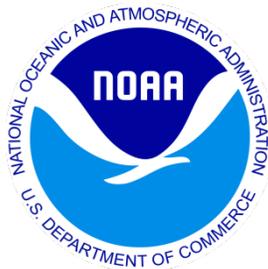


**APPENDIX C: RESPONSE TO PUBLIC COMMENTS ON THE  
NATIONAL OCEAN SERVICE DRAFT PEIS**

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**Response to Public Comments on the  
National Ocean Service  
Programmatic Environmental Impact Statement  
for Surveying and Mapping Projects in U.S. Waters  
for Coastal and Marine Data Acquisition**



**November 2022**

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## ACRONYMS AND ABBREVIATIONS

ACHP	Advisory Council on Historic Preservation
ADCP	Acoustic Doppler Current Profiler
AEWC	Alaska Eskimo Whaling Commission
AIS	Automatic Identification System
ANC	Alaska Native Corporation
ANSCA	Alaska Native Claims Settlement Act
ANO	Alaska Native Organization
BIA	Biologically Important Area
BMP	Best Management Practice
BOEM	Bureau of Ocean Energy Management
CAA	Conflict Avoidance Agreement
CARB	California's Air Resources Board
CBPA	Chesapeake Bay Preservation Area
CD	Consistency Determination
CFR	Code of Federal Regulations
CMP	Coastal Management Program
CNMI	Commonwealth of the Northern Mariana Islands
CRCP	Coral Reef Conservation Program
CWA	Clean Water Act
CZMA	Coastal Zone Management Act
dB	Decibel
DCMP	Delaware Coastal Management Program
DCRM	Division of Coastal Resources Management
DEP	Department of Environmental Protection
DEQ	Department of Environmental Quality
DFW	Division of Fish and Wildlife
DMR	Department of Marine Resources
DOC	Department of Commerce
DPEIS	Draft Programmatic Environmental Impact Statement
DWM	Department of Wildlife Management
DWR	Department of Wildlife Resources
EEZ	Exclusive Economic Zone
EFH	Essential Fish Habitat
EGLE	Environment, Great Lakes, and Energy
EIS	Environmental Impact Statement
EJ	Environmental Justice
ENC	Electronic Navigational Charts
ENOW	Economics National Ocean Watch
EO	Executive Order
EPA	Environmental Protection Agency
ESC	Erosion and Sediment Control
ESA	Endangered Species Act
F	Fahrenheit
FAQ	Frequently Asked Questions

FMC	Fishery Management Council
FR	Federal Register
ft	Foot/Feet
GDP	Gross Domestic Product
GPS	Global Positioning System
HC	Hydrocarbons
HPO	Historic Preservation Office
HRG	High Resolution Geophysical
Hz	Hertz
IPaC	Information for Planning and Consultation
IPC	Intergovernmental Policy Council
ITR	Incidental Take Regulation
IWC	International Whaling Commission
JPA	Joint Permit Application
kHz	Kilohertz
km	Kilometer
km <sup>2</sup>	Square Kilometer
lbs	Pounds
LCRP	Louisiana Coastal Resources Program
m	Meter
MARCO	Mid-Atlantic Regional Council on the Ocean
MARPOL	Marine Pollution
MBTA	Migratory Bird Treaty Act
MCL	Michigan Compiled Laws
MMPA	Marine Mammal Protection Act
MPA	Marine Protected Area
MSA	Magnuson-Stevens Fishery Conservation and Management Act
MSD	Marine Sanitation Device
MTNM	Marianas Trench Marine National Monument
NAVTEX	Navigational Telex
NEPA	National Environmental Policy Act
NGO	Non-Governmental Organization
NHO	Native Hawaiian Organization
NHPA	National Historic Preservation Act
nm	Nautical Mile
NMFS	National Marine Fisheries Service
NMSA	National Marine Sanctuaries Act
NOAA	National Oceanic and Atmospheric Administration
NOAA/OCS	National Oceanic and Atmospheric Administration's Office of Coast Survey
NOx	Nitrous Oxides
NOS	National Ocean Service
NRDC	Natural Resources Defense Council
NREPA	Natural Resources and Environmental Protection Act
NRHP	National Register of Historic Places
NRT	Navigation Response Team

NSB	North Slope Borough
OCM	Office for Coastal Management
OMB	Office of Management and Budget
ONMS	Office of National Marine Sanctuaries
OPR	Office of Protected Resources
ORR	Office of Response and Restoration
PA	Programmatic Agreement
PEIS	Programmatic Environmental Impact Statement
PM	Particulate Matter
PSA	Public Service Announcement
PSO	Protected Species Observer
ROV	Remotely Operated Vehicles
RPA	Resource Protection Area
SAR	Stock Assessment Report
SCHPR	South Carolina Historic Properties Record
SHPO	State Historic Preservation Officer
SLA	Submerged Lands Act
SWI	Sea Watch International
SWM	Storm Water Management
SWPPP	Storm Water Pollution Prevention Plan
TCP	Traditional Cultural Place
THPO	Tribal Historic Preservation Officer
U.S.	United States
U.S.C.	U.S. Code
USFWS	U.S. Fish and Wildlife Service
VESCL&R	Virginia Erosion and Sediment Control Law and Regulations
VAFWIS	Virginia Fish and Wildlife Information Service
VMRC	Virginia Marine Resource Commission
VSMP	Virginia Stormwater Management Program
VSWML&R	Virginia Storm Water Management Law and Regulations
WQIA	Water Quality Impact Assessment

## 1.0 INTRODUCTION

The public has a critical role in helping the National Ocean Service (NOS) understand the environmental impacts of the Proposed Action analyzed in the Programmatic Environmental Impact Statement (PEIS) for Surveying and Mapping Projects in U.S. Waters for Coastal and Marine Data Acquisition. Public participation promotes transparency, facilitates better decision-making, and helps federal agencies identify data gaps and sources of potential concern regarding the environmental impacts of a proposed action.

NOS published a “Notice of Availability of a Draft Programmatic Environmental Impact Statement for Surveying and Mapping Projects in U.S. Waters for Coastal and Marine Data Acquisition” in the *Federal Register* (FR) on June 25, 2021 to announce the availability of the Draft PEIS for public review. In conjunction with publication of the Draft PEIS, NOS prepared a comprehensive public involvement and outreach plan outlining the development and distribution of materials to inform the public and solicit input on the scope of the Proposed Action and related impact analysis. An interested party letter inviting public comment on the draft was distributed via email or U.S. mail to federal agencies; states and territories; Non-Governmental Organizations (NGOs); tribes; regional organizations; Alaska regional and village corporations; Native Hawaiian Organizations (NHOs); and NOS grantees, partners, and permit/authorization recipients with potential interest in the Proposed Action. Potentially interested tribes include those in geographic proximity to the action area (i.e., located in coastal states, Great Lakes states, or along major navigable rivers) as well as tribes with historic, religious, or cultural connections to coastal and marine resources regardless of proximity to the action area. In addition to contacting interested parties directly, the availability of the Draft PEIS was advertised in newspapers in coastal cities throughout the United States (U.S.) and posted on NOAA and NOS social media platforms. These announcements directed readers to the project website at <https://oceanservice.noaa.gov/about/environmental-compliance/surveying-mapping.html>. The website provides helpful information detailing key components of the Draft PEIS including an overview of the Proposed Action, fact sheets about the resources analyzed, and instructions on how to comment on the document. In order to reach communities in Alaska without reliable internet access, in addition to newspaper advertisements, NOS developed a Public Service Announcement (PSA) that was broadcasted by public radio stations to reach a broad geographic range along the Alaska coast. NOS offered to send a physical copy (a CD, USB drive, or hard copy) of the Draft PEIS to individuals or communities on request, to ensure that the Draft would be made available at community centers, libraries, and other public facilities as needed.

Following the publication of the Draft PEIS, the NOS Environmental Compliance Coordinator presented a brief overview of the Draft PEIS to the Alaska Eskimo Whaling Commission (AEWC), including information about NOS, the Proposed Action, expected impacts to marine mammals and subsistence hunting and fishing, and compliance with the Marine Mammal Protection Act (MMPA). In response to preliminary feedback received from AEWC members and other Alaska Native community members, NOS extended the original 60-day public comment period deadline by 90 days from August 24, 2021 to November 22, 2021 to accommodate the Alaskan subsistence hunting and fishing season. The extension of the public comment period was published in the *Federal Register* on August 24, 2021.

During the public comment period for the Draft PEIS, NOS received 31 comment submissions from 30 commenters via Regulations.gov and email. Commenters included State Historic

Preservation Officers (SHPOs), Tribal Historic Preservation Officers (THPOs), state Coastal Management program (CMP) offices, federally recognized tribes, Alaska Native corporations (ANCs), Alaska Native Organizations (ANOs), NGOs, and members of the public. The comments addressed a range of issues including the following:

- Protection of cultural and historic resources;
- Federal consistency under the Coastal Zone Management Act (CZMA);
- Incorporation of mitigation measures;
- Environmental justice (EJ) concerns pertaining to subsistence hunting and fishing in Alaska communities;
- Future coordination between NOS and other key stakeholders, such as the AEWC, North Slope Borough Department of Wildlife Management, Calista Corporation in Alaska, Donlin Gold, National Resources Defense Council, Cultural Heritage Partners representing the Upper Mattaponi Indian Tribe, the Chickahominy Indian Tribe, and the Seneca Nation of New York;
- The National Environmental Policy Act (NEPA) process, scope of the PEIS, selection of a programmatic NEPA approach, alternatives to the Proposed Action, cumulative effects analysis, references and data cited in the effects analysis;
- Impacts to marine mammals, fish, habitats, birds, sea turtles
- Methodology and data consideration for the acoustic modeling;
- Impacts to socioeconomic resources such as fisheries; and
- Access to surveying and mapping data collected during NOS projects through data sharing.

NOS has thoroughly considered all of the input received and has responded to the public comments in this document. Revisions to the Final PEIS have been made in response to comments where appropriate.

## 2.0 RESPONSE TO PUBLIC COMMENTS

This section is organized alphabetically by the name of the organization or private individual that submitted a comment. These submissions were reviewed by NOS, and comments on specific issues were identified and labeled with a subject and comment number (e.g., Cultural and Historic Resources-1). This enabled NOS to provide consistent responses to similar comments made by multiple commenters.

Each subsection below begins with the original comment submission as received by NOS. Following the original submittal, the individual comments identified are presented by subject followed by NOS's response. A complete list of acronyms and abbreviations is provided at the beginning of this document.

