrumented ranges used for training, PUTRs, and computer-based simulation training for the shallow water environment, discussed below.

a. Existing East Coast Instrumented Ranges: One existing undersea tracking range currently supports tactical training for the Atlantic Fleet: the Atlantic Undersea Test and Evaluation Center (AUTECH) near the Bahamas. AUTECH is a deep-water range, greater than 3,000 ft (914 m) deep. The ocean environs around AUTECH and the Berry Islands do not include broad operating regions within the water depths needed for USWTR. The region is characterized by broad plateaus of water at depths less than 100 ft (30 m), with steep transition zones to the ocean's bottom, and therefore do not meet littoral ASW training requirements.

b. PUTRs: A PUTR system was developed for use in test and evaluation (T&E) exercises and is also used for training of naval forces deployed overseas. The largest existing PUTR system, consisting of 100 sensor nodes, can only support an area limited to approximately 100 nm² (343 km²), far less than that required for the proposed USWTR training. Other variations of this type of range are smaller still. PUTR does not provide the necessary communications capability to support the acoustic command link for submarine target control, a submarine warning system to ensure safety when multiple submarines are present in a training event, or full range coverage for voice communications. As a result, this type of range cannot support all training platforms and training scenarios required to operate at the proposed USWTR.

c. Computer-Based Simulation Training: Conducting all activities through simulation does not meet the operational

requirements of realistic training. There are several reasons that simulators will not, in the foreseeable future, replace real-world training: (1) simulators cannot match the dynamics encountered in the ocean environment; (2) computer simulation cannot replicate the complexities of conducting coordinated ASW in at-sea combat; (3) the majority of research, development, test, and evaluation activities cannot be reliably executed using computer simulation; and (4) simulators cannot adequately replicate conditions in the world's shallow water areas where Navy forces could operate.

2. No Action Alternative: The No Action Alternative is required by CEQ regulations as a baseline against which the impacts of the proposed action are compared. Under the No Action Alternative, a USWTR would not be installed off the east coast of the U.S.

3. Alternative/Site A, the Preferred Alternative - JAX OPAREA USWTR: The proposed JAX OPAREA USWTR site (Site A) would be located offshore of northeastern Florida. The center of the range would be approximately 57 nm (106 km) from shore in the JAX OPAREA. The trunk cable would run approximately 51 nm (94 km) from the junction box near the edge of the range to land at NS Mayport. The shoreside trunk cable conduit would be installed under the dunes to the east of the CTF, with the seaward end of the conduit connected to underground cable in a trench. Commercial power and telecommunications connections would be made from the CTF to the NS Mayport infrastructure.

The JAX OPAREA USWTR site has been designated as the operationally preferred alternative USWTR site. The JAX OPAREA USWTR site offers preferred conditions for two of the critical evaluation criteria (physiography and availability based on climatological criteria) and is satisfactory in terms of adequacy of support infrastructure and training efficiency relative to vessel traffic. For non-critical evaluation criteria, Site A is rated preferred for all three subcriteria.

4. Alternative/Site B - Charleston USWTR: The proposed Site B USWTR would be located offshore of Charleston, South Carolina. The center of the range would be approximately 52 nm (96 km) from shore in the Charleston OPAREA. The trunk cable would run approximately 45 nm (83 km) from the junction box near the edge of the range to land at Fort Moultrie National Monument. The trunk cable conduit at Site B would be installed similarly to Site A, under the dunes to the east of the CTF with the seaward end of the conduit connected to underground cable in

a trench. Commercial power and telecommunications connections would be made from the CTF to facilities at the Fort Moultrie National Monument.

5. *Alternative/Site C - Cherry Point USWTR:* The Site C USWTR would be located offshore of southeastern North Carolina within the Cherry Point OPAREA. The center of the range would be approximately 48 nm (89 km) from shore. The trunk cable would run approximately 47 nm (86 km) from the junction box near the edge of the range to the beach. Onshore, the trunk cable conduit would run under the dunes, the existing roadways, and the Intracoastal Waterway to a CTF located near Onslow Beach, Camp Lejeune. Data signals from the CTF would be sent via microwave transmitter on the Onslow North Tower to the Starling communication site at MCB Camp Lejeune, and then onward to Fleet Air Control Facility (FACSFAC) Virginia Capes (VACAPES) over the existing microwave data link. Commercial power and telecommunications connections would be made from the CTF to the MCB Camp Lejeune infrastructure.

6. *Alternative/Site D - VACAPES USWTR:* The USWTR would be located offshore of the northeastern coast of Virginia. The center of the range would be approximately 46 nm (85 km) from shore in the VACAPES OPAREA. The trunk cable would run approximately 46 nm (85 km) from the junction box near the edge of the range to shore, to a CTF at the National Aeronautics Space Administration Wallops Flight Facility (NASA WFF). The shoreside trunk cable conduit would be installed under the dunes to the east of the CTF, with the seaward end of the conduit connected to underground cable in a trench which would be connected in conduit to bury and protect the cable through the surf zone and under the existing seawall. Commercial power and telecommunications connections would be made to the NASA WFF infrastructure.

ENVIRONMENTAL IMPACTS: The Navy analyzed the potential impacts of the proposed action (including the installation and operation) in terms of the following resource areas: geology, bathymetry, and substrate; water characteristics and currents; plankton and benthos; fish; essential fish habitat (EFH); sea turtles and marine mammals; seabirds and migratory birds; endangered and threatened species; federal agency usage; commercial fishing; recreational fishing; commercial shipping and recreational boating; scuba diving; marine mammal watching; cultural resources at sea; landside impacts; and coastal zone management. The analysis was conducted to determine the significance of impacts in U.S. territory, as defined under

NEPA, and significance of harm in non-territorial waters in accordance with EO 12114. In addition, resources and issues were evaluated under the Clean Water Act (CWA), Clean Air Act (CAA), CZMA, MMPA, ESA, Migratory Bird Treaty Act (MBTA), Bald and Golden Eagle Protection Act (Eagle Act), National Historic Preservation Act (NHPA), Sustainable Fisheries Act (SFA), and Magnuson-Stevens Fishery Conservation and Management Act (MSA).

