

**GEORGIA COASTAL CONSISTENCY DETERMINATION**

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# **FEDERAL AGENCY COASTAL ZONE MANAGEMENT ACT (CZMA) NEGATIVE DETERMINATION FOR GEORGIA**

27 April 2009

## **INTRODUCTION**

This document provides the State of Georgia with the Department of the Navy's (DoN's) Negative Determination under CZMA 16 United States Code (USC) § 1451 *et seq.* and 15 Code of Federal Regulations (CFR) § 930.35. The information in this Negative Determination is provided pursuant to 15 CFR § 930.35.

This CZMA Negative Determination addresses the Proposed Action of the Undersea Warfare Training Range (USWTR) Overseas Environmental Impact Statement (OEIS)/EIS (EIS).

## **NEGATIVE DETERMINATION**

In accordance with 15 CFR § 930.35, the DoN has reviewed Georgia's Coastal Management Program (CMP) and associated enforceable policies and has determined that the DoN's Proposed Action will have no effects on any coastal use or resource.

The DoN does not propose to conduct training or testing activities as described in the USWTR OEIS/EIS, in the State's coastal zone.

## **PROPOSED FEDERAL AGENCY ACTION**

The DoN proposes to instrument a 1,713-square-kilometer (km<sup>2</sup>) (500-square-nautical mile [NM<sup>2</sup>]) area of the ocean with undersea cables and sensor nodes and to use the area for anti-submarine warfare (ASW) training. The landward edge of the undersea warfare training range (USWTR) would be located approximately 93 km (50 NM) offshore of northeastern Florida and well outside of Georgia coastal waters.

A trunk cable connecting the range to the shore facilities at Naval Station Mayport (Florida) would be buried to a depth of approximately 0.3 to 0.9 meters (m) (1 to 3 feet [ft]). Ocean-bottom burial equipment would be used to cut (hard bottom) or plow (soft sediment) a furrow approximately 10 centimeters (cm) (4 inches [in]) wide, in which the 5.8-cm (2.3-in) cable would be placed. Cable installation would be accomplished using a tracked, remotely operated mechanical cable burial vehicle.

The trunk cable would be brought on shore in Florida and secured on land with a deadman (i.e., anchoring device). A 10-cm (4-in) conduit would be installed under the dunes to the east of the proposed cable termination facility (CTF) with the seaward end of the conduit emerging on the beach near the surf zone. The conduit would be installed using directional drilling techniques. From the land side termination point of the conduit to the CTF the cable would be installed in a 0.6-m- (2-ft-) wide, 0.9-m- (3-ft-) deep trench.

The CTF would be an approximately 37-m<sup>2</sup> (400-ft<sup>2</sup>) structure that would house the power supplies, system electronics, and communications gear necessary to operate the offshore range. Commercial power and telecommunications connections would be made to the Naval Station Mayport infrastructure. The communications signals would be routed to the range operations center (ROC) at the Fleet Area Control

and Surveillance Facility, Jacksonville (FACSFAC JAX) and electronics would be housed at the terminal end of the communications link.

In accordance with 50 CFR Part 401.12, the DoN has prepared a separate Biological Assessment 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 the National Marine Fisheries Service (NMFS) under the Endangered Species Act (ESA). In accordance with the Marine Mammal Protection Act (16 USC Section 1371[a][5]), the DoN will submit, at a later date, a request for a Letter of Authorization to NMFS for the incidental taking of marine mammals by the Proposed Action and obtain a Letter of Authorization prior to the commencement of training exercises on the range.

**PURPOSE AND NEED FOR ACTION**

The purpose of the proposed action is to enable the DoN to train effectively in an at-sea environment ranging in water depth from 36 to 274 meters [m] (20 to 900 feet [ft]) at a suitable location for Atlantic Fleet units. The DoN's primary mission is to maintain, train, equip, and operate combat-ready naval forces capable of winning wars, deterring aggression, and maintaining freedom of the seas. Antisubmarine warfare is a critical part of that mission. Atlantic Fleet units deploy worldwide and shifts in the military strategic landscape require increased naval capability in the world's shallow, or littoral, seas. Training effectively for these littoral environments requires the availability of realistic conditions in which actual potential combat situations can be adequately simulated. The DoN currently lacks an instrumented shallow water (encompassing depths of 36 to 274 m [120 to 900 ft]) training range offshore of the east coast of the United States that is geographically and oceanographically similar to potential strategic areas.