## **2.1 Advisory Council on Historic Preservation (ACHP) (Alexis Clark)**

### **2.1.1 *Comment Submission***

**From:** [NOSAA Environmental Compliance - NOAA Service Account](#)  
**To:** [Michelle.Smyk@solvllc.com](mailto:Michelle.Smyk@solvllc.com)  
**Subject:** Fwd: NOAA National Ocean Service Releases Draft PEIS for Surveying and Mapping Projects  
**Date:** Friday, October 15, 2021 11:35:41 AM  
**Attachments:** [image001.png](#)

---

ACHP

v/r  
Giannina DiMaio  
*NOS Environmental Compliance Coordinator*  
Pronouns: she/her/hers

NOAA, National Ocean Service  
Office of the Assistant Administrator  
1305 East-West Hwy, SSMC4 13th Floor  
Silver Spring, MD 20910  
V: 240-533-0918  
[nosaa.ec@noaa.gov](mailto:nosaa.ec@noaa.gov)

----- Forwarded message -----

**From:** Alexis Clark <[aclark@achp.gov](mailto:aclark@achp.gov)>  
**Date:** Wed, Aug 4, 2021 at 4:14 PM  
**Subject:** Re: NOAA National Ocean Service Releases Draft PEIS for Surveying and Mapping Projects  
**To:** [nosaa.ec@noaa.gov](mailto:nosaa.ec@noaa.gov) <[nosaa.ec@noaa.gov](mailto:nosaa.ec@noaa.gov)>  
**Cc:** Chris Daniel <[cdaniel@achp.gov](mailto:cdaniel@achp.gov)>, Jaime Loichinger <[jloichinger@achp.gov](mailto:jloichinger@achp.gov)>, Erik M. Hein <[hein@ncshpo.org](mailto:hein@ncshpo.org)>

Dear Ms. DeMaio,

Thank you for providing the additional information regarding the Draft PEIS. We concur with NCSHPO that it appears NOAA is proposing to develop a program alternative with the ACHP. We request NOAA provide some additional clarification about the “programmatic approach” mentioned. Does NOAA intend to develop a Program Specific Programmatic Agreement (PA) or a PA for complex undertakings? Additionally, if NOAA intends to develop a PA, the agency needs to formally initiate consultation. An agency can provide this documentation via our Electronic Section 106 Documentation Submittal System (e106). Information for this can be found on our website at <https://www.achp.gov/e106-email-form>.

Further, as a reminder, a Program or Project PA that would guide Section compliance for a Program of Projects or specific Projects should be completed prior to the finalization of the EIS, as conclusion

of the EIS prior to completion of the Section 106 process would appear to limit alternatives in the PA. The Draft PEIS is vague on how the Section 106 process will be completed.

We would welcome having a call with NOAA and NCSHPO to discuss these questions and next steps.

Thank you,

Alexis Clark

Historic Preservation Specialist

Advisory Council on Historic Preservation

401 F Street NW, Suite 308, Washington, DC 20001

(202) 517-0208

[www.achp.gov](http://www.achp.gov)



**COVID-19 and the ACHP.** The ACHP staff is teleworking and available by e-mail and phone. Up to date information on Section 106 and ACHP operations can be found at [www.achp.gov/coronavirus](http://www.achp.gov/coronavirus).

**From:** NOSAA Environmental Compliance - NOAA Service Account [mailto:[nosaa.ec@noaa.gov](mailto:nosaa.ec@noaa.gov)]

**Sent:** Tuesday, July 06, 2021 12:45 PM

**To:** Erik M. Hein

**Cc:** Chris Daniel; Jaime Loichinger

**Subject:** [External] Re: NOAA National Ocean Service Releases Draft PEIS for Surveying and Mapping Projects

Erik,

Thank you for taking the time to reach out to me regarding our plans for Section 106 Consultation under the NHPA. The Draft PEIS is not intended to substitute the requirement to consult with SHPOs. The document was provided to State Historic Preservation Offices and Tribal Historic Preservation Officers for information and awareness. The Draft PEIS was also provided to all federally recognized tribes in the action area as well as Native Hawaiian Organizations and Alaska Native tribes as part of our government-to-government consultation process.

NOS will be working on a programmatic approach with the Advisory Council on Historic Preservation (ACHP) and the National Conference of SHPOs. It is our understanding SHPOs will be part of this process. We would appreciate any comments or assistance in identifying historic or cultural resources that may be potentially affected by NOS surveying and mapping activities in your area. Additionally, if you have any thoughts or suggestions on how we could minimize or avoid potential adverse impacts of our surveying and mapping activities to historic properties that would be helpful as we develop a programmatic agreement with SHPOs.

My apologies for the delayed response as I was on leave last week. Please feel free to contact me if you have any additional questions or would like to discuss the process further.

v/r

Giannina DiMaio

*NOS Environmental Compliance Coordinator*

Pronouns: she/her/hers

NOAA, National Ocean Service

Office of the Assistant Administrator

1305 East-West Hwy, SSMC4 13th Floor

Silver Spring, MD 20910

V: 240-533-0918

[nosaa.ec@noaa.gov](mailto:nosaa.ec@noaa.gov)

On Mon, Jun 28, 2021 at 1:30 PM Erik Hein <[hein@ncshpo.org](mailto:hein@ncshpo.org)> wrote:

Dear Giannina:

Thank you for reaching out. I am, however, unclear on what this is – or what you are specifically asking State Historic Preservation Officers to do in the context of Section 106 of the National Historic Preservation Act. Are you substituting NEPA for 106? Is there an independent 106 consultation taking place? Are you seeking some sort of nationwide programmatic solution for Section 106?

Thank you in advance for any additional information you could provide.

Erik M. Hein

Executive Director

**National Conference of State Historic Preservation Officers**

Hall of States | 444 N. Capitol Street NW, Suite 342 | Washington, DC 20001

p| 202.624.5465 e| [hein@ncshpo.org](mailto:hein@ncshpo.org) f| 202.624.5419

---

**From:** NOSAA Environmental Compliance - NOAA Service Account  
<[nosaa.ec@noaa.gov](mailto:nosaa.ec@noaa.gov)>

**Sent:** Friday, June 25, 2021 5:26 PM

**Subject:** NOAA National Ocean Service Releases Draft PEIS for Surveying and Mapping Projects

Dear State Historic Preservation Officer,

The National Oceanic and Atmospheric Administration (NOAA) National Ocean Service (NOS) has prepared a Draft Programmatic Environmental Impact Statement (PEIS) for *Surveying and Mapping Projects in U.S. Waters for Coastal and Marine Data Acquisition* pursuant to the National Environmental Policy Act. The Draft PEIS is now available for a 60-day public comment ending August 24, 2021. The [Notice of Availability](#) was published today in the *Federal Register*.

The Draft PEIS analyzes the potential environmental impacts of recurring surveying and mapping data collection in United States coastal and marine waters over a period of six years. The analysis in this document covers the use of active acoustic equipment such as sub-bottom profilers, single beam and multibeam echo sounders, and side-scan sonars by NOS to collect data on the depths and shapes of underwater terrain, including the ocean, rivers, and lakes. The Draft PEIS analyzes impacts to critical environmental resources such as marine mammals, endangered and threatened species, and cultural and historic resources. The document can be found on the NOS Surveying and Mapping Draft PEIS website at <https://oceanservice.noaa.gov/about/environmental-compliance/surveying-mapping.html>.

Attached is the notification letter with additional information regarding the Draft PEIS.

If you have any questions, please feel free to contact me by phone at 240-533-0918 or email at [nosaa.ec@noaa.gov](mailto:nosaa.ec@noaa.gov).

v/r

Giannina DiMaio

*NOS Environmental Compliance Coordinator*

Pronouns: she/her/hers

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### 2.1.2 *NOS Response*

**Cultural and Historic Resources-1:** We concur with NCSHPO that it appears NOAA is proposing to develop a program alternative with the ACHP. We request NOAA provide some additional clarification about the “programmatic approach” mentioned. Does NOAA intend to develop a Program Specific Programmatic Agreement (PA) or a PA for complex undertakings?

**NOS Response:** While NOS may consider developing a Programmatic Agreement (PA) for multiple undertakings in the future, NOS will initiate project-specific consultations under Section 106 of the NHPA before commencing any activity with the potential to affect cultural or historic resources.

**Cultural and Historic Resources-2:** Additionally, if NOAA intends to develop a PA, the agency needs to formally initiate consultation. An agency can provide this documentation via our Electronic Section 106 Documentation Submittal System (e106). Information for this can be found on our website at <https://www.achp.gov/e106-email-form>.

**NOS Response:** Thank you for providing this information. NOS will initiate project-specific consultations under Section 106 of the NHPA before commencing any activity with the potential to affect cultural or historic resources.

**Cultural and Historic Resources-3:** Further, as a reminder, a Program or Project PA that would guide Section compliance for a Program of Projects or specific Projects should be completed prior to the finalization of the EIS, as conclusion of the EIS prior to completion of the Section 106 process would appear to limit alternatives in the PA. The Draft PEIS is vague on how the Section 106 process will be completed.

**NOS Response:** While NOS may consider developing a PA for multiple undertakings in the future, NOS will initiate project-specific consultations under Section 106 of the NHPA before commencing any project with the potential to affect cultural or historic resources.

This PEIS contains a programmatic effects analysis, meaning it provides an effects analysis for activities as they are typically conducted, with impacts assessed based on regional conditions, habitat types, species, and other factors. However, the PEIS does not identify the specific time or place for individual projects or activities over the next five years.

The PEIS will be used to inform NOS responsibilities under NHPA when conducting project-specific reviews. Completing the PEIS before initiating consultation under Section 106 prior to commencing project-specific activities will not limit the ability to develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize, or mitigate adverse effects. NOS will be able to consider and implement alternatives or additional mitigation measures developed through project-specific Section 106 consultations.

## **2.2 Alaska Eskimo Whaling Commission (John Hopson, Jr.)**

### ***2.2.1 Comment Submission***

# ALASKAESKIMO

WHALING COMMISSION

August 6, 2021

Giannina DiMaio  
DOC/NOAA/NOS  
Environmental Compliance Coordinator  
SSMC4-Station 13612  
1305 East West Highway  
Silver Spring, MD 20910

Via email: [nosaa.ec@noaa.gov](mailto:nosaa.ec@noaa.gov)

**Re: Notice of Availability of a Draft Programmatic Environmental Impact Statement for Surveying and Mapping Projects in U.S. Waters for Coastal and Marine Data Acquisition**

Dear Ms. DiMaio:

Please accept this request for an extension to the comment period on behalf of the Alaska Eskimo Whaling Commission (AEWC) for the the Draft Programmatic Environmental Impact Statement for Surveying and Mapping Projects in U.S. Waters for Coastal and Marine Data Acquisition (DPEIS).<sup>1</sup> We request an extension from August 24 to November 24 to allow adequate time to comment on the document.