While the potential for environmental impacts throughout the study area surrounding the proposed installation and operation of the USWTR was analyzed in the Final OEIS/EIS, because impacts associated with the operation of the USWTR will be updated and re-analyzed prior to conducting ASW training on the USWTR, this ROD only summarizes those effects.

Although the impacts associated with the proposed action related to the operation of the USWTR are not detailed below, they have been reviewed and taken into consideration in deciding to install the USWTR in the JAX OPAREA. Specifically, with regard to resources that may be impacted by the operation of the USWTR, no significant impacts were identified for those resources areas within the U.S. territory. No significant harm was identified to those resources beyond the territorial seas. Navy conducted an extensive analysis of the potential impacts of both installation and operation of the USWTR. The Navy recognizes the public's concern with the proposed action's potential impacts on the North Atlantic right whale. Installation activities will not be allowed during the North Atlantic right whale calving season which runs from November 15 to April 15. Potential effects from installation and operation of the USWTR were analyzed using the best available science. The quantitative analysis results associated with the operation of the USWTR are captured in Table 4.3-8 of the Final OEIS/EIS. Other details regarding the potential impacts associated with the operation of the USWTR after installation are presented throughout the Final OEIS/EIS and in Chapter 4 and are considered in this decision.

1. *Physiography*

a. Geology, Bathymetry, and Substrate: Cable installation would temporarily displace some bottom sediments and increase local sedimentation rates as the material returns to the sea floor.

Under NEPA, installation of the USWTR would have no significant impact on geology, bathymetry, or substrate in the

territorial waters or on land as a result of the analysis in the Final OEIS/EIS. Under EO 12114, installation of the USWTR would not cause significant harm to geology, bathymetry, or substrate within non-territorial waters as a result of the analysis in the Final OEIS/EIS. Mitigation measures are not necessary for the resource area.

b. Water Characteristics and Currents: Installation of the cable and transducer nodes would result in a temporary increase in turbidity that would not pose a significant impact, given its limited duration.

Installation of the USWTR would have no significant impact on water characteristics and currents in territorial waters based on analysis in the Final OEIS/EIS. Furthermore, the installation component of the proposed action would not cause significant harm to water characteristics and currents in non-territorial waters as a result of the analysis in the Final OEIS/EIS. Mitigation measures are not necessary for the resource area.

2. *Ecological Impacts*

a. Plankton and Benthos: Installation of the nodes, interconnect cables, and trunk cable may have a temporary impact on benthic organisms due to a localized increase in turbidity within the water column near the seafloor or due to physical damage to benthic corals. Re-colonization of benthic organisms is expected to occur faster in areas containing soft-bottom substrate than in those with hard-bottom substrate. It is not anticipated, however, that pelagic plankton will be adversely impacted since sediments are expected to disperse quickly after construction equipment passes.

Installation of the USWTR would have no significant impact on plankton and benthos in territorial waters as a result of the analysis in the Final OEIS/EIS. Furthermore, installation of the USWTR would not cause significant harm to plankton and benthos in non-territorial waters as a result of the analysis in the Final OEIS/EIS. In order to identify sensitive benthic features in advance of installation, a bottom mapping survey of the seafloor would be undertaken. The results of this bottom mapping effort will allow for strategic placement of the range infrastructure to avoid sensitive benthic resources to the maximum extent practicable.

b. Fish: Ecological groups of fish that occur in the JAX OPAREA include the coastal assemblage, the open shelf assemblage, and the shelf edge assemblage. Cable installation may have a temporary impact on benthic fish during the placement of the transducer nodes and interconnect cable, and the burial of the trunk cable. However, installation of the USWTR would have no significant impact on benthic fish in territorial waters as a result of the analysis in the Final OEIS/EIS. Furthermore, the proposed action would not cause significant harm to benthic fish in non-territorial waters as a result of the analysis in the Final OEIS/EIS. Mitigation measures are not necessary for the resource area.

c. Essential Fish Habitat (EFH): Designated EFH within the location of the Preferred Alternative include benthic substrate, live/hard bottom, artificial/manmade reefs, pelagic *Sargassum*, the water column, currents, nearshore habitats, and habitat areas of particular concern (HAPCs). The South Atlantic Fishery Management Council has also recently designated the North Florida Marine Protected Area (MPA), which lies within the Preferred Alternative Study Area. Installation of the nodes, interconnect cables, and trunk cable may result in a reduction of the quantity and/or quality of some types of EFH. Therefore, installation activities associated with implementation of the Preferred Alternative may adversely affect EFH. To address these potential impacts, the Navy agreed with NMFS that the Navy would avoid to the extent practicable EFH hard bottom habitat during installation of the USWTR. Mitigation associated with this is captured below and involves the use of bottom mapping to identify hard bottom habitats.

Under NEPA, installation of the USWTR would have no significant impact on EFH in territorial waters. Furthermore, under EO 12114, installation of the USWTR would not cause significant harm to EFH in non-territorial waters. Avoidance and minimization of impacts to EFH through Mitigation Related to Cable Installation at Sea (described in "MITIGATION MEASURES" section) is the primary mitigation measure to protect EFH. A complete listing of the entire suite of mitigation measures can be found in the Mitigation Measures section below.

d. Sea Turtles and Marine Mammals: Five species of sea turtles (green, hawksbill, Kemp's ridley, leatherback, and loggerhead) occur in the Preferred Alternative USWTR area. These sea turtle species are classified as endangered with the exception of the green and loggerhead sea turtle, which are classified as threatened. The Florida and Mexican Pacific coast

nesting populations of green turtles are listed as endangered. Green sea turtles from the endangered Florida population may be found in the JAX OPAREA. Green, loggerhead, and Kemp's ridley sea turtles are associated with ocean bottom habitats.