**GEORGIA'S COASTAL MANAGEMENT PROGRAM**

Georgia's CMP is comprised of 33 state codes, which constitute the enforceable policies of the CMP. State codes addressed as part of the Georgia CMP consistency review and considered in the analysis of the Proposed Action are discussed in Table 1 below. The DoN has determined that implementation of the Preferred Alternative will have no effects on any coastal use or resource in Georgia's coastal zone based on the following information, data, and analysis. All of the construction and training activities would be conducted outside of Georgia territorial waters.

Georgia's CMP is comprised of the following enforceable policies:

**Table 1. Georgia Coastal Management Program Consistency Review**

| <b>Statute<br/>(Georgia Statute)</b> | <b>Consistency</b>  | <b>Scope</b>  |
|--------------------------------------|---|---|
| OCGA 12-9-1<br><i>Air Quality</i>    | There would be no new sources of air pollutants in association with the USWTR. Furthermore, the Clean Air Act (CAA) conformity rules would not apply to the landside facilities or in nearshore areas within the 6-km (3-NM) jurisdiction of the CAA, as they would be within an attainment area for all criteria pollutants. Air quality impacts from construction activities at Naval Station Mayport would be from fugitive dust generated on site and mobile source | Establishes the state standards and programs, where necessary, for air quality, air emissions, construction, and release of hazardous air contaminants. |

| <b>Statute<br/>(Georgia Statute)</b>                      | <b>Consistency</b>  | <b>Scope</b>  |
|---|---|---|
|   | emissions from construction vehicles and workers' automobiles. These impacts would be minor and would be short-term in nature. Thus, the construction and operation of the proposed USWTR would have no significant impact on air quality in the vicinity of Naval Station Mayport and would be consistent with air quality policies. |   |
| OCGA 27-4-251<br><i>Aquaculture<br/>Development</i>       | The Proposed Action would not impact procedures of the Aquaculture Development Commission.  | Establishes the commission to study development of aquaculture.   |
| OCGA 52-7-1<br><i>Boat Safety</i>                         | The Proposed Action would not impact the safety of recreational or commercial vessels in Georgia state waters, as all construction and training activities would take place in either Florida waters or seaward of Florida's territorial waters.  | Provides safe boating standards on lakes, rivers, and coastal waters. Prohibits boating except at piers and marinas in waters 1,000 feet or less from Jekyll Island, Tybee Island, St. Simons Island, and Sea Island.   |
| OCGA 12-5-320<br><i>Coastal Management</i>                | The Proposed Action would not impact planning activities within the coastal zone or the implementation of development requirements.   | Addresses the requirements for development and implementation of coastal resource protection and their sustainable development. Requires the coordination of agencies when planning activities in the coastal zone.   |
| OCGA 12-5-280<br><i>Coastal Marshlands<br/>Protection</i> | The Proposed Action would not take place on land in Georgia. Therefore, no impacts would occur to tidal marshes, mudflats, and marshlands. Training activities would not impact estuaries.  | Provides for protection of tidal wetlands through limitations and permitting of activities in these areas. Identifies exempted actions. Includes activities that take place in marshland, intertidal area, mudflats, tidal water bottoms, and salt marsh area within estuarine areas. |
| OCGA 12-5-370<br><i>Safe Dams</i>                         | The Proposed Action would not impact inspections and permitting for dams.   | Protects public health, safety, and welfare through inspections and permitting for dams.  |
| OCGA 12-5-170<br><i>Safe Drinking Water</i>               | The Proposed Action would not impact the quality of drinking water in the state.  | Addresses the state's policy concerning water resources.  |