AEWC is a non-profit organization representing subsistence Whaling Captains in Northern coastal Alaska. AEWc represents the eleven bowhead whale subsistence hunting villages of Utqiagvik (Barrow), Nuiqsut, Kaktovik, Pt. Hope, Kivalina, Wales, Savoonga, Gambell, Little Diomede, Wainwright and Pt. Lay. Our whaling captains and their communities rely on the subsistence hunt of bowhead whales and other marine mammals in or adjacent to the Bering, Beaufort and Chukchi Seas.

We understand the importance of having good maps for our region, for the safety of all vessels. We appreciated the presentation provided at our July 2021 Board meeting in Fairbanks, AK. However, the presentation was general in nature and did not get into the specifics of the anticipated surveys in Alaska. Further, the surveying activities described in this DPEIS are of great concern to us as our communities participate in, and are dependent, on subsistence whaling. Marine activities during specific time periods have a high potential to disrupt bowhead whale migrations. This may put our hunters' safety at risk and negatively impact our subsistence hunts, which are necessary for our food security. For this reason, most industrial and governmental operations in the Beaufort and Chukchi Seas coordinate closely with the AEWc and the North Slope Borough Department of Wildlife Management to prevent and reduce the impacts of such activities. We have also been able to coordinate with NOAA and the National Ocean Service in the past, including the recent Sairdron project by the Office of Coast Survey to make

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<sup>1</sup> 86 FR 33663.

adjustments to address community needs during the fall harvest. This type of consultation and coordination must continue.

Unfortunately, the timing of the DPEIS process makes it difficult to adequately review the document. The next few months, August to October, are a particularly busy time for our whaling communities, and our colleagues at the North Slope Borough. Many of our North Slope Communities are actively whaling and then successful whaling captains are getting ready in November/December timeframe for Thanksgiving and Christmas Feasts. We also hope we do not end up with a situation like 2019 where, because of changes to the migration, the Captains in Utqiagvik were unable to harvest a whale until November. In addition, the communities on St. Lawrence Island of Gambell and Savoonga often catch whales in late December.

Moreover, at this time, we are unclear on what activities are planned for our region. We would like more time to review the document, interact with National Ocean Service personnel and learn more about this issue so that we can provide more useful comments. Accordingly, we believe that additional time is needed to adequately comment on this DPEIS.

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in black ink, appearing to read 'John Hopson, Jr.', written in a cursive style.

John Hopson, Jr.  
Chairman  
Alaska Eskimo Whaling Commission

cc: AEWK Commissioners  
Mayor Brower, North Slope Borough  
Voice of the Arctic Inupiat  
Inupiat Community of the Arctic Slope

### **2.2.2**     *NOS Response*

**NEPA Process-3:** Please accept this request for an extension to the comment period on behalf of the AEWG for the Draft Programmatic Environmental Impact Statement for Surveying and Mapping Projects in U.S. Waters for Coastal and Marine Data Acquisition (DPEIS). We request an extension from August 24 to November 24 to allow adequate time to comment on the document (86 FR 33663).

**NOS Response:** After receiving your letter, NOS extended the original 60-day public comment period deadline by 90 days from August 24, 2021 to November 22, 2021 to accommodate the Alaskan subsistence hunting and fishing community (86 FR 47299).

**Purpose and Need-1:** We understand the importance of having good maps for our region, for the safety of all vessels.

**NOS Response:** Thank you for your comment and support of the purpose and need for the Proposed Action.

**NEPA Process-4:** We appreciated the presentation provided at our July 2021 Board meeting in Fairbanks, AK. However, the presentation was general in nature and did not get into the specifics of the anticipated surveys in Alaska.

**NOS Response:** NOS appreciated the opportunity to present to the AEWG in July 2021. NOS will work with the NOAA Alaska Regional Navigation Manager to provide Alaskan communities with information on upcoming surveying projects to avoid or minimize interference with traditional hunting and fishing for subsistence uses.

Federally recognized tribes and ANCs may request formal government-to-government consultation pursuant to Executive Order (EO) 13175 at any time.

**Environmental Justice-9:** the surveying activities described in this DPEIS are of great concern to us as our communities participate in, and are dependent, on subsistence whaling. Marine activities during specific time periods have a high potential to disrupt bowhead whale migrations. This may put our hunters' safety at risk and negatively impact our subsistence hunts, which are necessary for our food security.

**NOS Response:** Thank you for your comment. NOS understands the North Slope Borough (NSB) and AEWG concerns for possible effects on subsistence, food security, and safety. NOS activities are conducted with the highest regard to health and safety, including the safety of subsistence hunters. NOS understands that protecting Alaska Native subsistence resources is vital.

NOS will coordinate with tribes and subsistence hunters and fishers prior to conducting projects in subsistence hunting areas. NOS will also work with the NOAA Alaska Regional Navigation Manager to provide Alaskan communities with information on upcoming surveying projects to avoid or minimize interference with traditional hunting and fishing for subsistence uses. Through this communication strategy, NOS would minimize the

potential for adverse impacts on subsistence communities, food security, and the safety of hunters.

NOS intends to notify individual tribes and ANCs pursuant to EO 13175 before conducting any project that may have tribal implications. Federally recognized tribes may request formal government-to-government consultation pursuant to EO 13175 at any time.

**Future Coordination-3:** We have also been able to coordinate with NOAA and the National Ocean Service in the past, including the recent Saildrone project by the Office of Coast Survey to make adjustments to address community needs during the fall harvest. This type of consultation and coordination must continue.

**NOS Response:** NOS agrees that the previous discussion regarding the Saildrone project was an example of effective coordination. We look forward to a continued cooperative partnership and open communication with tribes and subsistence hunters and fishers.

**NEPA Process-5:** Unfortunately, the timing of the DPEIS process makes it difficult to adequately review the document. The next few months, August to October, are a particularly busy time for our whaling communities, and our colleagues at the North Slope Borough. Many of our North Slope Communities are actively whaling and then successful whaling captains are getting ready in November/December timeframe for Thanksgiving and Christmas Feasts.

**NOS Response:** After receiving your comment, NOS extended the original 60-day public comment period deadline by 90 days from August 24, 2021 to November 22, 2021 to accommodate the Alaskan subsistence hunting and fishing community (86 FR 47299).

**Alaska-1:** Moreover, at this time, we are unclear on what activities are planned for our region.

**NOS Response:** NOS determined that a programmatic approach was appropriate because NOS conducts, authorizes, permits, and funds a suite of similar, ongoing data collection activities associated with recurring projects across a wide geographic area to characterize underwater features (e.g., habitat, bathymetry, marine debris). This Final PEIS is a comprehensive document that provides detailed programmatic effects analyses for surveying and mapping data collection activities based on regional conditions, habitat types, species, and other factors. However, the Final PEIS does not identify the specific time or place for individual projects or activities over the next five years. The analysis will be used to inform NOS leadership and the public on the environmental impacts of these activities before a decision is made on how to execute each project. All projects will require a project-specific review by NOS before proceeding.

Specific project locations are determined annually for the upcoming surveying season. NOS will coordinate with tribes and subsistence hunters and fishers prior to conducting projects in subsistence hunting areas. NOS will work with the NOAA Alaska Regional Navigation Manager to provide Alaskan communities with information on upcoming surveying projects to avoid or minimize interference with traditional hunting and fishing for subsistence uses. Through this communication strategy, NOS would minimize the potential for adverse impacts on subsistence communities, food security, and the safety of hunters.

NOS intends to notify individual tribes and ANCs pursuant to EO 13175 before conducting any project that may have tribal implications. Federally recognized tribes may request government-to-government consultation at any time for a proposed action that may have tribal implications. NOS will also initiate project-specific consultations under Section 106 of the NHPA before commencing any activity with the potential to affect cultural or historic resources.

## **2.3 Calista Corporation (Andrew Guy)**

### ***2.3.1 Comment Submission***



CALISTA CORPORATION  
www.calistacorp.com

November 22, 2021

Giannina DiMaio  
National Ocean Service, National Oceanic and Atmospheric Administration  
1305 East West Highway  
SSMC4-Station 13612  
Silver Spring, MD

Via Email: [nosaa.ec@noaa.gov](mailto:nosaa.ec@noaa.gov)

***Re: Calista Comments on National Oceanic and Atmospheric Administration (NOAA) National Ocean Service (NOS) Draft Programmatic Environmental Impact Statement (PEIS) for Survey and Mapping Projects in U.S. Waters for Coastal and Marine Data Acquisition (NOAA-NOS-2021-0055)***

Dear Ms. DiMaio:

## **Introduction**

On behalf of the Calista Corporation (“Calista”), an Alaska Native Claims Settlement Act (“ANCSA”) Regional Corporation, we thank the National Oceanic and Atmospheric Association (“NOAA”) National Ocean Service (“NOS”) for the opportunity to review and submit written comments on the Draft PEIS to analyze environmental impacts associated with NOS’s 2022-2027 survey and data collection activities. This issue is very important to the health and well-being of Calista shareholders, as it is vital to understand and protect our marine environment to protect our subsistence way of life.

## **Alternative C is Calista’s Preferred Alternative**

Calista supports Alternative C. Improving efficiencies in surveying, mapping, charting, and related data gathering, combined with a funding increase of 20 percent relative to Alternative B, would maximize the amount of this work in the Calista region in 2022-2027. This would be consistent with our goal of better understanding and protecting our marine environment in order to protect our subsistence way of life.

## **Calista**

Calista serves more than 34,000 Alaska Native shareholders with roots in the 56 tribal communities of the Yukon-Kuskokwim River Delta Region (“YK Region”). YK Region communities are located along the Yukon and Kuskokwim Rivers and along Bering Sea coast, spread across an area the size of New York State. The State of Alaska has the largest coastline of the U.S. totaling 6,640 miles. Of that, the Calista region contains 2,674 miles, or 40 percent, of Alaska’s coastline.

Calista shareholders include the tribal citizens of these 56 federally recognized Tribes – nearly one-quarter of all the Tribes in Alaska. The YK Region is not connected by a road system: Access to each community is by river ice road, frozen tundra, small watercraft during the short summer, or airplane. Many commercial goods and fuel are barged into the main hub community of Bethel, Alaska. Logistical limitations due to cost and weather often make it difficult to provide even basic goods and services in the YK Region.