There are 35 marine mammal species with possible or confirmed occurrence in the Preferred Alternative USWTR area, comprising 32 cetacean, 2 pinniped, and 1 sirenian species. Seven federally endangered marine mammals - North Atlantic right whale, humpback whale, sei whale, fin whale, blue whale, sperm whale, and West Indian manatee may occur in the vicinity of the Preferred Alternative JAX USWTR site. While the Preferred Alternative JAX USWTR site is located well offshore from the designated critical habitat for the North Atlantic right whale, the trunk cable would be buried within the confines of the critical habitat. Also, cable installation would be suspended during the North Atlantic right whale calving season (from November 15 through April 15).

(1) ESA and MMPA Conclusions: The period for installing cable is of limited duration and would also not occur during the North Atlantic right whale calving season; thus, there would be an extremely low probability that installation equipment would come into direct contact with any turtle. Marine mammals are not likely to be impacted during installation, as they do not typically utilize sea floor habitat for extended periods of time.

(2) NEPA and EO 12114 Conclusions: Installation activities will not be allowed during the North Atlantic right whale calving season which runs from November 15 to April 15. There would be no significant impact to marine mammals or sea turtles in territorial waters from the proposed installation as a result of the analysis in the Final OEIS/EIS. There would be no significant harm to marine mammals or sea turtles in non-territorial waters associated with installation of the USWTR as discussed in the Final OEIS/EIS. In order to mitigate potential impacts, lookouts will be posted on all installation vessels to alert the vessels' captains if marine mammals or sea turtles are present in the vicinity of the ship.

e. Seabirds and Migratory Birds: Installation activities would primarily be limited to the ocean bottom and are, therefore, unlikely to impact birds.

Installation of the USWTR would have no significant impact on seabirds and migratory birds in territorial waters as a

result of the analysis in the Final OEIS/EIS. Furthermore, the proposed activities would not cause significant harm to seabirds and migratory birds in non-territorial waters as a result of the analysis in the Final OEIS/EIS. Mitigation measures are not necessary for the resource area.

f. Endangered and Threatened Species: Two ESA-listed fish species were considered in the analysis of potential impacts. The shortnose sturgeon is not expected to occur in the Atlantic Ocean portion of the JAX Study Area. It is also considered rare that the smalltooth sawfish could be found in the JAX OPAREA. Only two encounters have been recorded within the boundaries of the JAX OPAREA. Critical habitat for species other than the North Atlantic right whale has not been designated under the ESA within the JAX OPAREA. One candidate species, the Atlantic sturgeon, may occur in the JAX Study Area. The analysis included consideration for 12 species of concern. Five sea turtle species occur within the Preferred Alternative USWTR site.

There are two threatened or endangered birds - the Bermuda petrel and the roseate tern - that may occur within the proposed range area. However, the Bermuda petrel will rarely occur along the east coast, preferring to nest on islets off Bermuda. Moreover, the roseate tern prefers beaches and sandbars.

The in-water construction from range installation may affect ESA-listed sea turtles and marine mammals at the Preferred Alternative JAX OPAREA site. In the JAX OPAREA, the North Atlantic right whale designated critical habitat extends to 15 nm (28 km) from the coast. The trunk cable would need to be installed through this critical habitat in order to connect the proposed range to the landside cable termination facility. Installation activities will not be allowed for the Preferred Alternative site between November 15 and April 15 of any year to protect North Atlantic right whales during their calving season. In addition, all cable installation vessels will be required to have lookouts that assist in advising the captain when a marine mammal or sea turtle is in vicinity of the vessel. Pursuant to Section 7 of the ESA, the Navy consulted with NMFS on potential impacts of USWTR installation on ESA-listed sea turtles and marine mammals, and on North Atlantic right whale critical habitat. NMFS provided Navy with a biological opinion (BO) on July 28, 2009, concluding that the installation may affect, but is not likely to adversely affect these endangered species and that ASW training activities on the USWTR, once it is installed, are likely to adversely affect but are not likely to jeopardize the continued existence of these endangered and threatened

species. NMFS's BO also concluded that the installation and ASW training on USWTR, once it is installed, may affect, but are not likely to result in the destruction or adverse modification for these endangered and threatened species.

There will be no effect on threatened or endangered seabirds from the installation phase and operation phase of the USWTR.

3. Socioeconomic Environment

a. Federal Agency Usage: The general area of the Preferred Alternative site is a major area of military use, primarily by the Navy and Marines. FACSFAC JAX would centrally manage scheduling military use of the USWTR to avoid conflicts with other activities in the JAX OPAREA.

(1) NEPA and EO 12114 Conclusions: Installation of the USTWR in the Preferred Alternative JAX OPAREA site would have no significant impact on military activity or other federal agency usage in territorial waters or on land. Also, the proposed installation action would not cause significant harm to military activity or other federal agency usage in non-territorial waters. Mitigation measures are not necessary for the resource area.

b. Commercial Fishing: It is anticipated that there would be little potential interaction between the trunk cable and fishing gear, including bottom-dragged fishing equipment. Additionally, a portion of the proposed range site has been designated a marine protected area by NMFS, precluding the use of certain types of fishing gear.

Installation of the USWTR would have no significant impact on commercial fishing in territorial waters. Furthermore, installation would not cause significant harm to commercial fishing in non-territorial waters. Mitigation measures are not necessary for the resource area.

c. Recreational Fishing: While recreational fishing is popular in the JAX OPAREA, most recreational fishing and boating occurs within a few miles of shore and is expected to be infrequent in the vicinity of the Preferred Alternative JAX OPAREA site. A delay or immediate hold on the exercise would be considered if any recreational fishing or other vessel enters the vicinity of the exercise. Additionally, a portion of the proposed range site has been designated a marine protected area by NMFS, precluding the use of certain types of fishing gear.