| <b>Statute<br/>(Georgia Statute)</b>                    | <b>Consistency</b>  | <b>Scope</b>   |
|---|---|--|
| OCGA 27-3-130<br><i>Endangered Wildlife</i>             | The Proposed Action would not adversely affect terrestrial or marine species. Effects to marine wildlife resources (including ESA-listed sea turtles and marine mammals) would be addressed through the federal consultation processes (Biological Assessment and Letter of Authorization) with the National Marine Fisheries Service. Mitigation measures for protection of North Atlantic right whales would be implemented from November through April, including the Early Warning System, safe vessel speeds, and stranding response plan. | Provides for protection of species that are rare, unusual, or in danger of extinction. Extends only to species on public lands which includes the subaqueous bottoms of the State.   |
| OCGA 12-16-1<br><i>Environmental Policy</i>             | The Proposed Action is a federal agency activity.   | Requires state agencies to prepare environmental impact reports.   |
| OCGA 12-7-1<br><i>Erosion and Sedimentation Control</i> | The construction activities associated with the Proposed Action would not take place on land within the state of Georgia.   | Requires counties and municipalities to establish procedures for land-disturbance activities. Identifies permit requirements, exemptions, and best management practices.   |
| OCGA 27-1-3<br><i>Game and Fish Code</i>                | The Proposed Action would not impact terrestrial wildlife or freshwater wildlife resources, or marine game and fish within the coastal zone. No activities would take place on land or in any freshwater rivers, creek, streams, or lakes.  | Provides regulations for protection, management and conservation of terrestrial and fresh water wildlife resources. Identifies responsible agencies for licensing and permitting recreational and commercial fish and wildlife activities.                         |
| OCGA 12-5-90<br><i>Groundwater Use</i>                  | The Proposed Action would not require a permit related to the Groundwater Use Act. There would be no effect to water quality or in particular, to groundwater.  | Establishes regulations for development and implementation of water conservation plans. Includes coastal groundwater management plan for water conservation, protection from saltwater encroachment, reasonable uses, future development and economic development. |

| <b>Statute<br/>(Georgia Statute)</b>                 | <b>Consistency</b>  | <b>Scope</b>   |
|--|---|--|
| OCGA 12-8-60<br><i>Hazardous Waste Management</i>    | The Proposed Action would not result in significant quantities of hazardous materials or wastes. Hazardous material and waste would be managed in accordance with applicable federal and state regulations and DoD service guidelines.                              | Regulates all aspects of hazardous waste including generation, transport, storage, treatment, and disposal.  |
| OCGA 12-3-70<br><i>Heritage Trust</i>                | The Proposed Action would not impact historical resources of the state and would avoid significant natural areas.   | Preserves certain property with unique characteristics, historical significance, or recreational value.  |
| OCGA 12-3-50<br><i>Historic Areas</i>                | The Proposed Action would not impact historical resources of the state. Most of the shipwrecks in the USWTR study area are along the Florida coastline, with additional shipwrecks scattered in off-shore waters. The DoN would avoid all known cultural resources. | Addresses management and preservation of the state's archaeological and historical resources.  |
| OCGA 12-3-90<br><i>Natural Areas</i>                 | The Proposed Action would not have a significant impact to natural areas including estuarine research reserves, and aquatic preserves. There would be no effect to the Gray's Reef National Marine Sanctuary as a result of the Proposed Action.                    | Identifies and preserves areas with unusual ecological significance. The goals of the act are to preserve natural plant or animal communities, rare or valuable members, and other natural features of significant scientific, educational, geologic, ecological, or scenic value. |
| OCGA 12-4-40<br><i>Oil and Gas and Deep Drilling</i> | The Proposed Action would not affect oil or gas drilling activities or involve any deep-water drilling.   | Protects underground freshwater supplies and certain environmentally sensitive areas. Sets forth standards to prevent pollution, waste, fire, and spillage related to oil, gas, or mineral exploration.  |
| OCGA 12-4-100<br><i>Phosphate Mining</i>             | The Proposed Action would not take place on land in Georgia; therefore, no effects would occur to phosphate mining.   | Oversees licenses for mining phosphate deposits.   |
| OCGA 50-16-61<br><i>Revocable License Program</i>    | The Proposed Action does not involve construction or land activities in Georgia.  | Allows for the issuance of revocable licenses for recreational docks on state-owned tidal water bottoms.   |

