



AUG 13 2012

RECORD OF DECISION  
ISSUANCE OF MARINE MAMMAL PROTECTION ACT (MMPA) REGULATIONS  
TO TAKE MARINE MAMMALS INCIDENTAL TO U.S. NAVY OPERATIONS OF  
SURVEILLANCE TOWED ARRAY SENSOR SYSTEM LOW FREQUENCY  
ACTIVE SONAR

Supported by: U.S. Navy Final Supplemental Environmental Impact Statement /  
Supplemental Overseas Environmental Impact Statement for Surveillance Towed Array  
Sensor System Low Frequency Active (SURTASS LFA) Sonar

National Oceanic and Atmospheric Administration  
National Marine Fisheries Service  
Office of Protected Resources  
Silver Spring, Maryland

In accordance with the National Environmental Policy Act (NEPA) and its implementing regulations and the National Oceanic and Atmospheric Administration's (NOAA) Administrative Order 216-6 Environmental Review Procedures for Implementing the National Environmental Policy Act, this document comprises NOAA's National Marine Fisheries Service's (NMFS) Record of Decision (ROD) for issuance of regulations pursuant to section 101(a)(5)(A) of the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1361 *et seq.*) for the taking of marine mammals by the U.S. Navy incidental to conducting operations of SURTASS LFA sonar on a maximum of four naval surveillance vessels in areas of the Pacific, Atlantic, and Indian Oceans and the Mediterranean Sea.

## I. INTRODUCTION

In August 2011, NMFS received an application from the Navy requesting five-year regulations and authorizations for the take of 94 species of marine mammals, by harassment, incidental to conducting SURTASS LFA sonar operations in areas of the world's oceans for the period of August 2012 through August 2017. These activities may incidentally take marine mammals present within areas of the Atlantic, Pacific, and Indian Oceans and the Mediterranean Sea by exposing them to sound from low-frequency active sonar at levels that NMFS associates with the take of marine mammals as defined by the MMPA. NMFS' issuance of MMPA regulations to the Navy governing the incidental take of marine mammals is a Federal action for which NMFS is responsible for analyzing the effects on the human environment pursuant to NMFS' NEPA procedures. NMFS participated as a cooperating agency in the development of the Navy's 2012 Final Supplemental Environmental Impact Statement/Supplemental Overseas Environmental Impact Statement (hereinafter FSEIS/SOEIS), which contained an analysis of the effects of the Navy's activities on the human environment. NMFS worked closely with the

Navy to provide information in NMFS' area of expertise to support the FSEIS/SOEIS' effects analyses for endangered species, marine mammals, and other marine resources. In accordance with the NEPA regulations at 40 CFR 1506.3, NMFS analyzed the FSEIS/SOEIS and concluded that NMFS' comments and suggestions have been addressed. NMFS adopted the Navy's FSEIS/SOEIS in August 2012.

#### A. NAVY PROPOSED ACTION

As described in the FSEIS/SOEIS, the Navy proposes to operate up to four SURTASS LFA sonar systems within areas of the Atlantic, Pacific, and Indian Oceans and the Mediterranean Sea (except for Arctic and Antarctic waters, coastal regions as specified in this rule, and offshore biologically important areas (OBIAs)) for routine training and testing as well as for the use of the system during military operations.

The purpose of SURTASS LFA sonar is to provide the Navy with a reliable and dependable system for long-range detection of quieter, harder-to-find submarines. Low-frequency sound travels in seawater for greater distances than higher frequency sound used by most other active sonars. According to the Navy, the SURTASS LFA sonar system would meet the Navy's need for improved detection and tracking of new generation submarines at a longer range.

The Navy evaluated conducting current and future training, testing, and use of the SURTASS LFA sonar systems during military operations in the FSEIS/SOEIS.

#### B. NMFS' MMPA DECISION AUTHORITIES

Sections 101(a)(5)(A) and (D) of the MMPA direct the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region during periods of not more than five consecutive years if certain findings are made and regulations are issued or, if the taking is limited to harassment and of no more than one year, the Secretary shall issue a notice of proposed authorization for public review.

