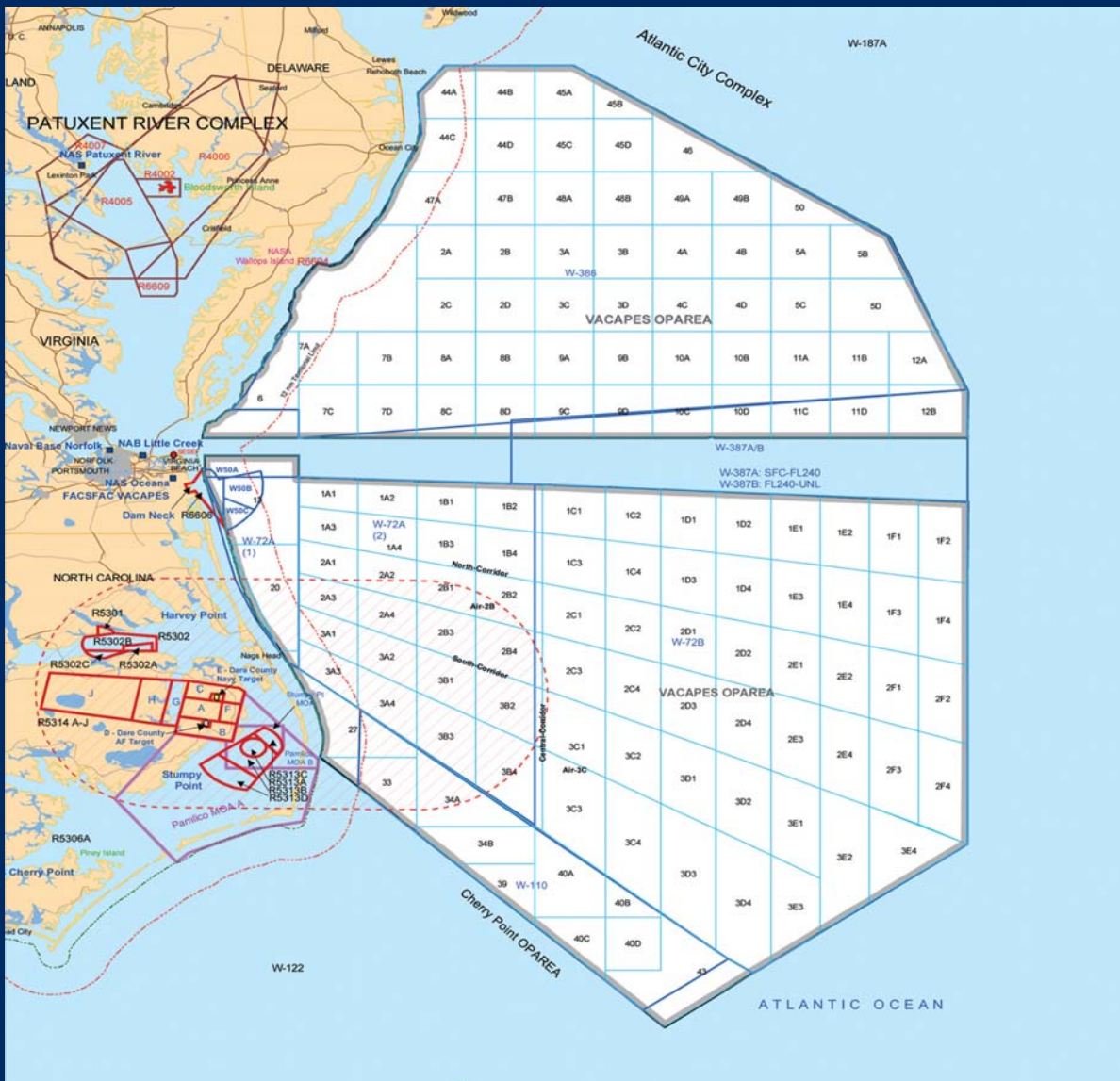


Virginia Capes Range Complex Final Environmental Impact Statement/ Overseas Environmental Impact Statement (EIS/OEIS) Volume 1



Prepared by:
United States Fleet Forces
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CHAPTER 4 :OTHER CONSIDERATIONS

4.1 CONSISTENCY WITH OTHER FEDERAL, STATE, AND LOCAL PLANS, POLICIES, AND REGULATIONS

Based on evaluation with respect to consistency and statutory obligations, the Department of the Navy's (DoN) alternatives, including the Proposed Action ("Proposed Action") for the VACAPES Range Complex Environmental Impact Statement (EIS)/Overseas Environmental Impact Statement (OEIS) does not conflict with the objectives or requirements of federal, state, regional, or local plans, policies, or legal requirements. Table 4.1-1 provides a summary of environmental compliance requirements that may apply.