| <b>Statute<br/>(Georgia Statute)</b>                       | <b>Consistency</b>  | <b>Scope</b>   |
|--|---|--|
| OCGA 52-1-30<br><i>Right of Passage</i>                    | The Proposed Action would not result in the closure of public access areas in state waters. Temporary disruptions to recreational and commercial fisheries could occur, but would be localized and for a short duration. No long-term effects to these resources would occur. | Provides for the use of all waterways by citizens.   |
| OCGA 12-2-1<br><i>River Corridor Protection</i>            | The Proposed Action would not affect river corridors, mountains, watersheds, or wetlands. No activities associated with the Proposed Action would create sedimentation or erosion in Georgia.   | Protects river corridors, mountains, watersheds, and wetlands. Provides protective measures for erosion and sedimentation and inclusion in management plans.   |
| OCGA 12-5-350<br><i>Scenic Rivers</i>                      | The Proposed Action would not impact any scenic rivers.   | Designates rivers with valuable scenic, recreational, or natural characteristics for present and future generations.   |
| OCGA 12-3-110<br><i>Scenic Trails</i>                      | The Proposed Action would not impact any scenic trails.   | Establishes a scenic trails program.   |
| OCGA 31-2-7 and<br>OCGA 31-3-5.1<br><i>Septic Tank Law</i> | The Proposed Action would not impact shoreline sanitation and does not include any construction or installation activities within the state of Georgia.   | Regulates septic tanks including safe placement, installation, and maintenance.  |
| OCGA 27-4-190<br><i>Shellfish</i>                          | The Proposed Action would not impact shellfish harvesting areas and would not affect the management of shellfish resources.   | Provides the regulations to harvest shellfish including licensing, approving areas for commercial harvest, and water quality monitoring.   |
| OCGA 2-5-230<br><i>Shore Protection</i>                    | The Proposed Action would not adversely affect the shoreline or access to the beach as no land activities would occur in Georgia.   | Provides for protection and management of sand dunes, beaches, sandbars, and shoals. Identifies limitations and permitting requirements related to construction, storage, parking, vehicle operation and related activities. Provides for public access and recreation at or near the beach. |

| <b>Statute<br/>(Georgia Statute)</b>              | <b>Consistency</b>  | <b>Scope</b>   |
|---|---|--|
| OCGA 12-8-21<br><i>Solid Waste Management</i>     | The Proposed Action would not involve the generation of solid waste within the state's coastal zone. All solid waste disposals would be conducted in accordance with DoN policies and procedures. | Sets forth the rules for solid waste handling facilities and processes to site new facilities.   |
| O.G.C. 12-4-70<br><i>Surface Mining</i>           | The Proposed Action would not impact surface mining.  | Regulates surface mining in the state and coastal zone.  |
| O.G.C. 52-1-1<br><i>Protection of Tidewaters</i>  | The Proposed Action would not result in the closure of areas within state tidewaters. No removal of structures or construction activities would occur.  | Provides for the use of all tidewaters by citizens. Allows for removal of structures.  |
| O.G.C. 12-13-1<br><i>Underground Storage Tank</i> | The Proposed Action does not include any construction or operation of landside facilities. There would be no landside activities in Georgia.  | Provides regulations to operate, detect releases, take corrective actions, and enforce the use of underground storage tanks. Ensures the protection of human health and safety and protection and maintenance of groundwater quality and surface water resources from contamination.   |
| OCGA 12-5-20<br><i>Water Quality Control</i>      | The Proposed Action would not result in significant impact to water quality from expended components.   | Ensures that water uses are prudent, maintains or restores purity, and provides an adequate supply. Regulates the use of rivers, streams, lakes, and subsurface waters for public and private water supply; and agricultural, industrial, and recreational uses is provided. Requires compliance with the Georgia Water Quality Control Act for activities in the coastal zone including tourism and recreation, manufacturing and transportation, and other activities. |