In order to authorize take under section 101(a)(5)(A), NMFS must make the determination that the specified activities will have a negligible impact on the affected species or stocks and not result in an unmitigable adverse impact on the availability of marine mammal species or stocks for taking for subsistence uses. In addition, NMFS is required to prescribe regulations setting forth the permissible methods of taking, and other means of effecting the least practicable adverse impact on the species or stock and its habitat (i.e., mitigation) and requirements pertaining to monitoring and reporting of such taking.

NMFS has defined "negligible impact" as "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival." (50 CFR § 216.103).

The National Defense Authorization Act (NDAA) (Public Law 108-136) amended the MMPA, by removing the "small numbers" and "specified geographical region" limitations and amending the definition of "harassment" as it applies to a "military readiness activity" to read as follows (Section 3(18)(B) of the MMPA):

- (i) any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or
- (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].

The MMPA also requires NMFS to consider personnel safety, practicality of implementation and impact on the effectiveness of the military readiness activity when making a determination of "least practicable adverse impact on such species or stock". Before making the required determination, NMFS must consult with the Department of Defense regarding the mitigation measures and their effect on the aforementioned factors.

## **II. NMFS' DECISION AND FACTORS CONSIDERED IN THE DECISION**

### **A. THE DECISION**

NMFS' decision is to issue regulations and subsequent annual LOAs for each vessel for the unintentional take of marine mammals incidental to the Navy's specified activities, is included within the FSEIS/SOEIS Alternative 2. This is the preferred alternative identified in the FSEIS/SOEIS and the action presented to NMFS in the Navy's August 2011 application.

The final rule will govern the issuance of LOAs for the unintentional taking of marine mammals, incidental to conducting SURTASS LFA sonar operations in areas of the world's oceans for the period of August 2012 through August 2017. Alternative 2 of the FSEIS/SOEIS includes an analysis of all of the activities for which the Navy has requested incidental take authorization pursuant to the MMPA. The regulations prescribe the permissible methods of taking, the means of effecting the least practicable adverse impact on the species or stock and its habitat (i.e., mitigation) and set forth requirements pertaining to monitoring and reporting of such taking for the specified activities, as described in Alternative 2.

The Navy will be authorized to take individuals of 94 species of marine mammals by Level B harassment. Although NMFS does not anticipate that it will occur, the Navy will

be authorized to take, by Level A harassment, no more than six mysticetes (total), across all species; no more than 25 odontocetes (across all species); and no more than 25 pinnipeds (across all species) incidental to SURTASS LFA sonar operations over the course of the five-year regulations.

## B. FACTORS CONSIDERED IN REACHING THE DECISION

In the FSEIS/SOEIS, the affected environment and environmental consequences are both discussed in Chapter 3, within subsections arranged by Resource type, including: Marine Environment: Habitat, Marine Protected Areas, Essential Fish Habitat and Marine Managed Areas; Acoustic Environment (ocean acoustic regimes); Marine Organisms: Invertebrates, Fish, Sea Turtles, and Marine Mammals; and Socioeconomics: Subsistence Harvesting, Marine Recreational Activities, and Research and Exploration Activities.

Appendix C contains additional information on marine mammals and the modeling used by the Navy to quantitatively evaluate impacts to marine mammals. The Marine Mammals subchapters in Chapter 3 (3.2.4 and 3.2.5) and Appendices D and F contain the majority of the analyses that relate to NMFS' action of issuing incidental take regulations. Other sections of the FSEIS/SOEIS contain analyses related to potential impacts on marine mammal habitat and further support NMFS' proposed issuance of regulations and subsequent LOAs. In addition, Chapter 4 provides an assessment of potential cumulative impacts, including analyzing the potential for cumulatively significant impacts to the marine environment and marine mammals.