## **Subsistence and Food Security**

Subsistence is a top priority for Calista and our 34,000 shareholders. Food security today relies on a mixed cash economy: It takes a cash income to afford the fuel, equipment, and supplies necessary to participate in subsistence hunting, fishing, and gathering activities. This year we saw a drastic decline in salmon escapement on the Yukon and Kuskokwim rivers, forcing fishing closures on communities that rely on salmon during the winter months. The State of Alaska, Calista, Doyon Limited, and other partners joined together to donate 37,000 of pounds of salmon to the Lower Yukon communities in September 2020 to alleviate the loss of this year's salmon harvest. While we were able to come together to share resources during hard times, the source of the lower salmon numbers needs to be understood and managed at the local, state, federal and international level. Subsistence is our natural right to be a part of the ecosystem, and as caretakers and stewards of our natural resources, we support co-management approaches that combine science and Traditional Knowledge.

Environmental impact mitigation during these coastal activities and data gathering should include protection of Alaska Native subsistence resources, including salmon, and responding to such threats through disaster declarations and other remedial action. NOAA NOS should also include responding to such threats by researching potential causes using methods that incorporate and account for Indigenous knowledge, climate change, and species-specific data. In the case of salmon, such species-specific data might include the life cycle of salmon species in the ocean; the effect changes in the ocean environment are having on salmon as they return to their spawning grounds in the Arctic, including the YK Region; by-catch practices of commercial trawlers; and international poaching.

We recommend increased funding as outlined in Alternative C, to further scientific studies on Arctic activities to support an increased understanding of our socio-ecologic and socio-economic systems that support the health of Alaskan Arctic communities. Given the alarming decline of various fisheries and the importance of these fisheries to Tribal subsistence users and well-being of the Alaska Native Communities, Tribal participation and representation on the Northwest Pacific Fisheries Management Council must demand additional studies and observations on trawler impacts of the seafloor, where the impacts of that activity cascades through the ecosystem, to the detriment of Calista shareholders.

## **Environmental Threats Due to Climate Change**

The YK Region is the most impacted region in Alaska from environmental threats due to climate change, per the 2019 Alaska Statewide Threat Assessment for Environmentally Threatened Communities (Figure 1). Calista participates in Yukon Kuskokwim Comprehensive Economic Development Strategy (YK CEDS) work sessions with Tribes, Village Corporations and non-profits to assess the YK Region for economic viability and resilience. In the Climate Change Adaption Workshop, Calista met with the Alaska Native Tribe Health Consortium ("ANTHC"), Center for Environmentally Threatened Communities (CETC), Association of Village Council Presidents ("AVCP") and U.S. Fish and Wildlife Service to address the actions needed to assist the YK Region's 28 high-risk and 19 next-highest-risk communities. Continued surveys will only strengthen the data and observation in our rapidly changing environment.

<b>ENVIRONMENTALLY THREATENED COMMUNITIES SUMMARY STATISTICS BY ALASKA REGION (2019)</b>				
Region	Highest Risk Communities	Next Highest Risk Communities	Risk Assessment Cost (million)	Mitigation Cost (million)
Yukon Kuskokwim	28	19	12.6	1,718
Northwest	21	4	7.2	1,124
Arctic Slope	6	2	0.0	287
Interior	13	14	6.9	182
Bristol Bay	3	12	2.4	72
Aleutian Pribilof	1	4	0.8	69
South Central, Southeast, Kodiak	1	16	2.0	27
<b>Total</b>	<b>73</b>	<b>71</b>	<b>31.8</b>	<b>3,478</b>

Figure 1: From ANTHC, based on data summarized from the 2019 Statewide Threat Assessment

### **Incorporation of Both Tribal and ANC Consultation is Required**

President Biden’s Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships was issued on January 26, 2021. The Memorandum reaffirms Executive Order 13175,<sup>1</sup> which requires federal agencies to consult with American Indians and Alaska Natives on federal policies that have tribal implications in regulation, legislation, or policy statements or actions that have direct effects on one or more Tribe, impacts Federal-Tribal relations, or impacts the distribution of power and responsibility between the Federal Government and Tribes.

In line with the Presidential Memorandum, we ask that the NOAA NOS prioritize upholding and complying with Congress’s clear and unambiguous mandate to also extend to Alaska Native Corporations the OMB and federal agencies’ tribal consultation obligations under Executive Order 13175.<sup>2</sup> Any plans, reports, policies, regulation, or other actions directed under the Biden Memorandum regarding consultation with “Indian tribes” and “Tribal officials,” as defined in EO 13175, by statute also apply to consultation with ANCs. All federal agencies must consult with ANCs “on the same basis” as Tribes to ensure the economic, social, and cultural interests of ANC shareholders are protected and advanced. One important reason for this is that under ANCSA, it is the ANCs, rather than the tribal governments, that are the caretakers and managers of the conveyed lands, which lands constitute all that remains of the traditional homelands of Alaska Native peoples.

Calista respects and supports YK Region Tribes, as well as the 45 ANCSA Village Corporations in the YK Region. While there are important and unequivocal differences between ANCs and sovereign Tribes, let there be no mistake: Congress made clear that federal agencies are required to consult with ANCs “on the same basis” as Tribes. Consistent with this requirement, it is critical that ANCs be provided the

<sup>1</sup> Executive Office of the President, Tribal Consultation and Strengthening Nation-to-Nation Relationships, 86 Fed. Reg. 7491 (Jan. 29, 2021).

<sup>2</sup> Public Law No. 108-199, as amended by Public Law No. 108-447, specifically extended these obligations to ANCs, requiring OMB and all Federal agencies to “consult with Alaska Native corporations on the same basis as Indian tribes under Executive Order No. 13175.” Consolidated Appropriations Act, 2004, Pub. L. 108-199, Div. H § 161, 118 Stat. 3, 452 (2004), as amended by Consolidated Appropriations Act, 2005, Pub. L. 108-447, Div. H, Title V § 518, 118 Stat. 2809, 3267.

opportunity to meaningfully participate in the development and implementation of policies that could impact our ability to fulfill the purposes for which we were established under ANCSA: to provide economic and social benefits to our Alaska Native shareholders, including tribal citizens.

ANCs should receive notice of all Tribal consultation notices provided to federally recognized Tribes within their respective regions. As previously mentioned, the region that Calista represents is home to 56 federally recognized Tribes and 45 ANCSA Village Corporations spread across a roadless area the size of New York State. Calista works closely with the Tribes and Village ANCs in our region and provides support on a variety of matters including self-governance, rural economies, lands, and natural resources. Rural and remote tribal governments often have limited funding, administrative capacity, technology including internet access, and infrastructure, so Calista and YK Village Corporation staffs regularly provide administrative, financial, and other needed support.

Moreover, because of the split surface-subsurface land ownership under ANCSA (Regional Corporations predominantly own subsurface lands, while Village Corporations predominantly own surface lands), it is imperative that ANCs be notified of any NOAA initiatives that may impact ANC lands and natural resources. This will enable Calista and the YK Region Village Corporations to support and work with the Tribes on issues of common concern. The NOAA NOS may not be aware of implications to ANC lands, projects, and resources unless potentially impacted ANCs, who own and manage the land, are invited to consult and given the opportunity to weigh in on any unforeseen lands and natural resources impacts.

### **Current Project**

In 2018 to 2019, Calista worked with NOAA and the State of Alaska to the prioritize coastal surveys in the YK Region. This year, a new survey conducted by NOAA in coordination with the State of Alaska, gives Calista an additional opportunity to verify the coastal mapping priorities that were finalized in 2019, and also to expand that coastal surveying activity to include ocean mapping. This expansion will not only ensure that Calista’s ANCSA land selections along the coast are valid, but also help us better understand and protect the marine environment of the YK Region, in order to protect our subsistence way of life.

### **Conclusion**

Calista supports the purpose of the proposed action, “to gather accurate and timely data on the marine and coastal environment,” and also the need for the proposed action, “to ensure safety at sea, economic well-being, and the efficient stewardship of public trust resources.” Alternative C aligns well with this purpose and need, and is consistent with Calista’s goal of better understanding and protecting the marine environment of the YK Region in order to protect our subsistence way of life.

Quyana,

CALISTA CORPORATION



Andrew Guy  
President and CEO

### 2.3.2 *NOS Response*

**Alternatives-3:** Calista supports Alternative C. Improving efficiencies in surveying, mapping, charting, and related data gathering, combined with a funding increase of 20 percent relative to Alternative B, would maximize the amount of this work in the Calista region in 2022-2027. This would be consistent with our goal of better understanding and protecting our marine environment in order to protect our subsistence way of life...We recommend increased funding as outlined in Alternative C, to further scientific studies on Arctic activities to support an increased understanding of our socio-ecologic and socio-economic systems that support the health of Alaskan Arctic communities.

**NOS Response:** Thank you for your support of Alternative C in which NOS would adopt new techniques and technologies to encourage greater program efficiencies regarding surveying, mapping, and related data gathering activities. Alaska continues to be a mapping priority for NOS.

**Mitigation Measures-19:** Environmental impact mitigation during these coastal activities and data gathering should include protection of Alaska Native subsistence resources, including salmon, and responding to such threats through disaster declarations and other remedial action. NOAA NOS should also include responding to such threats by researching potential causes using methods that incorporate and account for Indigenous knowledge, climate change, and species-specific data. In the case of salmon, such species-specific data might include the life cycle of salmon species in the ocean; the effect changes in the ocean environment are having on salmon as they return to their spawning grounds in the Arctic, including the YK Region; by-catch practices of commercial trawlers; and international poaching.

**NOS Response:** The Final PEIS has been updated to include additional mitigation measures that NOS has developed to be implemented on each project as appropriate to minimize the impacts of project activities, including reducing impacts on sensitive species and subsistence hunting and fishing. The mitigation measures in the Final PEIS were developed with subject matter experts and in coordination with field crews and with the National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (USFWS), and the Office of National Marine Sanctuaries (ONMS). The complete list of mitigation measures is included as an appendix to the Final PEIS.

NOS will work with the NOAA Alaska Regional Navigation Manager to provide Alaskan communities with information on upcoming surveying projects to avoid or minimize interference with traditional hunting and fishing for subsistence uses.

NOS intends to notify individual tribes and ANCs pursuant to EO 13175 before conducting any project that may have tribal implications. Federally recognized tribes and ANCs may request formal government-to-government consultation pursuant to EO 13175 at any time.

**Out of Scope-2:** Given the alarming decline of various fisheries and the importance of these fisheries to Tribal subsistence users and well-being of the Alaska Native Communities, Tribal participation and representation on the Northwest Pacific Fisheries Management Council must demand additional studies and observations on trawler impacts of the seafloor, where the impacts of that activity cascades through the ecosystem, to the detriment of Calista shareholders.