| <b>Statute<br/>(Georgia Statute)</b>            | <b>Consistency</b>  | <b>Scope</b>   |
|---|---|--|
| OCGA 12-5-120<br><i>Water Wells Standards</i>   | The Proposed Action would not include the construction, operation, or maintenance of water wells. | Requires compliance with the Water Wells Standards Act and regulates the siting, construction operation, maintenance, and abandon of wells and boreholes. Authorizes a council to adopt and amend rules to govern the licensing of well contractors. |
| OCGA 12-6-170<br><i>Wildflower Preservation</i> | The Proposed Action would not occur on land in Georgia.   | Designates and protects plant species that are rare, unusual, or in danger of extinction on public lands.  |

**CONCLUSION**

In conclusion, after careful consideration of the proposed action, the DoN has determined that the installation and operation of the USWTR would be consistent to the maximum extent practicable with the National Oceanic and Atmospheric Administration- (NOAA-) approved enforceable policies of the Georgia Coastal Management Program.

| Comments  | Navy's Response   |
|---|---|
| <p>"Given the importance of Georgia and Florida coastal waters to endangered North Atlantic right whales, and given the proximity of the proposed USWTR range to the right whale calving grounds, our chief recommendation would normally be that the Navy avoid conducting USWTR activities between November 15 and April 15 each year (i.e. when right whales are present off Georgia and Florida). Unfortunately, this option has been explicitly eliminated from consideration in the DEIS/OEIS. We urge the Navy to reconsider this decision. Avoiding or significantly reducing the scope of ASW activities between November 15 and April 15 would be the simplest way to reduce potential impacts to right whales and right whale habitat."</p>  | <p>The Navy has mitigation measures in place specific to operations conducted within the right whale critical habitat off the Georgia/Florida coasts that include posting additional lookouts, reducing speed and minimizing time spent in this area. Actual training on the range will occur further offshore than the coastal habitat preferred by mother/calf pairs. Construction during this period will be avoided, as detailed in Subchapter 6.4.</p> |
| <p>"Installation of the range should occur between April 15 and November 15 to avoid impacting North Atlantic right whales."</p>  | <p>Construction during the calving season will be avoided, as detailed in Subchapter 6.4.</p>   |
| <p>"We question the accuracy of the Acoustic Effects Analysis given how little is known about the density data at the heart of the analysis (i.e. Navy OPAREA Density Estimates) are spatially and temporally coarse in scale, and therefore inappropriate for fine- scale analysis that was conducted in the DEIS/OEIS. Rather, we recommend that comprehensive marine mammal surveys be conducted within the proposed USWTR area across all seasons in order to calculate accurate season-specific estimates of marine mammal density. This point is particularly important for North Atlantic right whales because the density of right whales beyond 30 NM of shore is unknown. Accurate right whale density estimates for waters beyond 30 NM are needed in order to predict impacts to right whales. The revised density estimates should be incorporated into the Acoustic Effects Analysis prior to publication of the Final EIS; they should also be considered by NMFS prior to issuing a Letter of Authorization (LOA) or consulting with the Navy under Section 7 of the Endangered Species Act (ESA)."</p> | <p>The Navy OPAREA Density Estimates (NODES) report has been placed on the project web site; it utilizes the best available method in density modeling. Navy used aerial and ship-board survey data from National Marine Fisheries Service going back to 1998 to develop these density estimates.</p>   |