**TABLE 4.1-1
SUMMARY OF ENVIRONMENTAL COMPLIANCE FOR THE PROPOSED ACTION**

Plans, Policies, and Controls	Responsible Agency	Status of Compliance
National Environmental Policy Act (NEPA) of 1969 (42 USC §§ 4321. <i>et seq.</i>) Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 CFR §§ 1500-1508) DoN Procedures for Implementing NEPA (32 CFR Part 775)	DoN	The EIS portion of this document has been prepared in accordance with NEPA, CEQ regulations, and Navy NEPA procedures. Public participation and review is being conducted in compliance with NEPA. The Proposed Action would not likely result in significant impacts.
Executive Order (EO) 12114, Environmental Effects Abroad of Major Federal Actions	DoN	EO 12114 requires environmental consideration for actions that may affect the environment outside of U.S. Territorial Waters. The OEIS aspects of this document satisfy this requirement. The Proposed Action would not likely result in significant harm to the environment.

**TABLE 4.1-1
SUMMARY OF ENVIRONMENTAL COMPLIANCE FOR THE PROPOSED ACTION
(Continued)**

Plans, Policies, and Controls	Responsible Agency	Status of Compliance
Clean Air Act (CAA) (42 USC Part 7401 <i>et seq.</i>)	DoN USEPA Virginia DEQ Maryland DOE North Carolina DENR Delaware DNREC	Counties in Maryland, North Carolina, and Virginia’s Eastern Shore bordering the Proposed Action Study Area are designated in “attainment,” and thus the General Conformity Rule is not applicable to these areas. Hampton Roads Air Quality Control Region, VA is an attainment area with a maintenance plan for the 8-hour ozone standard and where the Proposed Action occurs adjacent to Sussex County, Delaware (moderate nonattainment), Records of Non-Applicability have been prepared for each area (Appendix L).
Clean Water Act (CWA) (33 USC §§ 1344, <i>et seq.</i>)	USEPA	No permit under the CWA, whether under Section 401, 402, or 404 (b) (1), is required
Rivers and Harbors Act (33 USC §§ 401, <i>et seq.</i>)	U.S. Army Corps of Engineers (USACE)	Section 10 permits will be required for Mine Warfare training Areas in the Lower Chesapeake Bay and VACAPES OPAREA. The Navy has initiated the consultation process with USACE.
Coastal Zone Management Act (CZMA) (16 CFR §§ 1451, <i>et seq.</i>)	Virginia DEQ, North Carolina DENR Maryland MDE Delaware DNREC	The Navy has determined that the Proposed Action is consistent to the maximum extent practicable and is preparing a Federal Consistency Determination (CCD) in accordance with the CZMA. (Appendix G)
Magnuson-Stevens Fishery Conservation and Management Act (16 USC §§ 1801-1802)	National Marine Fisheries Service (NMFS)	The Proposed Action would not likely adversely affect Essential Fish Habitat (EFH) and would not likely decrease the available area or quality of EFH.

**TABLE 4.1-1
SUMMARY OF ENVIRONMENTAL COMPLIANCE FOR THE PROPOSED ACTION
(Continued)**

Plans, Policies, and Controls	Responsible Agency	Status of Compliance
Endangered Species Act (ESA) (16 USC §§ 1531, <i>et seq.</i>)	DoN U.S. Fish and Wildlife Service (USFWS) NMFS	The EIS/OEIS analyzes potential effects to species listed under the ESA. The Navy will complete consultation under Section 7 of the ESA with NMFS on the potential that the Proposed Action may affect listed species. The Navy has completed consultation with USFWS on the potential that the Proposed Action may affect listed species.
Marine Mammal Protection Act (MMPA) (16 USC §§ 1431, <i>et seq.</i>)	NMFS	This EIS/OEIS analyzes potential effects to marine mammals, some of which are species-listed under the ESA. As noted, potential effects on listed species are the subject of consultations with NMFS. The Navy has prepared a request for a Letter of Authorization from the NMFS regarding effects on marine mammals.
The National Marine Sanctuaries Act (16 USC §§ 1431, <i>et seq.</i>)	National Oceanic and Atmospheric Administration	The Proposed Action would have no effect on sanctuary resources in the offshore environment of NC, VA, DE or MD. Review of agency actions under Section 304 is not required.
National Historic Preservation Act (NHPA) (16 USC §§ 470, <i>et seq.</i>)	DoN Delaware Division of Historical and Cultural Affairs Maryland Historical Trust Virginia Department of Historic Resources North Carolina State Historic Preservation Office	The Navy complies with the consultation and other requirements of the NHPA. The Proposed Action would not likely have a significant impact on protected resources.
Act to Prevent Pollution from Ships (APPS) (33 U.S.C. §§ 1901, <i>et seq.</i>)	DoN	The Navy complies with the discharge regulations set forth under the requirements of the APPS.