Installation of the USWTR would have no significant impact on recreational fishing in territorial waters. Furthermore, installation of the USWTR would not cause significant harm to recreational fishing in non-territorial waters. Mitigation measures are not necessary for the resource area.

d. Commercial Shipping and Recreational Boating: Installation of the range cables, nodes, and sensors at the proposed action site would have no significant impact on commercial shipping or recreational boating in territorial waters. In addition, the installation of the USWTR would not cause significant harm to commercial shipping or recreational boating in non-territorial waters. Mitigation measures are not necessary for the resource area.

e. Scuba Diving: Installation of the USWTR would have no significant impact on scuba diving in territorial waters. Furthermore, installation of the USWTR would not cause significant harm to scuba diving in non-territorial waters. Mitigation measures are not necessary for the resource area.

f. Marine Mammal Watching: Marine mammal watching (e.g., whale- and dolphin-watching), includes tours by boat, aircraft, or from land to view cetaceans. The cetaceans most desired for whale watching include whales, dolphins, and porpoises. Whale watching in the southeast occurs within a few miles of shore and rarely in areas between 3 and 12 nm from the coast. Very few tours are conducted in the vicinity of the Preferred Alternative site.

Nearshore activities involving installation of the USWTR would be a relatively short-term event that would have no significant impact to marine mammal watching in territorial waters. Furthermore, there would be no significant harm to marine mammal watching in non-territorial waters. Mitigation measures are not necessary for the resource area.

5. Cultural Resources at Sea: Shipwrecks and/or obstructions are known to occur within the JAX OPAREA. Known shipwreck locations will be avoided during installation. If an unknown shipwreck is discovered during the survey of the trunk cable corridor or within the range boundaries, its location would be documented so that it could be avoided in the placement of the nodes and the cables. If an unknown shipwreck is found, the Navy would consult with the State Historic Preservation Office pursuant to Section 106 of the NHPA.

a. NHPA Conclusions: The Navy obtained provisional concurrence on a finding of "no historic properties affected" on the installation of the range infrastructure from the Florida Division of Historic Resources.

b. NEPA and EO 12114 Conclusions: Installation of the USWTR in the Preferred Alternative JAX OPAREA site would have no significant impact on cultural resources at sea in territorial waters. Furthermore, the proposed installation activities would not cause significant harm to cultural resources at sea in non-territorial waters. Impacts to cultural resources at sea will be further avoided and minimized through the performance of a bottom mapping survey that will serve to identify previously unidentified shipwrecks.

6. Landside Impacts: There would be no land use impacts at the Preferred Alternative landfall site.

a. NEPA Conclusions: Installation of the USWTR in the Preferred Alternative JAX OPAREA site would have no significant impact on land use. Mitigation measures are not necessary for the resource area.

b. Socioeconomics: There would be no displacement of persons associated with implementation of landside components of the USWTR's installation. With respect to the EO on environmental justice (EO 12898), installation of the USWTR in the Preferred Alternative JAX OPAREA site would not result in disproportionately high and adverse environmental or health impacts on minority or low-income populations. In regard to EO 13045 involving protection of children from environmental health risks and safety risks, Installation of the USWTR in the Preferred Alternative JAX OPAREA site would not pose disproportionate environmental health and safety risks to children.

Installation of the USWTR in the Preferred Alternative JAX OPAREA site would have no significant impact on socioeconomics. Mitigation measures are not necessary for the resource area.

c. Wetlands: There are no National Wetland Inventory - identified wetlands at the Preferred Alternative landfall site. While installing the landside portion of the trunk cable, if wetlands occur in the proposed route of the trunk cable, directional drilling would be used to avoid wetlands to the maximum extent practicable. No impacts to estuarine and/or

freshwater wetlands are anticipated with installation of the USWTR in the Preferred Alternative JAX OPAREA site.

Installation of the USWTR in the Preferred Alternative JAX OPAREA site would have no significant impact on wetlands. Mitigation measures are not necessary for the resource area.

d. Threatened and Endangered Species: At the Preferred Alternative landfall location, the construction of the USWTR would have no effect on the wood storks observed near NS Mayport, as there are no documented nests in the immediate vicinity of the proposed CTF. With respect to sea turtles, current conservation measures in place at NS Mayport beach would result in no effect to any nesting sea turtles that may occur. Manatees would also not be affected.

(1) ESA Conclusions: There will be no effect on threatened or endangered species from installation of the landside facilities of the CTF at the Preferred Alternative landfall site.

(2) NEPA Conclusions: Installation of the USWTR in the Preferred Alternative JAX OPAREA site would have no significant impact on threatened or endangered species. Mitigation measures are not necessary for the resource area.

e. Essential Fish Habitat: A very small area of nearshore EFH would be impacted by the process of burying the trunk cable in the corridor that connects the USWTR with the CTF at NS Mayport. The maximum area potentially impacted in the process of burying the trunk cable is estimated as a 16.4-ft (5-m) wide path.

(1) SFA and MSA Conclusions: Installation of the USWTR at the Preferred Alternative landfall site may adversely affect EFH. Hard bottom nearshore EFH could experience a reduction of the quantity and/or quality and therefore may be adversely affected. The Navy completed consultation with the NMFS regarding actions that could be taken to avoid or minimize potential impacts of the construction or operation of the USWTR on EFH. A copy of this letter can be found on the project website, http://projects.earthtech.com/uswtr/USWTR_index.htm.

(2) NEPA Conclusions: Installation of the USWTR in the Preferred Alternative JAX OPAREA site would have no significant impact on EFH.

f. Migratory Birds: Although migratory birds utilize beach habitats as foraging habitat, the construction of the landside facilities at the Preferred Alternative landfall site would have no significant impact on foraging activities. The construction activities would be temporary and there are ample foraging grounds for migratory birds in the region.

Installation of the USWTR in the Preferred Alternative JAX OPAREA site would have no significant impact on migratory birds. Mitigation measures are not necessary for the resource area.

g. Vegetation and Soils: Minimal clearing of existing maritime scrub/shrub vegetation would be required at the Preferred Alternative landfall site. While there would be short-term impacts such as the disturbance of soil and vegetation during the construction phase, the landfall area would be returned to pre-disturbance grade and stabilized; thus, there would be no long-term impacts to soils or vegetation at the Preferred Alternative landfall site.