**NOS Response:** NOS does not regulate or conduct trawling operations. Generally, research on the effects of particular fishing gear is conducted by the NMFS Fisheries Science Centers and by NMFS through the fisheries management process. Chapter 2 of the Final PEIS describes the NOS surveying and mapping activities included under the Proposed Action.

**Cultural and Historic Resources-26:** Incorporation of Both Tribal and ANC Consultation is Required

President Biden's Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships was issued on January 26, 2021. The Memorandum reaffirms Executive Order 13175,<sup>1</sup> which requires federal agencies to consult with American Indians and Alaska Natives on federal policies that have tribal implications in regulation, legislation, or policy statements or actions that have direct effects on one or more Tribe, impacts Federal-Tribal relations, or impacts the distribution of power and responsibility between the Federal Government and Tribes.

In line with the Presidential Memorandum, we ask that the NOAA NOS prioritize upholding and complying with Congress's clear and unambiguous mandate to also extend to Alaska Native Corporations the OMB and federal agencies' tribal consultation obligations under Executive Order 13175. <sup>2</sup> Any plans, reports, policies, regulation, or other actions directed under the Biden Memorandum regarding consultation with "Indian tribes" and "Tribal officials," as defined in EO 13175, by statute also apply to consultation with ANCs. All federal agencies must consult with ANCs "on the same basis" as Tribes to ensure the economic, social, and cultural interests of ANC shareholders are protected and advanced. One important reason for this is that under ANCSA, it is the ANCs, rather than the tribal governments, that are the caretakers and managers of the conveyed lands, which lands constitute all that remains of the traditional homelands of Alaska Native peoples.

**NOS Response:** NOS recognizes its responsibility to conduct consultation when federal actions and decisions may have implications on ANCs. NOS appreciates that the Calista Corporation may also want to engage in consultation for this Proposed Action. NOS would like to assure the Calista Corporation that NOS recognizes its responsibility to conduct consultation with federally recognized ANCs on the same basis as federally recognized Indian tribes under EO 13175 (Public Law (Pub. L.) 108-199, 118 Stat. 452, as amended by Pub. L. 108-447, 118 Stat. 3267).

NOS understands that protecting Alaska Native subsistence resources is vital. NOS is committed to ongoing communication with both federally recognized tribes and ANCs to understand the implications of NOS activities in Alaska and to mitigate the effects on subsistence activities, food security, and climate change.

**Cultural and Historic Resources-27:** ANCs should receive notice of all Tribal consultation notices provided to federally recognized Tribes within their respective regions.

**NOS Response:** NOS recognizes its responsibility to conduct consultation when federal actions and decisions may have implications on ANCs. NOS appreciates that the Calista Corporation may also want to engage in consultation for this Proposed Action. NOS would

like to assure you that NOS recognizes its responsibility to conduct consultation with federally recognized ANCs on the same basis as federally recognized Indian tribes under EO 13175 (Pub. L. 108-199, 118 Stat. 452, as amended by Pub. L. 108-447, 118 Stat. 3267). Please feel free to contact us if you would like to engage in consultation under EO 13175 for this Proposed Action.

NOS understands that protecting Alaska Native subsistence resources is vital. NOS is committed to ongoing communication with both federally recognized tribes and ANCs to understand the implications of NOS activities in Alaska and to mitigate the effects on subsistence activities, food security, and climate change.

**Future Coordination-12:** Moreover, because of the split surface-subsurface land ownership under ANCSA (Regional Corporations predominantly own subsurface lands, while Village Corporations predominantly own surface lands), it is imperative that ANCs be notified of any NOAA initiatives that may impact ANC lands and natural resources. This will enable Calista and the YK Region Village Corporations to support and work with the Tribes on issues of common concern. The NOAA NOS may not be aware of implications to ANC lands, projects, and resources unless potentially impacted ANCs, who own and manage the land, are invited to consult and given the opportunity to weigh in on any unforeseen lands and natural resources impacts.

**NOS Response:** NOS understands that protecting Alaska Native subsistence resources is vital. NOS is committed to ongoing communication with both federally recognized tribes and ANCs to understand the implications of NOS activities in Alaska and to mitigate the effects on subsistence activities, food security, and climate change. NOS would like to assure you that it recognizes its responsibility to conduct consultation with federally recognized ANCs on the same basis as federally recognized Indian tribes under EO 13175 (Public Law (Pub. L.) 108-199, 118 Stat. 452, as amended by Pub. L. 108-447, 118 Stat. 3267). Please feel free to contact NOS if you would like to engage in consultation under EO 13175 for this Proposed Action.

**Purpose and Need-5:** Calista supports the purpose of the proposed action, “to gather accurate and timely data on the marine and coastal environment,” and also the need for the proposed action, “to ensure safety at sea, economic well-being, and the efficient stewardship of public trust resources.”

**NOS Response:** Thank you for your comment and support of the purpose and need for the Proposed Action.

**Alternatives-4:** Alternative C aligns well with this purpose and need, and is consistent with Calista’s goal of better understanding and protecting the marine environment of the YK Region in order to protect our subsistence way of life.

**NOS Response:** Thank you for your support of Alternative C. Alaska continues to be a mapping priority for NOS.

## **2.4 Catawba Tribal Historic Preservation Officer (Wenonah Haire)**

### ***2.4.1 Comment Submission***

**From:** [NOSAA Environmental Compliance - NOAA Service Account](#)  
**To:** [Wendy.Grome@solvlc.com](mailto:Wendy.Grome@solvlc.com); [Michelle.Smyk@solvlc.com](mailto:Michelle.Smyk@solvlc.com)  
**Subject:** Fwd: NOAA National Ocean Service Releases Draft PEIS for Surveying and Mapping Projects  
**Date:** Friday, June 25, 2021 7:08:02 PM

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First request to print! See address below.

v/r  
Giannina DiMaio  
*NOS Environmental Compliance Coordinator*  
Pronouns: she/her/hers

NOAA, National Ocean Service  
Office of the Assistant Administrator  
1305 East-West Hwy, SSMC4 13th Floor  
Silver Spring, MD 20910  
V: 240-533-0918  
[nosaa.ec@noaa.gov](mailto:nosaa.ec@noaa.gov)

----- Forwarded message -----

**From:** **Wenonah Haire** <[wenonah.haire@catawba.com](mailto:wenonah.haire@catawba.com)>  
**Date:** Fri, Jun 25, 2021 at 7:05 PM  
**Subject:** Re: NOAA National Ocean Service Releases Draft PEIS for Surveying and Mapping Projects  
**To:** NOSAA Environmental Compliance - NOAA Service Account <[nosaa.ec@noaa.gov](mailto:nosaa.ec@noaa.gov)>

Sorry but we have to have all documents in hard copy format. Please send in care of Caitlin Rogers at 1536 Tom Steven Road, Rock Hill, SC. 29730.

Sincerely,  
Wenonah g. Haire, DMD

Sent from my iPhone

On Jun 25, 2021, at 5:46 PM, NOSAA Environmental Compliance - NOAA Service Account <[nosaa.ec@noaa.gov](mailto:nosaa.ec@noaa.gov)> wrote:

Dear Tribal Historic Preservation Officer,

The National Oceanic and Atmospheric Administration (NOAA) National Ocean Service (NOS) has prepared a Draft Programmatic Environmental Impact Statement (PEIS) for *Surveying and Mapping Projects in U.S. Waters for Coastal and Marine Data Acquisition* pursuant to the National Environmental Policy Act. The Draft PEIS is now available for a 60-day public comment ending August 24, 2021. The [Notice of Availability](#) was

published today in the *Federal Register*.

The Draft PEIS analyzes the potential environmental impacts of recurring surveying and mapping data collection in United States coastal and marine waters over a period of six years. The analysis in this document covers the use of active acoustic equipment such as sub-bottom profilers, single beam and multibeam echo sounders, and side-scan sonars by NOS to collect data on the depths and shapes of underwater terrain, including the ocean, rivers, and lakes. The Draft PEIS analyzes impacts to critical environmental resources such as marine mammals, endangered and threatened species, and cultural and historic resources. The document can be found on the NOS Surveying and Mapping Draft PEIS website at <https://oceanservice.noaa.gov/about/environmental-compliance/surveying-mapping.html>.

Attached is the notification letter with additional information regarding the Draft PEIS.

If you have any questions, please feel free to contact me by phone at 240-533-0918 or email at [nosaa.ec@noaa.gov](mailto:nosaa.ec@noaa.gov).

v/r

Giannina DiMaio  
*NOS Environmental Compliance Coordinator*  
Pronouns: she/her/hers

NOAA, National Ocean Service  
Office of the Assistant Administrator  
1305 East-West Hwy, SSMC4 13th Floor  
Silver Spring, MD 20910  
V: 240-533-0918  
[nosaa.ec@noaa.gov](mailto:nosaa.ec@noaa.gov)  
<NOS Surveying and Mapping DPEIS Notification Letter - THPO  
06252021.pdf>

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#### **2.4.2**     *NOS Response*

**Out of Scope-1:** Sorry but we have to have all documents in hard copy format. Please send in care of Caitlin Rogers at 1536 Tom Steven Road, Rock Hill, SC. 29730.

**NOS Response:** A copy of the Draft PEIS was mailed to this contact at the address provided on June 30, 2021.

## **2.5 Chickahominy Indian Tribe (Stephen Adkins)**

### **2.5.1 *Comment Submission***



August 24, 2021

Chief Stephen Adkins  
8200 Lott Cary Road  
Providence Forge, VA 23140

Giannina DiMaio  
DOC/NOAA/NOS  
Environmental Compliance Coordinator  
SSMC4-Station 13612  
1305 East West Highway  
Silver Spring, MD 20910  
*Submitted electronically via Regulations.gov*

Re: Public Comment on NOAA-NOS-2021-0055 National Oceanic and Atmospheric Administration (NOAA) National Ocean Service (NOS) Draft Programmatic Environmental Impact Statement for Surveying and Mapping Projects in U.S. Waters for Coastal and Marine Data Acquisition

Dear Ms. DiMaio,

The Chickahominy Indian Tribe (Tribe) appreciates the opportunity to comment on the Draft Programmatic Environmental Impact Statement (PEIS) for Surveying and Mapping Projects in U.S. Waters for Coastal and Marine Data Acquisition. We are a federally recognized tribe located in Virginia on the watershed of the Chickahominy River. The Tribe has over 970 tribal citizens, most of whom live near the Chickahominy Tribal Office and the tribe's historic Samaria Indian Baptist Church in Charles City County. The Tribe was acknowledged by the federal government in 2018 by the Thomasina E. Jordan Act and our service and trust areas consist of Henrico, Charles City, New Kent, and James City Counties.