Within the Marine Mammals subsection of Chapter 3 (and Appendix C), the Navy's FSEIS/SOEIS addresses potential acoustic impacts resulting from SURTASS LFA sonar operations, as well as non-acoustic impacts (such as ship strikes). These sections describe in detail the acoustic thresholds that NMFS uses to indicate the received sound levels at which marine mammals will be considered taken pursuant to the MMPA. The FSEIS/SOEIS also describes in detail the analytical framework and model that the Navy uses to estimate take, based on NMFS' acoustic thresholds. Last, the Navy presents estimates (for each alternative) of the number of each species of marine mammal that will be exposed to levels of sound that NMFS has determined will result in Level A or Level B harassment. The Navy uses these take estimates, combined with the other information included in this Chapter to conclude (and NMFS concurs with their conclusion) that none of the alternatives will result in any adverse population level effects on any of the affected species or stocks. The take estimates for the Navy's preferred alternative are the subject of the Navy's request to NMFS for MMPA Section 101(a)(5)(A) authorization.

In the Mitigation chapter, the Navy describes the mitigation measures that are required pursuant to their routine training, testing, and use of the SURTASS LFA sonar system activities. Additionally, in section 5.1.4, the Navy discusses mitigation measures for marine mammals, specifically, that have been recommended by the public in the past during NEPA and MMPA public comments, but which the Navy has not adopted. These measures are analyzed in the context of 1) the potential benefit to marine mammals; 2) the likely effectiveness of the measure, and; 3) the practicability of the measure for implementation.

As described above, the environmental consequences to the marine environment are of particular importance for NMFS' evaluation in reaching the decision to issue MMPA incidental take regulations. In particular, because NMFS' action is specific to authorizing unintentional take of marine mammals, the key factors considered in the decision are related to NMFS' statutory responsibilities under the MMPA and the Endangered Species Act (ESA). The primary documents supporting this decision are the Navy's FSEIS/SOEIS and the Biological Opinion for the SURTASS LFA final rule.

As a cooperating agency, NMFS assisted the Navy by providing technical information and analyses to evaluate the effects of SURTASS LFA sonar operations on marine mammals and their habitat. Via the MMPA process, NMFS reviewed the Navy's request to determine whether the total taking resulting from the activities would have a negligible impact on the affected species or stocks of marine mammals, would not have an unmitigable adverse impact on the availability of those species or stocks of marine mammals intended for subsistence uses, and that the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. As supported by the FSEIS/SOEIS, NMFS has made the requisite findings under the MMPA and will include these findings in a final rule.

Key relevant factors considered by NMFS in this decision include:

- Requiring mitigation. As noted above, for military readiness activities, NMFS is required to consider personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity when it makes its determination of what is required to effect the "least practicable adverse impact." NMFS consulted with the Navy via the MMPA process and as a NEPA cooperating agency before making the required determination. NMFS assisted in the preparation of a section of the Navy's FSEIS/SOEIS (Offshore Biologically Important Areas (OBIA) for SURTASS LFA Sonar Operations), based on a process NMFS developed to systematically review ocean areas to identify scientifically supported OBIA candidates that augments the analysis of mitigation measures. This section included additional analysis of mitigation measures NMFS considered during the MMPA rulemaking, with particular emphasis on whether these measures would be beneficial, effective, and practicable.
- Addressing 2007 Litigation on SURTASS LFA Sonar. A number of plaintiffs filed a lawsuit challenging actions by the Navy and NMFS regarding compliance with various environmental statutes for the operation of SURTASS LFA sonar under NMFS' 2007 rule for SURTASS LFA sonar incidental take. The plaintiffs raised two main issues in the 2007 litigation of relevance here: (1) the process for identifying OBIA's for the 2007 rule, which resulted in ten OBIA's; and (2) the agencies' failure to extend the "coastal buffer" exclusion zone, which limits SURTASS LFA sonar operations within 22 km of any coastline, in areas where the continental shelf goes beyond 22 km. The presiding U.S. district court judge agreed with the plaintiffs that the process was flawed.