Installation of the USWTR in the Preferred Alternative site would have no significant impact on vegetation and soils. Mitigation measures are not necessary for the resource area.

h. Floodplain Management: Installation of the Preferred Alternative landside facilities at NS Mayport would require construction within the floodplain. The Navy has determined that there is no other practicable alternative that would avoid construction in the floodplain, as the USWTR trunk cable must come ashore and connect to a CTF near the shoreline. Construction of the Preferred Alternative landside facilities would not result in impacts to beneficial uses of the floodplain.

Installation of the USWTR in the Preferred Alternative site would have no significant impact on floodplain management. Mitigation measures are not necessary for the resource area.

i. Cultural Resources: There would be no impacts to cultural resources at landfall for installation of the USWTR in the Preferred Alternative JAX OPAREA site.

(1) National Historic Preservation Act Conclusions: The Navy consulted with the state of Florida's Division of Historical Resources regarding potential impacts to historic resources associated with the construction of landside facilities at the Preferred Alternative landfall site. The

Division of Historical Resources concurred with the Navy's determination that the landside installation of the trunk cable would not affect known historic properties.

(2) NEPA Conclusions: Installation of the USWTR in the Preferred Alternative JAX OPAREA site would have no significant impact on cultural resources. Mitigation measures are not necessary for the resource area.

j. Air Quality: There would be no new sources of air pollutants at the landside facility at the Preferred Alternative landfall site. Furthermore, the CAA conformity rules would not apply to the landside facilities or in near-shore areas within the 3 nm (6 km) jurisdiction of the CAA, as they would be within an attainment area for all criteria pollutants. Air quality impacts from construction activities would be from fugitive dust generated on site, and mobile source emissions from construction vehicles and worker automobiles. These impacts would be minor and would be short-term in nature.

Installation of the USWTR in the Preferred Alternative site would have no impact on air quality. Mitigation measures are not necessary for the resource area.

k. Hazardous Materials: Onshore construction and operation of the Preferred Alternative landside facilities would not result in significant quantities of hazardous materials being used or generated. Small quantities of standard maintenance and repair materials (e.g., solder flux, flux remover, isopropyl alcohol, and petroleum products) may be used as needed and would be disposed of in accordance with all applicable regulations.

Installation of the USWTR in the Preferred Alternative site would have no significant impact on hazardous materials. Mitigation measures are not necessary for the resource area.

7. Coastal Zone Management: Federal agency activities affecting a land or water use, or natural resource of a state's coastal zone must be consistent to the maximum extent practicable with the enforceable policies of the state's coastal management program. The Navy has reviewed the coastal consistency policies enforced by the states of Florida and Georgia associated with the Preferred Alternative. Additional details regarding compliance with the CZMA are provided in the later section on compliance with environmental laws.

MITIGATION MEASURES

As explained previously, this ROD implements only a portion of the Preferred Alternative, the installation of the USWTR at Site A in the JAX OPAREA. Therefore mitigation measures related to the operational use of the range are not discussed in detail in this ROD. The Final OEIS/EIS at Chapter 6 provides a full analysis and discussion of relevant mitigation measures. As noted, prior to conducting ASW training on the USWTR the Navy will submit an application to NMFS for an incidental take authorization pursuant to the MMPA. At that time, NMFS and Navy will review the Navy's mitigation measures for ASW training on the USWTR. In addition, the Navy will reinitiate consultations with the NMFS on the training activities the Navy will propose to conduct on the USWTR when the Navy consults with the NMFS on the appropriate MMPA incidental take authorization. The Navy's analysis of potential exposure effects will be updated, if necessary, to reflect the best available science at that time.

1. *Mitigation Related to Cable Installation at Sea*

a. Lookouts will be posted on all vessels participating in the cable installation processes, to observe for marine mammals and sea turtles. Lookouts would advise the Captain to the presence of a marine mammal or sea turtle, in order to prevent entanglement or ship strike.

b. Lookouts will observe for *Sargassum* mats, and inform the Captain, to facilitate avoiding the mats to the maximum extent possible.

c. Cable installation will be suspended during the North Atlantic right whale calving season (from November 15 through April 15).

d. A bottom mapping plan and survey will be completed prior to commencement of cable installation. The survey will utilize methodologies such as multi-beam sonar, photography and videography of bottom features, and biological and geological sampling. Information gained from this mapping effort would allow for the identification of important biological and physical features, such as biogenic reef formations, live/hardbottom and other structural habitat, such as shipwrecks. Knowledge of the presence of these features would allow for their avoidance to the maximum extent practicable. The bottom mapping plan will be provided to NMFS and will

provide additional detail on the methods for developing habitat maps of the seafloor.

e. A mitigation plan for offsetting the potential loss of EFH will be completed prior to commencement of cable installation. The plan will focus on avoidance and minimization of potential impacts to EFH and be based on the results of the bottom mapping survey. NMFS will assist the Navy in developing this plan, prioritizing specific locations of live/hardbottom habitat for avoidance, and scoping mitigation options, should they prove necessary.

2. Mitigation Related to Landside Installation: The only potential adverse landside environmental impacts anticipated at NS Mayport beach could be to protected species. There could be temporary impacts to the nesting activities of the federally threatened loggerhead sea turtle, and endangered green sea and leatherback turtles if installation occurs during nesting months. Under such circumstances, consultation with the USFWS would be conducted before initiating any construction activities. Nesting areas will likely be completely avoided through the use of horizontal directional drilling under beach habitats. No additional mitigation measures will be required at the landfall site.

CUMULATIVE IMPACTS: The Final OEIS/EIS analyzed cumulative impacts associated with implementation of Navy-sponsored activities and other non-Navy activities in the region. The analysis of cumulative impacts considered the effects of the Preferred Alternative in combination with other past, present, and reasonably foreseeable future actions taking place in the JAX OPAREA regardless of what agency or person undertakes these actions. Activities included in the Final OEIS/EIS cumulative impact analysis included commercial and recreational fishing; onshore and offshore liquefied natural gas facilities; exploration, extraction, and production of oil, gas, and alternative energy on the outer continental shelf; state regulated oil and gas activities; dredging operations; maritime traffic; seismic surveys; scientific research; expended materials; environmental contaminants and biotoxins; marine tourism; National Aeronautics and Space Administration activities; military operations; implementation of vessel operational measures to reduce ship strikes to North Atlantic right whales, and AFAST activities.