Because of the location of Chickahominy contemporary and ancestral territory, the Tribe is most concerned about potential impacts affecting the Virginia coastline, Chesapeake Bay, and any activities where anadromous fish or other species might return from to the James River watershed. This is predominantly in the Southeast Region but may include small portions of the Greater Atlantic Region of the PEIS study areas especially for migratory species. The Tribe requests that NOAA extend the comments deadline and evaluate more closely the Surveying and Mapping Projects' potential impacts on species of significance to Virginia Algonquian tribes, cultural and historic properties, and to tribes, tribal governments, and tribal trust resources.

**1. NOAA should extend the comment deadline on this Environmental Impact Statement**



This PEIS is almost 700 pages long with over 260 pages of appendices and is highly technical. A sixty-day review time is not sufficient for such a broad PEIS of such complexity, and the Tribe requests that NOAA extend the review time for an additional 60 days. In addition, the Tribe recommends that National Historic Preservation Act consultation on this federal action should be accompanied by regional area meetings and presentations to allow tribal communities to discuss the proposed actions within their areas of interest in more detail.

## **2. The Tribe is especially concerned about anadromous fish species and other potential environmental effects that could impact plants and animals of traditional significance to the Chickahominy**

The Chickahominy Indian Tribe is especially interested in the surveying results for species such as shad, striped and largemouth bass, sturgeon, blueback herring, and alewife. The Tribe is a signatory to the 1677 Treaty of Middle Plantation, which enumerates the rights of Virginia tribal communities who negotiated a peace settlement with the English crown. Article VII explicitly assures the Indians rights to “their wonted conveniences of oystering, fishing, and gathering [of various plants]” used by Virginia tribes to support themselves. Fishing has been significant to Chickahominy people since well before English contact, and fishing has remained a very important practice for our Tribe.<sup>1</sup>

The PEIS acknowledges that fish species with swim bladders (like sturgeon, herrings, and American shad) are susceptible to barotrauma from sound waves associated with some surveying equipment, and some have sensitive hearing and may be affected by hearing noises of survey systems. Some, like Atlantic sturgeon, are also threatened or endangered. The PEIS acknowledges that survey equipment, vessels, and ROV and autonomous vehicle operations may disturb animals from preferred feeding or breeding grounds or may cause discomfort for some species. However, effects of these types of activities are routinely characterized as insignificant, minimal, or unlikely. The Tribe requests that reviews of specific surveying activities provide more detail regarding the rationale for characterizing these adverse effects as minimal.

The Tribe also observes that there are no references in the PEIS to fish hatchery, research, and restoration efforts conducted by Virginia Tidewater tribes. The EIS should be revised to include information regarding the Pamunkey NOAA Species Recovery grant to study Atlantic sturgeon, the shad fishery and hatchery on the Pamunkey Indian reservation, and the impacts on Virginia tribes of over-fishing and environmental damage that inhibited fish populations. The surveying and mapping that this PEIS contemplates should generally be used to encourage more consideration of the tribe trust rights of Virginia Tribes and to evaluate impacts of the culturally important fish populations and species health issues.<sup>2</sup>

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<sup>1</sup> See Stern, Theodore. 1952. Chickahominy: The Changing Culture of a Virginia Indian Community. *Proceedings of the American Philosophical Society* 96(2): 157-225.

<sup>2</sup> For more details, see Jenkins, Alexis. 2019. *Remembering the River: Traditional Fishery Practices, Environmental Change and Sovereignty on the Pamunkey Indian Reservation*. Undergraduate thesis. <https://scholarworks.wm.edu/cgi/viewcontent.cgi?article=2437&context=honorstheses>



**3. NOAA acknowledges that the impacts of the activities permitted under this PEIS to cultural resources, historic properties, and Tribes could be severe, but does not provide much insight or specifics about how it intends to identify, evaluate, avoid, or mitigate these effects**

NOS states that this PEIS will have a moderate adverse impact on cultural and historical resources but claims that this impact would be “insignificant.” In Section 3.3.6, NOS states that they will coordinate with the Advisory Council on Historic Preservation to develop approaches for addressing potential cultural resources impacts of these programmatic activities. In Section 3.11.2.2.3, NOAA acknowledges that the installation of tidal gauges could destroy part or all of historic properties in the project area. In Section 3.11.2.2.4, NOAA acknowledges that activities permitted under this PEIS could have effects on reservations or villages, impact tribal trust resources, affect facilities or entities owned or operated by tribes, affect Tribes, tribal governments, and traditional lifeways, and affect TCPs or traditional use areas.

NOAA should provide more information regarding how it intends to consult with ACHP and tribes and should provide greater information regarding how the agency intends to identify tribes to reach out to for consultation on a given program or action. The Tribe requests that given NOAA’s acknowledgement that such significant impacts to Tribes and historic properties may occur, the agency develop a separate report analyzing how permitted actions in the Surveying and Mapping program might have such effects and propose how it intends to identify, evaluate, avoid, and mitigate such effects.

**4. The Tribe requests that surveying and mapping projects include archaeological equipment, staff, and expertise wherever practicable**

While these activities provide significant risks to tribal, historic, and cultural resources, the planned surveying and mapping of the oceans off the coasts also provide an opportunity to evaluate submerged archaeological resources with very little additional cost, as the vessels and equipment will likely be making similar survey routes and using similar approaches for survey as would be needed for archaeological evaluations. The Tribe requests that NOAA examine ways that draped multibeam and sub-bottom profilers calibrated for archaeological data collection could be added to NOAA survey vessels wherever possible, and that NOAA comprehensively evaluates projects where archaeological data gathering on paleochannels and paleolandscapes of interest to tribes could be gathered during the completion of other types of research. Currently, the coast of Virginia has received much less marine archaeology evaluation compared with the northeast Atlantic and the Gulf Coast, and this is a needed corrective so that the potential impacts to offshore cultural resources of importance to tribes can be more readily identified.



Thank you for the opportunity to comment on the National Oceanic Service Survey and Mapping Draft Programmatic EIS.

Respectfully,

Chief Stephen Adkins  
Chickahominy Indian Tribe

### 2.5.2 *NOS Response*

**Fish-5:** Because of the location of Chickahominy contemporary and ancestral territory, the Tribe is most concerned about potential impacts affecting the Virginia coastline, Chesapeake Bay, and any activities where anadromous fish or other species might return from to the James River watershed. This is predominantly in the Southeast Region but may include small portions of the Greater Atlantic Region of the PEIS study areas especially for migratory species. The Tribe requests that NOAA extend the comments deadline and evaluate more closely the Surveying and Mapping Projects' potential impacts on species of significance to Virginia Algonquian tribes, cultural and historic properties, and to tribes, tribal governments, and tribal trust resources...2. The Tribe is especially concerned about anadromous fish species and other potential environmental effects that could impact plants and animals of traditional significance to the Chickahominy

The Chickahominy Indian Tribe is especially interested in the surveying results for species such as shad, striped and largemouth bass, sturgeon, blueback herring, and alewife.

**NOS Response:** EO 13175 and the NOAA Tribal Consultation Handbook provide required procedures for consultation with federally recognized Tribes in recognition of the sovereignty of federally recognized Tribes and the federal government's trust responsibility to those tribes. NOS would also continue to facilitate Tribal involvement related to planned projects throughout the action area. NOS will coordinate with your office about projects in Virginia waters about potential impacts on species of significance to Virginia Algonquian tribes; impacts are expected to be small.

After receiving your comment, NOS extended the original 60-day public comment period deadline by 90 days from August 24, 2021 to November 22, 2021.

Section 3.7.2 of the PEIS discusses that underwater acoustic sources have not been known to cause direct injury or mortality to fish, and that direct injuries (e.g., barotrauma) from sound sources used by NOS are unlikely because of slow rise times, lack of strong shock waves, and relatively low peak pressures. The Final PEIS also discusses that vessels, remotely operated vehicles (ROVs), and survey equipment can disturb and displace nearby fish, interrupt feeding, cause other behavior modifications, and possibly mask biologically important signals; such impacts would vary among species as most fish cannot hear the higher frequencies emitted by vessel, ROV, and equipment sound, except for perhaps shad, river herring, and menhaden. Therefore, impacts are expected to be adverse and negligible as they would be limited to temporary behavioral and stress-startle responses to individual fish or schools of fish found within the project area. The severity of effects on shad, river herring, and menhaden, species that can potentially hear the higher frequencies of vessel sound, could be somewhat higher but are not expected to be more than minor, as impacts would still be temporary or short-term, may include some stress responses without permanent physiological damage, and may disturb breeding, feeding, or other activities but without any impacts on population levels. Any displacement of fish would be short-term and limited to the NOS project area or its immediate surroundings.

This PEIS does not cover fisheries research, which is conducted by NOAA's Fisheries Science Centers. NOS conducts benthic habitat surveys, and results may be found at <https://products.coastalscience.noaa.gov/collections/benthic/default.aspx>.

**NEPA Process-10:** 1. NOAA should extend the comment deadline on this Environmental Impact Statement.

This PEIS is almost 700 pages long with over 260 pages of appendices and is highly technical. A sixty-day review time is not sufficient for such a broad PEIS of such complexity, and the Tribe requests that NOAA extend the review time for an additional 60 days.

**NOS Response:** NOS extended the original 60-day public comment period deadline by 90 days from August 24, 2021 to November 22, 2021(86 FR 47299).

**Cultural and Historic Resources-22:** In addition, the Tribe recommends that National Historic Preservation Act consultation on this federal action should be accompanied by regional area meetings and presentations to allow tribal communities to discuss the proposed actions within their areas of interest in more detail.

**NOS Response:** NOS intends to notify individual tribes pursuant to EO 13175 before conducting any project that may have tribal implications. Federally recognized tribes may request government-to-government consultation at any time for a proposed action that may have tribal implications.

NOS will also initiate project-specific consultations under Section 106 of the NHPA before commencing any activity with the potential to affect cultural or historic resources. NOS will consider providing regional meetings if interest is expressed after consultation is initiated.

**Fish-6:** The PEIS acknowledges that fish species with swim bladders (like sturgeon, herrings, and American shad) are susceptible to barotrauma from sound waves associated with some surveying equipment, and some have sensitive hearing and may be affected by hearing noises of survey systems. Some, like Atlantic sturgeon, are also threatened or endangered. The PEIS acknowledges that survey equipment, vessels, and ROV and autonomous vehicle operations may disturb animals from preferred feeding or breeding grounds or may cause discomfort for some species. However, effects of these types of activities are routinely characterized as insignificant, minimal, or unlikely. The Tribe requests that reviews of specific surveying activities provide more detail regarding the rationale for characterizing these adverse effects as minimal.