This FSEIS/SOEIS is the third environmental impact statement for SURTASS LFA sonar. The alternatives in the FSEIS/SOEIS address deficiencies identified in the District Court's 2008 opinion, and fulfill the Navy's responsibilities under NEPA with regard to changes in the proposed action.

NMFS addressed the concerns of the U.S. District Court by developing a systematic framework for identifying OBIA's throughout the world's oceans based on areas with high marine mammal densities, feeding or breeding concentrations, migratory corridors, or small populations. Several of the 22 offshore biologically important areas in this final rule extend beyond the shelf, seaward of the 22-km coastal standoff zone.

The Navy also used NMFS' OBIA analysis for identifying OBIA's and in its consideration of increasing the coastal standoff zone from 22 km (12 nm) to 46 km (25 nm). In light of these comprehensive efforts to identify and analyze areas of importance to marine mammals outside of the 22 km (12 nm) coastal standoff zone, and the need for broad operational flexibility, the Navy's FSEIS/SOEIS reasonably examined and addressed the practicability of increasing the coastal standoff zone within the OBIA process.

- Addressing uncertainty. The FSEIS/SOEIS acknowledges a degree of uncertainty regarding the effects of underwater sound on marine mammals. NMFS provided extensive input in the FSEIS/SOEIS process to address these uncertainties, and has included requirements for mitigation, monitoring and reporting by Navy in the final rule to manage uncertainty. The key issues and the manner in which they are addressed in the final rule include:
  1. Continuing management to reduce uncertainty will be implemented via the MMPA final rule by requiring extensive monitoring and reporting by the Navy, including the establishment and implementation of a monitoring plan specific to SURTASS LFA sonar operations. These plans are available on NMFS' website, and are specifically designed to be iterative and provide feedback to support NMFS' use of adaptive management throughout rule implementation, as presented in the FSEIS/SOEIS and further explained in the final rule.
  2. Finally, while not a required component of the final rule, the Navy's FSEIS/SOEIS describes the Navy's continuing commitment to marine mammal research, in particular research related to the effects of underwater sound on marine mammals. NMFS will continue to encourage and support the Navy's research efforts. The timeframe for completing the research and conducting an assessment of how that research factors into MMPA authorizations however, does not allow NMFS to wait for the results of the research prior to authorizing the Navy's request for incidental take.

NMFS finds that the FSEIS/SOEIS appropriately acknowledges uncertainty and provides detailed analyses as to how existing information is incorporated to assess effects where uncertainties exist, and to address and manage uncertainty via mitigation, monitoring, reporting and research.

Considering effects to ESA-listed marine mammals. In August 2012, NMFS issued a Biological Opinion on the U.S. Navy's proposal to conduct SURTASS LFA sonar operations within areas of the Atlantic, Pacific, and Indian Oceans and the Mediterranean Sea for the period of August 2012 through August 2017 and the Permits and Conservation Division's proposal to issue regulations to govern authorizations to the U.S. Navy to "take" marine mammals incidental to the conduct of SURTASS LFA sonar operations within areas of the Atlantic, Pacific, and Indian Oceans and the Mediterranean Sea during the same period of time.

The Biological Opinion concludes that the proposed regulations and any take associated with activities authorized by those regulations are not likely to jeopardize the continued existence of threatened or endangered species under NMFS' jurisdiction or destroy or adversely modify critical habitat. The Biological Opinion includes an explanation of how the baseline and effects analyses in Biological Opinions relate to those contained in the cumulative impact section of NEPA documents. In particular, these analyses consider the effects resulting from interactions of potential stressors, thereby augmenting the FSEIS/SOEIS' cumulative impacts analysis.