**TABLE 4.1-1
SUMMARY OF ENVIRONMENTAL COMPLIANCE FOR THE PROPOSED ACTION
(Continued)**

Plans, Policies, and Controls	Responsible Agency	Status of Compliance
EO 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations	DoN	The Proposed Action would not likely result in disproportionately high and adverse human health or environmental effects on minority or low income populations.
EO 13045, Protection of Children from Environmental Health Risks and Safety Risks	DoN	The Proposed Action would not likely result in disproportionate risks to children from environmental health risks or safety risks.
EO 13112 Invasive Species	DoN	EO 13112 requires Agencies to identify actions that may affect the status of invasive species and take measures to avoid introduction and spread of these species. This EIS/OEIS satisfies the requirement of EO 13112 with regard to the Proposed Action.
EO 11990 Protection of Wetlands	DoN	The Proposed Action would not likely have a significant impact on wetlands.
EO 12962 Recreational Fisheries	DoN	EO 12962 requires Agencies to fulfill certain duties with regard to promoting the health and access of the public to recreational fishing areas. The Proposed Action complies with these duties.
EO 13158, Marine Protected Areas	DoN	EO 13158 requires Agencies to identify any actions that affect the natural or cultural resources that are protected by an MPA. Agencies shall avoid harm to the natural and cultural resources that are protected by an MPA. This EIS/OEIS satisfies the requirement of EO 13158 with regard to the Proposed Action.
Migratory Bird Treaty Act (16 USC §§ 703-712)	USFWS	The Proposed Action would not likely have a significant impact on migratory birds, and would comply with applicable requirements of the MBTA

4.2 REQUIRED PERMITS AND APPROVALS

All required permits and approvals have been obtained. The decisions and supporting data can be found in the appendices.

4.2.1 COASTAL ZONE MANAGEMENT ACT COMPLIANCE

The CZMA of 1972 (16 United States Code [U.S.C.] Section [§] 1451) encourages coastal states to be proactive in managing coastal zone uses and resources. CZMA established a voluntary coastal planning program; participating states submit a Coastal Management Plan (CMP) to National Oceanographic and Atmospheric Administration (NOAA) for approval. Under CZMA, federal actions are required to be consistent, to the maximum extent practicable, with the enforceable policies of approved CMPs.

CZMA defines the coastal zone (16 U.S.C. Part 1453) as extending, "to the outer limit of State title and ownership under the Submerged Lands Act" (i.e., 3 nautical miles [nm] from the shoreline). The coastal zone extends inland only to the extent necessary to control the shoreline. Excluded from the coastal zone are lands the use of which is by law subject solely to the discretion of, or which is held in trust by, the federal government (16 U.S.C. Part 1453).

Review of federal agency activities is conducted through the submittal of either a Consistency Determination or a Negative Determination. A federal agency shall submit a Consistency Determination when it determines that its activity may have either a direct or an indirect effect on a state's coastal zone or resources. In accordance with 15 CFR § 930.39, the consistency determination shall include a brief statement indicating whether the proposed activity will be undertaken in a manner consistent to the maximum extent practicable with the enforceable policies of the management program and should be based upon an evaluation of the relevant enforceable policies of the management program. A federal agency may submit a Negative Determination to a coastal state when the federal agency has determined that its activities would not have an effect on the state's coastal zone or its resources or when conducting the same or similar activities for which Consistency Determinations have been prepared in the past.

Pursuant to 15 CFR § 930.41, the state has 60 days from the receipt of the Consistency Determination in which to concur with or object to the Consistency Determination, or to request an extension under 15 CFR § 930.41(b). Federal agencies shall approve one request for an extension period of 15 days or less.

In accordance with the CZMA, the Navy has reviewed the enforceable policies of each state's CZMP relevant to the study area. Based on the limitations discussed in this EIS, the enforceable policies of each state's CZMP, and pursuant to 15 CFR § 930.39, the Navy has prepared Consistency Determinations for all affected states. Specific information regarding CZMA can be found in Appendix K. CCDs or Negative Determinations were written for each state adjacent to the EIS/OEIS Study Area and are in Appendix G.

4.3 RELATIONSHIP BETWEEN SHORT-TERM USE OF MAN'S ENVIRONMENT AND MAINTENANCE AND ENHANCEMENT OF LONG-TERM PRODUCTIVITY

NEPA requires analysis of the relationship between a project's short-term impacts on the environment and the effects those impacts may have on the maintenance and enhancement of the long-term productivity of the affected environment. Impacts that narrow the range of beneficial uses of the environment are of particular concern. This means that choosing one option may reduce future flexibility in pursuing other options, or that committing a resource to a certain use may often eliminate the possibility for other uses of that resource.