Most of the summary conclusions on past, present, and reasonably foreseeable future actions for the resources evaluated

were no adverse impacts and potential for minor, but recoverable, adverse impacts. There were fewer summary conclusions categorized as potential for moderate, but recoverable, adverse impacts. No summary conclusions were characterized as potential for major, non-recoverable, adverse impacts. Table 4.8-5 in the Final OEIS/EIS provides a summary of cumulative impacts by resource area.

COMPLIANCE WITH ENVIRONMENTAL LAWS:

1. **MMPA:** Before ASW training commences on the USWTR in 2014/2015, the Navy will submit, at a later date, a request for regulations and a Letter of Authorization pursuant to Section 101(a)(5)(A) of the MMPA for the incidental taking of marine mammals.

2. **ESA:** In accordance with 50 CFR Section 401.12, the Navy prepared a separate Biological Assessment (BA) to assess the potential effects from the Proposed Action on marine resources and anadromous fish (which live in saltwater but spawn in freshwater) protected by NMFS under the ESA.

As part of the environmental documentation for the Final OEIS/EIS, the Navy initiated informal consultation on December 14, 2004 and formal consultation on October 20, 2005 with NMFS. Subsequently, based on the revised Draft OEIS/EIS, a new BA was prepared that assessed effects to listed species associated with the proposed installation and operation at the Navy's Preferred Alternative JAX OPAREA site. Species that may be affected by the installation of and training on the proposed USWTR include the North Atlantic right whale, humpback whale, sei whale, fin whale, blue whale, sperm whale, loggerhead sea turtle, Kemp's ridley sea turtle, leatherback sea turtle, green sea turtle, and hawksbill sea turtle. However, as stated earlier in this document, the Navy's section 7 consultation under the ESA is only with regard to the installation of the range. Navy will initiate another formal consultation under Section 7 of the ESA to address ASW training on the USWTR in the 2014/2015 timeframe.

In accordance with 50 CFR Section 401.12, by letter dated October 16, 2008, the Navy submitted a Biological Assessment for USWTR which evaluates the potential effects from the proposed action on marine resources to the NMFS Office of Protected Resources. The letter stated that the Navy has determined that the installation of the proposed USWTR may affect the following species: North Atlantic right whale, humpback whale, sei whale, fin whale, blue whale, green sea turtle, hawksbill sea turtle,

Kemp's ridley sea turtle, leatherback sea turtle, and loggerhead sea turtle.

3. CZMA: Federal agency activities affecting a land or water use, or natural resource of a state's coastal zone must be consistent to the maximum extent practicable with the enforceable policies of the state's approved coastal management program. The Navy has reviewed the coastal consistency policies enforced by the states of Florida and Georgia associated with the Preferred Alternative.

In accordance with the CZMA, the Navy has reviewed the enforceable policies of Florida and Georgia's Coastal Zone Management Plan (CZMP) because of their location adjacent to the USWTR Preferred Alternative Site, within the JAX OPAREA. Based on the location of USWTR activities, the enforceable policies of each state's CZMP, and pursuant to 15 CFR section 930.39, the Navy prepared a Consistency Determination for the state of Florida and a Negative Determination for the state of Georgia. The Navy submitted these determinations by letters dated April 29, 2009 to each state. Both letters are available on the USWTR website at http://projects.earthtech.com/uswtr/USWTR_index.htm.

a. Response to Consistency Determinations

(1) Florida: By letter dated May 12, 2009, a response was sent by the Florida Department of Environmental Protection (DEP) in response to the Coastal Zone Consistency Determination submitted by the Navy. The DEP letter indicated that they did not object to the proposed USWTR but had concerns regarding: (1) the evaluation of USWTR to federal waters that could affect Florida's coastal and marine resources, (2) impacts to the North Florida Marine Protected Area, and (3) impacts to benthic habitat from construction and marine debris released during training exercises on the range.

After further dialogue, the Navy proposed to address the three concerns stated above through a phased consistency determination approach provided for in 15 C.F.R. section 930.36(d) by evaluating the planning, design and installation of the USWTR in relation to the Florida Coastal Management Program (FCMP) at this time. Because operation of the USWTR is not anticipated to occur until at least 2014, updated analysis and decision making will be conducted closer in time to the date when the training will begin. Under the phased consistency determination approach, the Navy will submit another coastal consistency determination to Florida DEP to address the training on the USWTR in 2014/2015 timeframe.

In a letter dated July 27, 2009, Florida DEP concurred with the phased consistency approach and provided a finding that the planning, design, and construction phase of the USWTR project is consistent with the provisions of the FCMP with two conditions:

(i) The Navy will conduct benthic habitat studies to determine the location of benthic resources in the area. The benthic resource information should be obtained using survey protocols outlined in Florida DEP's letter of November 3, 2008. The Navy will provide the state with the results and analyses of the data collected as soon as it becomes available. Information shall include detailed maps depicting the location and type of benthic resources, as well as the location of proposed structures and cables, with video and still photography collected. Florida will work cooperatively with the Navy in the analyses and assist in determining areas that should be avoided during planning, designing and/or constructing the sonar grid for USWTR. A final report discussing resources identified and the estimated impacts of proposed structures and cables shall be submitted to the Florida DEP. Where impacts to benthic resources cannot be avoided, the Navy will be required to mitigate for those impacts.

(ii) The construction phase of the proposed USWTR project shall not occur during the North Atlantic right whale calving season (November 15 through April 15).

The Navy has previously committed to both of these measures during consultations with the National Marine Fisheries Service (NMFS) under the Endangered Species Act and the Magnuson-Stevens Fisheries Conservation and Management Act. The Navy fully intends to carry out these requirements in accordance with those statutory requirements. The Navy will ensure that the information is shared with Florida.