#### National Marine Sanctuaries Act.

The Navy initiated consultation with NOAA's Office of National Marine Sanctuaries (ONMS) pursuant to section 304(d) of the National Marine Sanctuaries Act (NMSA) in July 2012. The ONMS determined that the Navy's SURTASS LFA sonar activities are likely to affect sanctuary resources and subsequently provided reasonable and prudent alternatives to protect sanctuary resources to the Navy on August 6, 2012. The Navy responded in writing to each of ONMS' recommendations before signing their Record of Decision.

### **III. OTHER ALTERNATIVES CONSIDERED**

The alternatives analyzed in the Navy's FSEIS/SOEIS and their relationships to NMFS' alternatives are described here. NMFS' proposed action (issuance of regulations together with LOAs) would authorize take of marine mammals, incidental to a subset of the activities analyzed in the Navy's FSEIS/SOEIS that are anticipated to result in the take of marine mammals, i.e., those activities that involve the use of SURTASS LFA sonar. Thus, these components of the Navy's proposed action are the subject of NMFS' proposed MMPA regulatory action. The Navy's FSEIS/SOEIS contains a thorough analysis of the environmental consequences of their proposed action on the human environment, including a specific section on marine mammals.

## A. SUMMARY OF THE ALTERNATIVES CONSIDERED BY THE NAVY

The Navy analyzed three alternatives in the FSEIS/SOEIS, including two action alternatives (Alternatives 1 and 2) and the No Action Alternative.

**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. In the FSEIS/SOEIS, under this alternative, operational deployment of the active sonar component of the SURTASS LFA sonar system would not occur. Under this alternative, the Navy's ability to locate and defend against enemy submarines would be greatly impaired and without this long-range surveillance capability, the Navy's reaction times to submarines would be greatly reduced and compromised. The No Action alternative would not fulfill this purpose.

**Alternative 1:** This alternative proposes the employment of SURTASS LFA sonar with geographical restrictions that include maintaining sound pressure level below 180 dB re: 1  $\mu$ Pa within 22 km (12 nm) of any coastline and within the designated OBIA's in the 2007 FSEIS. This alternative is the same as the 2007 FSEIS Preferred Alternative (see Table 4.27 in the 2012 FSEIS/SOEIS). The Navy would conduct visual, passive acoustic, and active acoustic monitoring and suspend/delay SURTASS LFA sonar transmissions if a marine mammal enters the LFA sonar mitigation and 1-km buffer zone around the vessel. SURTASS LFA sonar sound fields will not exceed 145 dB within known recreational and commercial dive sites. Under this alternative, NMFS would incorporate additional mitigation and monitoring measures and reporting requirements into the MMPA rulemaking and Letters of Authorization.

**Alternative 2 (Preferred Alternative):** Alternative 2 is the Navy's preferred alternative. This alternative is the same as Alternative 1 but includes a comprehensive update of the OBIA's using NMFS' process, including seasonal restrictions (See Table 4.26 in the 2012 FSEIS/SOEIS). Under this alternative, NMFS would incorporate additional mitigation and monitoring measures and reporting requirements into the MMPA rulemaking and Letters of Authorization. Accordingly, this NEPA Alternative would satisfy the purpose and need of the NMFS' MMPA action (the issuance of regulations and subsequent LOAs along with required mitigation measures and monitoring), and would enable the Navy to comply with the statutory and regulatory requirements of the MMPA and ESA.

The Navy considered several other alternatives in the 2001 FEIS/FOEIS and in the 2007 FSEIS but did not carry them forward for analysis in the FSEIS/SOEIS because they concluded that none of these potential alternatives met the purpose and need of the Proposed Action:

- Acoustic and non-acoustic detection methods such as radar, laser, magnetic, infrared, electronic, electric, hydrodynamic, biological technologies, passive sonar and high- or mid-frequency active sonar;
- Unrestricted SURTASS LFA sonar operations;
- Monitoring and mitigation for fish;

- The use of small boats and aircraft for pre-operational surveys; and
- An extended coastal standoff range to 46 km (25 nm) from 22 km (12 nm).