| Comments   | Navy's Response   |
|--|---|
| <p>"The Navy estimated the annual "Acoustic Footprint" and exposure levels in its Acoustic Effects Analysis, but did not present this information in the DEIS/OEIS. This information is needed to assess the environmental impacts of the project and should be included in the Final EIS."</p>  | <p>A Range Distance Table has been placed in Chapter 4 of the Final EIS. The maximum distance sonar energy will travel is 147 km (approximately 80 nautical miles), but levels at this distance from the source are not expected to cause harassments. As detailed in the referenced table, harassments are expected to drop substantially at distances greater than 43.8 km (approximately 24 nautical miles) from the source.</p> |
| <p>"The maximum distance at which Level B harassment will occur from sonar sources is not provided in the DEIS/OEIS. This is particularly important given the proximity of the USWTR project area to the right whale calving ground. The Navy should address whether sonar energy will propagate from the USWTR and into areas inhabited by right whales. This information should be included in the Final EIS; it should also be considered by NMFS prior to issuing a LOA or consulting with the Navy under Section 7 of the ESA."</p>   | <p>A Range Distance Table has been placed in Chapter 4 of the Final EIS. The maximum distance sonar energy will travel is 147 km (approximately 80 nautical miles), but levels at this distance from the source are not expected to cause harassments. As detailed in the referenced table, harassments are expected to drop substantially at distances greater than 43.8 km (approximately 24 nautical miles) from the source.</p> |
| <p>"If sound is likely to propagate from the USWTR and into the right whale calving grounds, the potential for cumulative negative impacts on individual right whales and their habitat should be considered. Breeding females return to the waters off Georgia and northeast Florida every 3-5 years to calve. Immature right whales often return to the calving grounds each winter during the first few years of their lives. These individual whales may remain in waters off Georgia and Florida for extended periods (3-4 months). As such, the potential for cumulative impacts on individual whales should not be discounted."</p> | <p>The Navy consulted with National Marine Fisheries Service, who is a cooperating agency on the EIS. Please refer to Chapter 4.8 regarding the assessment of cumulative impacts.</p>   |
| <p>"The Navy's Integrated Comprehensive Monitoring Program (ICMP) should include a program for monitoring the long-term acoustic effects of USWTR activities on the project area and the adjacent right whale calving grounds. This program should be implemented in cooperation with NMFS and independent researchers."</p>   | <p>Comment noted. The Navy will be implementing a monitoring program for USWTR in coordination with NMFS in accordance with the Marine Mammal Protection Act and the Endangered Species Act.</p>  |

| Comments  | Navy's Response   |
|---|---|
| <p>"The Navy's emphasis on posting vessel lookouts as the primary operational means of avoiding marine mammal impacts is insufficient. Marine mammals are difficult to detect visually--even by trained observers. The probability of detecting marine mammals at night and in periods of inclement weather is even lower. Greater emphasis should be placed on real-time passive acoustic detection and visual detection of marine mammals by air prior to onset of USWTR activities."</p>   | <p>Please refer to Subchapter 6.1.2.2. Lookouts will use different techniques, including night lookout techniques, during periods of low light. Passive sonar, using all capable range instrumentation, and aerial monitoring would be used during all ASW exercises to detect the presence of marine mammals.</p>  |
| <p>"The right whale-specific vessel mitigation measures in the DEIS/OEIS would apply only to the Southeast U.S. critical habitat and an adjacent 5 NM-wide 'associated area of concern.' Right whales inhabit a much larger area than this. Research has shown that right whales utilize most waters within 30 nautical miles of the Georgia and northeast Florida. As stated above, right whales may also utilize waters beyond 30 NM of shore; further research is needed to address this question. Right whale-specific mitigation measures should apply to all areas inhabited by right whales--not just the currently delineated Southeast U.S. critical habitat."</p> | <p>The specific mitigation measures for USWTR will be developed in coordination and in consultation with National Marine Fisheries Service.</p>   |
| <p>"Navy vessels should travel at 10 knots (or minimum safe speed) while transiting through waters inhabited by right whales between November 15 and April 15. Exercises requiring greater vessel speeds should be conducted outside the right whales season or in location where right whales are not present. Contrary to the Navy's contention in the DEIS/OEIS, vessel speed limits are not arbitrary. The best available science indicates that whale mortality and serious injury is significantly reduced at speeds of 10 knots or less."</p>  | <p>Navy vessels travel at a slow, safe speed in accordance with the U.S. Coast Guard "Rules of the Road," found at <a href="http://www.navcen.uscg.gov/mwv/navrules/rotr_online.htm">http://www.navcen.uscg.gov/mwv/navrules/rotr_online.htm</a>. Also, Navy follows measures regarding transits as outlined in the 1997 Biological Opinion. The formal consultation with NMFS under Section 7 of the ESA will determine if additional mitigation measures are necessary.</p> |

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