(2) **Georgia:** The Georgia Coastal Resources Division (CRD) disagreed with the Navy's negative determination by letter dated June 26, 2009. A copy of the letter is available on the USWTR website at <http://projects.earthtech.com/uswtr/index.htm>. In summary, Georgia CRD was concerned that the mitigation measures outlined in the USWTR Final OEIS/EIS fail to adequately protect North Atlantic right whales and their habitat from the potential impact of mid-frequency active sonar (MFAS) and a right whale/vessel collision. After further dialogue, the Navy proposed a phased consistency determination provided for in 15 C.F.R. section 930.36(d) evaluating the planning, design and installation of the USWTR in relation to the Georgia Coastal Management Program (GCMP). Georgia CRD concurred by letter

dated July 20, 2009 that the planning, design and construction of USWTR complies to the maximum extent practicable with the GCMP. This letter is also available on the USWTR website mentioned earlier in this paragraph.

Because training on the USWTR is not anticipated to occur until at least 2014, updated analysis and decision making will be conducted closer in time to the operational date. That further decision making will be done in conjunction with appropriate coordination and consultation with NMFS and after compliance with applicable laws and executive orders including the MMPA, the ESA, NEPA, and the CZMA as they relate to training on USWTR. The Navy will evaluate the operation of USWTR with regard to the enforceable policies of the GCMP and submit a determination at a future date.

Georgia CRD in its letter of July 20, 2009, requested that the Navy consider "[i]n situ measurements of MFA sonar equipment and a passive acoustic array" to validate the accuracy of the acoustic effects model at the Preferred Alternative JAX OPAREA site. In response, the acoustic effects model used to analyze active sonar's effects on marine mammals was the result of coordination between Navy and the NMFS. The critical component in how sonar energy propagates over an area, the Navy's acoustic propagation model (CASS/GRAB), has been validated by Navy and non-Navy experts because the accuracy of the model is important not only for training events, but also actual ASW operations.

Also, Georgia CRD suggested that the Navy consider "[l]ong-term acoustic monitoring of the calving grounds adjacent to the USWTR should be integrated into the Integrated Comprehensive Monitoring Program (ICMP)."¹ In consideration of the four to five year period between now and installation of USWTR, the Navy will continue to collect data on the surrounding marine environment. For example, for the foreseeable future the Navy will utilize HARP buoys to gather acoustic information, including marine mammal vocalizations. Also, the Navy will conduct surveys utilizing surface vessels and aircraft throughout the year, including during the North Atlantic right whale calving season. The surveys will take place at the USWTR location and in the sea space between the eastern edge of the critical habitat for the North Atlantic right whale and the

¹ The ICMP was prepared pursuant to NMFS' incidental take authorization for AFAST for evaluation of training activities involving the use of active sonar and its effects on marine mammals. There is approximately 30 nm between the calving grounds and the western edge of where the USWTR will be installed. The USWTR is therefore not adjacent to the calving grounds.

western edge of the proposed USWTR. Hydrophones on the USWTR themselves, once installed, will afford the ability to gather information about marine mammal presence. Three universities are assisting the Navy in this effort: Duke University, University of North Carolina - Wilmington, and University of Saint Andrews, Scotland. All of the data collected will inform the Navy's future MMPA incidental take authorization application, ESA consultation, and any updated NEPA and EO 12114 analysis for use of the USWTR. Finally, the Navy is committed to adaptive management and the data collection efforts discussed above will be used in the development of mitigation measures for ASW training on USWTR in consultation with the NMFS.

Finally, Georgia CRD recommended that all Navy vessels 65 feet or longer operate at speeds of 10 knots or less when transiting within the Southeast U.S. Seasonal Management Area between November 15 and April 15 annually with two exceptions: (a) vessels may operate at speeds greater than 10 knots as necessary to maintain safe steerage and navigation; and (b) vessels may operate at speeds greater than 10 knots when engaged in combat, activities in support of combat, or other defense activities requiring greater vessel speeds. Navy advised Georgia that the Navy consulted with NMFS under Section 7 of the ESA which resulted in a Programmatic Biological Opinion dated June 5, 2009, for Navy training along the East coast which included an evaluation of vessel transit and the potential for a ship strike.² NMFS did not impose a term or condition on the Navy in the Programmatic Biological Opinion based on the evaluation of the Navy's mitigation measures which includes the use of the Early Warning System (EWS) to alert ships and aircraft of the presence of North Atlantic right whales and the limitation on certain types of training that can take place during the North Atlantic right whale calving season (November 15 to April 15 annually).

4. NHPA: The Navy conducted a hydrographic survey of the proposed path of the trunk cable in 2008. That survey assessed cultural features that are likely to be in the path, to allow for planning of a route that will minimize impact to cultural resources. The Navy initiated consultation with the state of Florida's Division of Historic Resources regarding potential impacts to historic resources (*i.e.*, shipwrecks) through the construction of and training on the USWTR on May 15, 2009,

² Programmatic Biological Opinion for Navy Activities in the JAX Range Complex from June 2009 to June 2014, dated June 5, 2009, is available at the following website: http://www.jacksonvillerrangecomplexeis.com/documents/VACAPES-JAX-CHP_ProgBiOps_2009_signed_060509.pdf

pursuant to Section 106 of the NHPA. By letter dated June 3, 2009, the Florida Department of State, Division of Historic Resources stated that "it is the opinion of this office that the proposed undertaking will likely have no adverse effect on historic properties. However, we cannot make a final determination of undertaking effects until we receive and review a copy(ies) of the hydrographic surveys of the trunk cable corridor and range area."

5. MSA: The Navy prepared an EFH assessment and concluded that EFH may be adversely affected by the installation and operation of an USWTR offshore of Jacksonville, Florida. Pursuant to the MSA, the Navy requested initiation of the EFH consultation process with NMFS on April 23, 2009. In a June 19, 2009, letter, NMFS responded to the Navy and described a recommended path forward agreed to by both agencies, and acknowledged that the procedural goals for implementing the EFH requirements of the MSA were satisfied and that EFH conservation recommendations were not needed at this time. A copy of this letter can be found on the project website at http://projects.earthtech.com/uswtr/USWTR_index.htm.