**Table 1 SURTASS LFA Sonar System FSEIS/SOEIS Alternatives Matrix**

<b>Proposed Mitigation</b>	<b>No Action Alternative</b>	<b>Alternative 1</b>	<b>Alternative 2</b>
Visual, passive acoustic, and active acoustic monitoring for marine mammals and sea turtles.	N/A <sup>1</sup>	Yes	Yes
Suspension/delay of SURTASS LFA sonar transmissions if a marine mammal enters the LFA sonar mitigation and 1-km buffer zones around the vessel.	N/A	Yes	Yes
Geographic restrictions such that the sound field does not exceed 180 decibels (dB) re: 1 $\mu$ Pa within 22 km (14 mi; 12 nm) of any coastline, including islands.	N/A	Yes	Yes
Geographic restrictions such that the sound field does not exceed 180 dB re: 1 $\mu$ Pa at 1 km (0.54 nm) seaward of outer boundaries of OBIAs.	N/A	Yes	Yes
2007 NMFS Final Rule OBIAs	N/A	Yes	No
2012 updated OBIAs	N/A	No	Yes
Restrictions such that the sound field does not exceed 145 dB re: 1 $\mu$ Pa within dive sites.	N/A	Yes	Yes
Reporting and research.	N/A	Yes	Yes

<sup>1</sup>Not applicable.

#### B. SUMMARY OF ALTERNATIVES CONSIDERED BY NMFS

For all of the Navy alternatives identified above, the Navy includes an associated list of standard protective measures specifically developed to minimize adverse impacts on marine mammals. NMFS worked closely with the Navy throughout the development of the FSEIS/SOEIS to identify these additional mitigation measures (for marine mammals) that the Navy should consider in their analysis. As a result of this cooperating agency role, the Navy discussed and considered additional mitigation measures in its FSEIS/SOEIS, and determined that they would adhere to the additional mitigation measures if implemented in the final rule for SURTASS LFA sonar operations.

The inclusion of the analysis of these additional mitigation measures strengthens the FSEIS/SOEIS' support and coverage of NMFS' FSEIS/SOEIS alternatives. The Navy does not enumerate these alternatives in the FSEIS/SOEIS. However, the FSEIS/SOEIS supports the analyses of these alternatives:

**No Action Alternative:** NMFS is unable to reach the required determinations under the MMPA, and denies the Navy's request for an incidental take authorization (for NMFS, this constitutes the NEPA-required No-action Alternative).

**Alternative 2:** NMFS promulgates regulations and issues LOAs authorizing take of marine mammals incidental to a subset of the Navy's SURTASS LFA sonar operations described in the Navy's FSEIS/SOEIS preferred alternative (Alternative 2), but with additional mitigation requirements for marine mammals, potentially including measures considered but eliminated in Chapter 5 of the FSEIS/SOEIS or other additional measures developed by NMFS or suggested to NMFS via public comment on the proposed rule.

#### C. THE ENVIRONMENTALLY PREFERABLE ALTERNATIVE

The No-action Alternative described in the Navy's FSEIS/SOEIS is the baseline level of operations of SURTASS LFA sonar on a maximum of four naval surveillance vessels in areas of the Pacific, Atlantic, and Indian Oceans and the Mediterranean Sea prior to the Navy's August 2012 ROD. The No-action Alternative includes no conduct of SURTASS LFA sonar operations. Both Alternatives 1 and 2 (the Preferred Alternative) include increased numbers of SURTASS LFA sonar operations above those numbers analyzed in the No-action Alternative. The No-action Alternative is considered the environmentally preferred alternative.

#### IV. PUBLIC INVOLVEMENT

Public opportunities for review and comment have occurred in support of the NEP A preparation and the consideration of MMPA rulemaking. The Navy published a Notice of Intent (NOI) to prepare an SEIS/OEIS in the *Federal Register* on January 21, 2009 (FR 74, 3574). In the NOI, the Navy and NMFS solicited scoping comments on the above topics, to include OBIA's, greater coastal standoff, and cumulative effects. The Navy received no public comments at the end of the 45-day public scoping period.