**NOS Response:** The PEIS uses the best available information to evaluate impacts on fish species. As discussed in Section 3.7.2 of the Final PEIS, adverse effects from NOS activities are possible for the small numbers of individual fish that could occur in close proximity (i.e., within several meters) to an active sound source. Generally, adverse effects on a species can be considered significant if they result in a reduction in the overall health and viability of a population. However, given the localized and transient spatial scale of no more than a few NOS projects occurring at any one time, relative to the generally large-scale distribution of fish populations and the considerably narrow beam characteristics of equipment such as echo sounders, no population level effects are expected on marine or freshwater fish.

**Environmental Justice-13:** The Tribe also observes that there are no references in the PEIS to fish hatchery, research, and restoration efforts conducted by Virginia Tidewater tribes. The EIS should be revised to include information regarding the Pamunkey NOAA Species Recovery grant to study Atlantic sturgeon, the shad fishery and hatchery on the Pamunkey Indian reservation, and the impacts on Virginia tribes of over-fishing and environmental damage that inhibited fish populations. The surveying and mapping that this PEIS contemplates should generally be used to encourage more consideration of the tribe trust rights of Virginia Tribes and to evaluate impacts of the culturally important fish populations and species health issues.<sup>2</sup>

**NOS Response:** Thank you for your comment. Fish hatchery, research, and restoration efforts conducted by Virginia Tidewater tribes and the Pamunkey NOAA Species Recovery grant are not expected to be impacted by the Proposed Action.

NOS determined that a programmatic approach was appropriate because NOS conducts, authorizes, permits, and funds a suite of similar, ongoing data collection activities associated with recurring projects across a wide geographic area to characterize underwater features (e.g., habitat, bathymetry, marine debris). This Draft PEIS is a comprehensive document that provides detailed programmatic effects analyses for surveying and mapping data collection activities based on regional conditions, habitat types, species, and other factors. However, the Draft PEIS does not identify the specific time or place for individual projects or activities over the next five years. The analysis will be used to inform NOS leadership and the public on the environmental impacts of these activities before a decision is made on how to execute each project. All projects will require a project-specific review by NOS before proceeding.

NOS agrees that surveying and mapping data could be useful to evaluate and protect tribal trust fisheries resources. NOS coastal and marine data support ecosystem stewardship, such as fisheries research and restoration work by the Virginia Tidewater Tribes. For instance, bathymetric base layers provide valuable information about essential habitat for fish.

Tribes and the public can reach out to NOAA Navigation Managers to engage in the planning process for future surveying and mapping projects. Information regarding contacting NOAA Navigation Managers can be found at the following website: <https://nauticalcharts.noaa.gov/customer-service/regional-managers/index.html>.

NOS will initiate project-specific consultations under Section 106 of the NHPA before commencing any activity with the potential to affect cultural or historic resources.

NOS intends to notify individual tribes pursuant to EO 13175 before conducting any project that may have tribal implications. Federally recognized tribes may request government-to-government consultation at any time for a proposed action that may have tribal implications.

**Cultural and Historic Resources-23:** 3. NOAA acknowledges that the impacts of the activities permitted under this PEIS to cultural resources, historic properties, and Tribes could be severe,

but does not provide much insight or specifics about how it intends to identify, evaluate, avoid, or mitigate these effects.

NOS states that this PEIS will have a moderate adverse impact on cultural and historical resources but claims that this impact would be “insignificant.” In Section 3.3.6, NOS states that they will coordinate with the Advisory Council on Historic Preservation to develop approaches for addressing potential cultural resources impacts of these programmatic activities. In Section 3.11.2.2.3, NOAA acknowledges that the installation of tidal gauges could destroy part or all of historic properties in the project area. In Section 3.11.2.2.4, NOAA acknowledges that activities permitted under this PEIS could have effects on reservations or villages, impact tribal trust resources, affect facilities or entities owned or operated by tribes, affect Tribes, tribal governments, and traditional lifeways, and affect TCPs or traditional use areas. NOAA should provide more information regarding how it intends to consult with ACHP and tribes and should provide greater information regarding how the agency intends to identify tribes to reach out to for consultation on a given program or action

**NOS Response:** Significance criteria and determinations presented in the PEIS were developed for the purpose of compliance with NEPA. Impacts that would be considered major and significant are defined in Table 3.11-1; none of the potential impacts from NOS activities were evaluated to be major and significant under NEPA.

While the Draft PEIS will be used to inform NOS responsibilities under NHPA, NOS will comply with Section 106 of the NHPA for any activity that has the potential to affect cultural or historic resources as described in the regulations at 36 Code of Federal Regulations (CFR) 800.8, regardless of the NEPA impact category.

NOS will conduct project-specific NHPA consultations before commencing any project with the potential to affect cultural or historic resources. NOS intends to notify individual tribes before conducting any project that may have tribal implications. Federally recognized tribes may request government-to-government consultation under EO 13175 at any time.

**Cultural and Historic Resources-24:** The Tribe requests that given NOAA’s acknowledgement that such significant impacts to Tribes and historic properties may occur, the agency [should] develop a separate report analyzing how permitted actions in the Surveying and Mapping program might have such effects and propose how it intends to identify, evaluate, avoid, and mitigate such effects.

**NOS Response:** Adverse effects were analyzed as required for compliance with NEPA. No significant adverse impacts to cultural and historic resources are expected under any alternative of the Proposed Action (See Sections 3.11.2.2 - 3.11.2.4). NOS intends to notify individual tribes before conducting any project that may have tribal implications. Federally recognized tribes may request government-to-government consultation under EO 13175 at any time.

**Cultural and Historic Resources-25:** 4. The Tribe requests that surveying and mapping projects include archaeological equipment, staff, and expertise wherever practicable.

While these activities provide significant risks to tribal, historic, and cultural resources, the planned surveying and mapping of the oceans off the coasts also provide an opportunity to evaluate submerged archaeological resources with very little additional cost, as the vessels and equipment will likely be making similar survey routes and using similar approaches for survey as would be needed for archaeological evaluations. The Tribe requests that NOAA examine ways that draped multibeam and sub-bottom profilers calibrated for archaeological data collection could be added to NOAA survey vessels wherever possible, and that NOAA comprehensively evaluates projects where archaeological data gathering on paleochannels and paleolandscapes of interest to tribes could be gathered during the completion of other types of research. Currently, the coast of Virginia has received much less marine archaeology evaluation compared with the northeast Atlantic and the Gulf Coast, and this is a needed corrective so that the potential impacts to offshore cultural resources of importance to tribes can be more readily identified.

**NOS Response:** Adverse effects were analyzed as required for compliance with NEPA. No significant adverse impacts to cultural and historic resources are expected under any alternative of the Proposed Action (See Sections 3.11.2.2 - 3.11.2.4).

All data collected by NOS is made publicly available to the extent allowed by federal law. Tribes and the public can reach out to NOAA Navigation Managers to engage in the planning process for future surveying and mapping projects. Information regarding contacting NOAA Navigation Managers can be found at the following website: <https://nauticalcharts.noaa.gov/customer-service/regional-managers/index.html>.

## **2.6 Commonwealth of the Northern Mariana Islands Division of Coastal Resources Management (Arthur Charfauros)**

### **2.6.1 *Comment Submission***

Dear Ms. DiMaio,

Thank you for the opportunity to review and comment on the National Oceanic and Atmospheric Administration (NOAA) National Ocean Service (NOS) Surveying and Mapping Draft Programmatic Environmental Impact Statement (PEIS). Please see comments regarding this Draft PEIS from the Commonwealth of the Northern Mariana Islands (CNMI) Division of Coastal Resources Management (DCRM). We hope to have continued collaboration leading up to a CZMA determination for the programmatic actions, and any supplemental activities throughout the life of the project.

- 1.3.1 describes how project or site-specific review or analysis will be conducted, wherein the majority of future projects would not require additional project-specific analysis. For some potential projects such as installation of buoys or other large anchoring masses, especially those that trigger federal permits and are within the coastal zone, we request further coordination with our office as these potential projects materialize. For any addendum of activities or subsequent phases beyond the timeframe of the program that may have additional coastal effects which are not listed within the purview of the PEIS, CNMI DCRM encourages continued coordination pursuant to §930.34.

-Page xxii lists the acronym and abbreviation for the Coral Reef Conservation Program (CRCP), which is part of NOAA's Office for Coastal Management (OCM). The CRCP includes research and monitoring to assess coral reef and other marine ecosystems, however it is unclear whether the program is included in the Draft PEIS.

- Would Executive Order 13352-Facilitation of Cooperative Conservation be applicable under 3.3.8 Executive Orders?

- Presidential Proclamation 8335 established the Marianas Trench Marine National Monument (MTNM) under the authority of the Antiquities Act. Why was there no mention of the MTNM or the Antiquities Act, although the MTNM is within the project scope?

-The Submerged Lands Act (SLA) (43 U.S.C. §§ 1301 et seq.) is referenced on page 62 pertaining to the Archaeological Resources Protection Act (ARPA) stating that the permit system established under ARPA applies to federal marine protected areas and submerged lands which were not transferred under the SLA. SLA is not listed under Acronyms and Abbreviations, and there is minimal information regarding its applicability throughout the Draft PEIS. For the CNMI, SLA includes Public Law 94-241, Public Law 93-435, Public Law 113-34, Proclamation 9077, and also involves the MTNM. There should be more substantive analysis within the PEIS between the relevance of federal laws and regulations for the SLA, the MTNM, and NOS's proposed activities within the region.

### 2.6.2 *NOS Response*

**CZMA-1:** For some potential projects such as installation of buoys or other large anchoring masses, especially those that trigger federal permits and are within the coastal zone, we request further coordination with our office as these potential projects materialize.

**NOS Response:** NOS provided Consistency Determination (CD) letters to all coastal states and territories with approved Coastal Management Programs (CMPs). The CDs evaluate the coastal effects of proposed activities according to the relevant enforceable policies to make a consistency determination under CZMA. Potential requirements for future coordination will be developed through the CZMA process.

**CZMA-2:** For any addendum of activities or subsequent phases beyond the timeframe of the program that may have additional coastal effects which are not listed within the purview of the PEIS, CNMI DCRM encourages continued coordination pursuant to §930.34.

**NOS Response:** NOS does not intend to pursue a phased consistency determination under 15 CFR 930.36(d). NOS will continue to coordinate under CZMA for all future projects, as appropriate.

**Scope-2:** The CRCP includes research and monitoring to assess coral reef and other marine ecosystems, however it is unclear whether the program is included in the Draft PEIS.