NMFS and Navy agreed to further collaborate to establish an approach for improving coordination on data collection efforts and sharing such data to the extent national security and other Navy restrictions allow. As data collection and other research results in new habitat data, the Navy will continue to reassess and incorporate such information into future environmental planning for USWTR. This approach may include: (1) NMFS identifying specific, finite areas of known or potential deepwater habitats of concern; (2) the Navy providing the areas where current/proposed activity would result in high use of expended materials that could potentially disturb bottom habitats; and (3) NMFS and the Navy agree to further assess those areas in future environmental planning documents once areas of overlap are identified.

In addition, the Navy and NMFS agreed that a habitat mapping plan and mitigation plan should be developed. Specifically, the Navy agreed to: (1) provide NMFS with a plan for developing habitat maps of the seafloor and for incorporating that information into the further refinements of the plans for the installation and operation of USWTR, including the trunk cable corridor (this plan will include specific measures that will be implemented to avoid and minimize adverse effects to shelf edge habitats, including those found within the North Florida MPA); and (2) provide a sequential mitigation plan to offset the loss of EFH that focuses first on avoidance and

minimization, based on the results of the additional studies that will occur during the planning of USWTR (NMFS will assist the Navy in developing this plan, prioritizing specific locations of live/hardbottom habitat for avoidance, and scoping mitigation options, should they prove necessary).

CHANGES BETWEEN THE 2008 DRAFT AND 2009 FINAL OEIS/EIS: As a result of comments received to the 2005 USWTR Draft OEIS/EIS, the availability of new data since the 2005 documents were published, and some modification of the methodology used to analyze behavioral impacts on marine mammals from acoustic sources during training activities on the proposed range, the Navy decided to issue a completely revised Draft OEIS/EIS. The 2008 Draft OEIS/EIS included the evaluation of an additional alternative (Charleston USWTR) and the operationally Preferred Alternative was changed from the Cherry Point USWTR site to the JAX USWTR site. Similar to comments received during the 2008 scoping, comments received on the 2008 Draft OEIS/EIS did not require significant revisions in the Final OEIS/EIS. There were revisions which are reflected in the Final OEIS/EIS that were made to reflect new operational concerns, revised capabilities, and relocation of Fleet assets. The Final OEIS/EIS incorporated, and formally responded to, all public comments received on the 2008 Draft OEIS/EIS. The NOA of the Final OEIS/EIS was published in the Federal Register, in various newspapers, and on the project website, http://projects.earthtech.com/uswtr/USWTR_index.htm.

RESPONSES TO COMMENTS ON THE FINAL OEIS/EIS: The NOA of Availability of the Final OEIS/EIS was published in the Federal Register on June 26, 2009 (74 Fed. Reg. 30570), in various newspapers, and on the USWTR OEIS/EIS Web site. Release of the Final OEIS/EIS was followed by a 30-day wait period. The Navy reviewed and considered all comments received during the wait period following the issuance of the NOA. The Navy received two comments on the Final OEIS/EIS. The first was a statement of general opposition to the USWTR being installed and operated. The second was provided by the U.S. Environmental Protection Agency (EPA) Region IV concerning expended material. This comment received from EPA Region IV, which is discussed in the next paragraph, reiterated a comment it submitted on the 2008 Draft OEIS/EIS.

EPA Region IV Comment: EPA Region IV reiterated a concern raised in its review of the Draft OEIS/EIS related to the "deposition of expended training material and their accumulation

over time". The Region also reiterated its request that the Navy commit to "specific commitments to conduct marine-based monitoring" within the context of the Navy's ICMP for USWTR.

In its response to the EPA Region IV comment on the Draft OEIS/EIS, the Navy stated that the ICMP has been defined by the Navy as relevant only to MMPA and ESA issues involving marine mammals and sea turtles. Accordingly, it is not the appropriate venue to address monitoring associated with expended training materials.

The Final OEIS/EIS concluded no significant impact or harm would result from the deposition of expended training material, and as such, committing to "specific" monitoring efforts would be premature at this time. The Navy, however, is committed to ensuring the long-term sustainability of water ranges and at sea operating areas, and has indicated its interest in working with applicable regulators on increasing the knowledge level of the potential effects of military expended training materials on the environment.

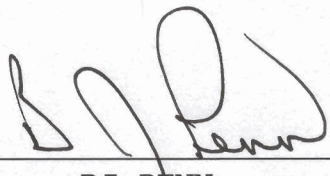
Finally, at this time the Navy is implementing only a portion of the proposed action, a decision to move forward with installation of the USWTR. Installation consists of the USWTR's planning, design, and construction. Because use of the USWTR is not anticipated to occur until at least 2014, the analysis for use will be updated in time to support decision-making related to training activities. The updated analysis and decision will include the best available science for potential impacts from use of the USWTR. That decision-making will also include appropriate coordination and consultation with NMFS and after compliance with applicable laws and EOs, including the MMPA, the ESA, NEPA and the CZMA as they relate to use of the USWTR.

CONCLUSIONS: In determining whether to develop a USWTR at the Preferred Alternative site, the following factors were considered: the Congressional mandates in U.S. Code, Title 10, Section 5062; existing assets and capabilities of the Atlantic Fleet; the Navy and DoD's operational and training requirements; environmental impact, the training and maintenance of ships and aircraft, and training of personnel; and comments received during the OEIS/EIS process.

After carefully weighing all of these factors and analyzing the data presented in the Final OEIS/EIS, I have determined that installation of the USWTR in the JAX OPAREA site best meets the requirements for the Navy training activities. While both the

installation and operation of the USWTR are fully analyzed in the Final OEIS/EIS, and informs the decision as to the site selected for installation of the USWTR, this Record of Decision implements only a portion of the proposed action by authorizing the installation of the USWTR. In addition to the specific mitigation measures identified in this ROD and discussed in the Biological Opinion, the Department of Navy will continue to review during the installation of the range its procedures and coordinate with other federal, state, and local entities as necessary to determine if any additional mitigation measures are necessary, feasible and practicable.

31 July 2009
Date



BJ PENN
Assistant Secretary of the Navy
(Installations and Environment)