The Navy prepared a Draft Supplemental Environmental Impact Statement/Supplemental Overseas Environmental Impact Statement (DSEIS/SOEIS) to provide supplemental analyses for the Navy's employment of SURTASS LFA sonar systems. The notice of availability published on August 19, 2011 (EIS No. 20110269) and the public could provide comments through the Navy's SURTASS LFA sonar website at <http://www.surtass-lfa-eis.com> or by mailing a written comment. The Navy distributed copies of the DSEIS/SOEIS as described in the DSEIS/SOEIS. Copies were available at 16 public libraries across many coastal states including Hawaii, and could be obtained by request or electronically at the Navy's SURTASS LFA sonar website.

The Navy received comments from three federal agencies, one organization, and one individual. The comments focused on the following general categories: marine mammals; OBIA's; mitigation measures; cumulative impacts; and noise concerns. The FSEIS/SOEIS addressed all oral and written comments received during the DSEIS/SOEIS comment period. As a cooperating agency, NMFS assisted in the analysis and consideration of public comments in NMFS' areas of jurisdiction and expertise to support the development of the FSEIS/SOEIS. The Navy ensured the FSEIS/SOEIS was mailed to all individuals, agencies, and organizations that requested a copy of the final document and that FSEIS/SOEIS is available at <http://www.surtass-lfa-eis.com>. The

Navy made the FSEIS/SOEIS available on June 8, 2012 (EIS No. 20120176), and presents the distribution list in Chapter 8 of the FSEIS/SOEIS. The Navy received no public comments during the FSEIS/SOEIS wait period.

Public involvement also occurred in association with NMFS' rulemaking. On August 30, NMFS published a Federal Register notice of receipt of the Navy's application for regulations and Letters of Authorization for SURTASS LFA sonar operations (76 FR 53884) with a request for comments and information through September 29, 2011. On January 6, 2012, (77 FR 842) NMFS published a proposed rule in response to the Navy's request to take marine mammals incidental to SURTASS LFA sonar operations in areas of the Pacific, Atlantic, and Indian Oceans and the Mediterranean Sea. NMFS requested comments, information and suggestions concerning the request. During the 45-day public comment period, NMFS received comments from: 22 private individuals; the Marine Mammal Commission; and the Natural Resources Defense Council. NMFS considered these comments in developing the final rule and included detailed responses to those comments in the preamble to the final rule. The categories of public comments primarily addressed effects on marine mammals; the OBIA analysis; operational restrictions; and mitigation recommendations.

NMFS carefully considered public input in developing a final rule and in reaching this decision to issue the regulations for the activities specified in FSEIS/SOEIS Alternative 2.

#### **IV. MITIGATION, MONITORING, AND REPORTING MEASURES**

The final rule includes detailed mitigation measures that must be implemented by Navy when conducting specified activities in areas of the Pacific, Atlantic, and Indian Oceans and the Mediterranean Sea. In addition, the final rule requires the Navy to implement extensive monitoring and reporting. Inclusion of these requirements ensures that NMFS' action of issuing incidental take regulations specifies and requires all practicable means to avoid or minimize environmental harm from the selection of FSEIS/SOEIS Alternative 2.

In addition to the requirements that will be established in the final rule and required of Navy, NMFS will conduct the following activities as part of the continuing MMPA implementation process:

- NMFS will meet annually with the Navy to discuss the required Navy monitoring reports, Navy research and development advances, current science and other new information (such as the output of the above workshops) and whether the existing mitigation or monitoring modifications are appropriate. This use of adaptive management via the MMPA process will allow NMFS to consider new data from different sources to determine (in coordination with the Navy) on an annual basis if mitigation or monitoring measures should be modified or added (or deleted) if new data suggests that such modifications are appropriate (or are not appropriate) for subsequent annual LOAs.