With respect to marine mammals, the Navy, in partnership with the National Marine Fisheries Service (NMFS), is committed to furthering understanding of these creatures and developing ways to lessen or eliminate the impacts that Navy training activities may have on these animals.

The Proposed Action would result in both short- and long-term environmental effects. However, the Proposed Action would not likely be expected to result in any impacts that would reduce environmental productivity, permanently narrow the range of beneficial uses of the environment, or pose long-term risks to health, safety, or the general welfare of the public. The Navy is committed to sustainable range management, including co-use of the VACAPES Range Complex with the general public and commercial interests. This commitment to co-use enhances the long-term productivity of the range areas surrounding VACAPES Range Complex.

4.4 IRREVERSIBLE OR IRRETRIEVABLE COMMITMENT OF RESOURCES

NEPA requires that environmental analysis include identification of “...any irreversible and irretrievable commitments of resources which would be involved in the Proposed Action should it be implemented.” Irreversible and irretrievable resource commitments are related to the use of non-renewable resources and the effects that the uses of those resources would have on future generations. Irreversible effects primarily result from the use or destruction of a specific resource (*e.g.*, energy or minerals) that cannot be replaced within a reasonable time frame. Irretrievable resource commitments involve the loss in value of an affected resource that cannot be restored as a result of the action (*e.g.*, the disturbance of a cultural site).

For the alternatives, including the Proposed Action, most resource commitments are neither irreversible nor irretrievable. Most impacts are short-term and temporary or long lasting, but negligible. There are several culturally significant shipwrecks in the area proposed for training activities; however, these sites are well-documented and the Navy makes every effort to avoid these areas whenever possible. No habitat associated with threatened or endangered species would be lost as result of implementation of the Proposed Action. Since there would be no building or facility construction, the consumption of materials typically associated with such construction (concrete, metal, sand, fuel, *etc.*) would not likely occur. Energy typically associated with construction activities would not likely be expended and irretrievably lost. Implementation of the Proposed Action would require fuels used by aircraft, ships, and ground-based vehicles. Since fixed- and rotary-wing flight and ship activities could increase, relative, total fuel use would increase. Therefore, total fuel consumption would increase and this nonrenewable resource would be considered irretrievably lost.

4.5 ENERGY REQUIREMENTS AND CONSERVATION POTENTIAL OF ALTERNATIVES AND MITIGATION MEASURES

Increased training and testing operations on the VACAPES Range Complex would result in an increase in energy demand over the No Action Alternative. This would result in an increase in fossil fuel consumption, mainly from aircraft, vessels, and power supply. Although the required electricity demands of increased intensity of range complex usage would be met by the existing electrical generation infrastructure within the VACAPES Range Complex, the alternatives would result in a net cumulative negative impact on the energy supply.

Energy requirements would be subject to any established energy conservation practices onboard each vessel. No additional power generation capacity other than the potential use of generators would be required for any of the operations. The use of energy sources has been minimized wherever possible without compromising safety, training, or testing operations.

At the present time, the Navy, under the direction of the Energy Policy Act (EPA) of 1992 and EO 13149, is actively testing and introducing several different types of alternate fuels (bio-diesel B100/B20, clean natural gas, fuel ethanol E85, fuel cells, *etc.*) to further reduce the impacts of its activities on the environment and non-renewable resources.

4.6 NATURAL OR DEPLETABLE RESOURCE REQUIREMENTS AND CONSERVATION POTENTIAL OF VARIOUS ALTERNATIVES AND MITIGATION MEASURES

Resources that will be permanently and continually consumed by project implementation include water, electricity, natural gas, and fossil fuels; however, the amount and rate of consumption of these resources would not likely result in significant environmental impacts or the unnecessary, inefficient, or wasteful use of resources. Nuclear-powered vessels are beneficial because they decrease the use of fossil fuels. With respect to operational activities, project mitigation measures would ensure that all natural resources are conserved or recycled to the maximum extent feasible. It is also possible that new technologies or systems will emerge, or will become more cost effective or user-friendly, and will further reduce the Navy's reliance on nonrenewable natural resources. However, even with implementation of conservation measures, consumption of natural resources would generally increase with implementation of the alternatives.

Aircraft operations within the VACAPES OPAREAs are the single largest airborne noise source. Noise levels in excess of 90 dBA can occur. Sustainable range management practices that protect and conserve natural and cultural resources are in place. Sustainable range management practices are in place that protect and conserve natural and cultural resources, as well as and preserve access to training areas for current and future training requirements, while addressing potential encroachments that threaten to impact range capabilities.

4.7 URBAN QUALITY, HISTORIC AND CULTURAL RESOURCES, AND THE DESIGN OF THE BUILT ENVIRONMENT

There are no urban areas under consideration in this EIS/OEIS and therefore no urban quality issues exist. Likewise, there is no new construction being proposed. Historic and cultural resources are addressed in Section 3.12.