**NOS Response:** The NOS PEIS addresses surveys and related projects undertaken by NOS. These projects may include those NOS survey and mapping activities funded by the Coral Reef Conservation Program (CRCP). The CRCP Final PEIS can be found online at: [https://coast.noaa.gov/data/coralreef\\_noaa\\_gov/about/resources/CRCP\\_FPEIS\\_07132020\\_NS\\_508c.pdf](https://coast.noaa.gov/data/coralreef_noaa_gov/about/resources/CRCP_FPEIS_07132020_NS_508c.pdf).

**Scope-3:** Would Executive Order 13352-Facilitation of Cooperative Conservation be applicable under 3.3.8 Executive Orders?

**NOS Response:** Yes, EO 13352 Facilitation of Cooperative Conservation would be applicable and has been added in Section 3.3.8.

**Scope-4:** Presidential Proclamation 8335 established the Marianas Trench Marine National Monument (MTNM) under the authority of the Antiquities Act. Why was there no mention of the MTNM or the Antiquities Act, although the MTNM is within the project scope?

**NOS Response:** The Proposed Action could occur anywhere in U.S. waters, including state waters, marine protected areas (MPAs), and other special status areas. The Marianas Trench Marine National Monument (MTNM) is within the geographic scope; however, there are no consultation requirements under the Antiquities Act for the MTNM that require detailed discussion of the resources within the MTNM. The analysis of impacts to resources in the NOS PEIS includes resources within marine national monuments.

**Scope-5:** SLA is not listed under Acronyms and Abbreviations, and there is minimal information regarding its applicability throughout the Draft PEIS.

**NOS Response:** Submerged Lands Act (SLA) has been added to the list of acronyms and abbreviations for the Final PEIS. The SLA (43 U.S. Code [U.S.C.] § 1301 et seq.) establishes the title of the states to submerged navigable lands within their boundaries including navigable waterways, such as rivers, as well as marine waters within the state's boundaries, generally 3 nautical miles (nm) (5.6 kilometers [km]) from the coastline. State and territory offshore waters are part of the action area for the PEIS. The analysis in the PEIS considers projects that could take place on submerged lands as defined in the SLA.

**Scope-6:** There should be more substantive analysis within the PEIS between the relevance of federal laws and regulations for the SLA, the MTNM, and NOS's proposed activities within the region.

**NOS Response:** The Proposed Action could occur anywhere in U.S. waters, including state waters, MPAs, and other special status areas. NOS will follow all federal requirements for operating in state and territory waters, including the MTNM. Due to the extensive scope of the Proposed Action, the PEIS does not include an exhaustive list of applicable federal environmental laws, regulations, and EOs.

NOS provided CD letters to all coastal states and territories with approved CMPs. The CDs evaluate the coastal effects of proposed activities according to the relevant enforceable policies to make a consistency determination under CZMA. Potential requirements for future coordination will be developed through the CZMA process.

## **2.7 Connecticut State Historic Preservation Officer (Jonathan Kinney)**

### **2.7.1 *Comment Submission***



July 16, 2021

Ms. Giannina DiMaio  
National Oceanic and Atmospheric Administration  
National Ocean Service  
1305 East West Highway  
Silver Spring, Maryland 20910  
(sent via email only to [nosaa.ec@noaa.gov](mailto:nosaa.ec@noaa.gov))

Subject: *Draft Programmatic Environmental Impact Statement for Surveying and Mapping  
Projects in U.S. Waters for Coastal and Marine Data Acquisition*  
Long Island Sound, Connecticut

Dear Ms. DiMaio:

The Connecticut State Historic Preservation Office (CT SHPO) has reviewed the referenced Draft Programmatic Environmental Impact Statement (PEIS) and provides the following comments only as it pertains to activities in the Connecticut waters of Long Island Sound. The mission of the National Ocean Service (NOS) is to provide data, tools, and services to support coastal economies. The Office of Coast Survey within NOS uses acoustic technology for developing and upgrading charts, surveying the seafloor, responding to maritime emergencies, and searching for underwater obstructions that pose a danger to navigation. The primary goals and activities of NOS also can afford additional protection to our State's important cultural resources through identification and avoidance.

Although only small portions of Long Island Sound have been subjected to previous cultural resources surveys, several properties eligible for listing or listed on the National Register of Historic Places have been reported. However, CT SHPO concurs with NOS that the proposed activities described in the PEIS are not likely to affect significant historic or cultural resources. Our office also understands that if NOS determines that an activity has the potential for adverse impacts, CT SHPO will have the opportunity for additional consultation to avoid or minimize those effects.

SHPO appreciates the opportunity to review and comment upon this important planning document and we look forward to additional consultation, as needed. For additional information, please contact Catherine Labadia, Environmental Reviewer, at (860) 500-2329 or [catherine.labadia@ct.gov](mailto:catherine.labadia@ct.gov).

Sincerely,

A handwritten signature in blue ink that reads "Jonathan Kinney".

Jonathan Kinney  
Deputy State Historic Preservation Officer

State Historic Preservation Office

450 Columbus Boulevard, Suite 5 | Hartford, CT 06103 | P: 860.500.2300 | [Cultureandtourism.org](http://Cultureandtourism.org)

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### **2.7.2**     *NOS Response*

**Purpose and Need-2:** The primary goals and activities of NOS also can afford additional protection to our State’s important cultural resources through identification and avoidance.

**NOS Response:** We agree and look forward to working with the Connecticut SHPO for the protection of cultural resources.

**Cultural and Historic Resources-4:** CT SHPO concurs with NOS that the proposed activities described in the PEIS are not likely to affect significant historic or cultural resources. Our office also understands that if NOS determines that an activity has the potential for adverse impacts, CT SHPO will have the opportunity for additional consultation to avoid or minimize those effects.

**NOS Response:** Thank you for your careful consideration and your input. NOS will initiate project-specific consultations under Section 106 of the NHPA before commencing any activity with the potential to affect cultural or historic resources.

## **2.8 Cultural Heritage Partners (representing the Upper Mattaponi Indian Tribe) (Marion F. Werkheiser)**

### **2.8.1 *Comment Submission***



August 24, 2021

DOC/NOAA/NOS  
Environmental Compliance Coordinator  
SSMC4-Station 13612  
1305 East West Highway  
Silver Spring, MD 20910  
*Submitted electronically via Regulations.gov*

Re: Public Comment on NOAA-NOS-2021-0055 National Oceanic and Atmospheric Administration (NOAA) National Ocean Service (NOS) Draft Programmatic Environmental Impact Statement for Surveying and Mapping Projects in U.S. Waters for Coastal and Marine Data Acquisition

Dear Ms. DiMaio,

Our law firm represents the Upper Mattaponi Indian Tribe. We write regarding the Draft Programmatic Environmental Impact Statement (PEIS) for Surveying and Mapping Projects in U.S. Waters for Coastal and Marine Data Acquisition.

The Upper Mattaponi Indian Tribe is a federally recognized sovereign tribe, headquartered in King William County. The Upper Mattaponi were members of the Powhatan chiefdom and have significant cultural affiliation to the Mattaponi River, the James River watershed, and environmental impacts in the Chesapeake Bay. Citizens of the Nation are descended from a Virginia Algonquian tribe residing in the Mattaponi watershed. One of the Tribe's villages recorded by Captain John Smith was the village of Passaunkack, at the location of the present day Upper Mattaponi. Particularly important consultation areas include their historic area of Adamstown near Central Garage, the Mattaponi Indian Reservation, and the general area between the Pamunkey and the Mattaponi rivers. At this time, the most active Upper Mattaponi cultural resources consultation areas include King William, Caroline, Hanover, King and Queen, and New Kent Counties. The Tribe may also have consultation interests anywhere in the Middle Peninsula or the Northern Neck. The Tribe has environmental consultation areas anywhere where a project may affect the water or air quality in the above areas, the Chesapeake Bay, or the Atlantic Ocean.

Because of the location of Upper Mattaponi contemporary and ancestral territory, the Tribe is most concerned about potential impacts affecting the Virginia coastline, Chesapeake Bay, and any activities where anadromous fish or other species might return from to the James River watershed. This is predominantly in the Southeast Region, but may include small portions of the Greater Atlantic Region of the PEIS study areas especially for migratory species. The Tribe requests that NOAA evaluate more closely the Surveying and Mapping Projects' potential

impacts on species of significance to Virginia Algonquian tribes, cultural and historic properties, and to tribes, tribal governments, and tribal trust resources.

**1. NOAA should extend the comment deadline on this Environmental Impact Statement**

This PEIS is almost 700 pages long with over 260 pages of appendices and is highly technical. A sixty-day review time is not sufficient for such a broad PEIS of such complexity, and the Tribe requests that NOAA extends the review time for an additional 60 days. In addition, the Tribe recommends that National Historic Preservation Act consultation on this federal action should be accompanied by regional area meetings and presentations to allow tribal communities to discuss the proposed actions within their areas of interest in more detail.

**2. The Tribe is especially concerned about anadromous fish species and other potential environmental effects that could impact plants and animals of traditional significance to the Upper Mattaponi**

The Upper Mattaponi Indian Tribe is especially interested in the surveying results for species such as shad, striped and largemouth bass, sturgeon, blueback herring, and alewife. The Tribe is a signatory to the 1677 Treaty of Middle Plantation, which enumerates the rights of Virginia tribal communities who negotiated a peace settlement with the English crown. Article VII explicitly assures the Indians rights to “their wonted conveniences of oystering, fishing, and gathering [of various plants]” used by Virginia tribes to support themselves. Fishing has been significant to Mattaponi people since well before English contact, and fishing has remained a very important practice for the Tribe.

The PEIS acknowledges that fish species with swim bladders (like sturgeon, herrings, and American shad) are susceptible to barotrauma from sound waves associated with some surveying equipment, and some have sensitive hearing and may be affected by hearing noises of survey systems. Some of these fish, like Atlantic sturgeon, are also threatened or endangered. The PEIS acknowledges that survey equipment, vessels, and ROV and autonomous vehicle operations may disturb animals from preferred feeding or breeding grounds or may cause discomfort for some species. However, the effects of these types of activities are routinely characterized as insignificant, minimal, or unlikely. The Tribe requests that reviews of specific surveying activities provide much more detail regarding the rationale for these minimal assessments of adverse effects.

The Tribe also observes that there are no references in the PEIS to fish hatchery, research, and restoration efforts conducted by Virginia Tidewater tribes. The EIS should be revised to include information regarding the Pamunkey NOAA Species Recovery grant to study Atlantic sturgeon, the shad fishery and hatchery on the Pamunkey and Mattaponi Indian reservations, and the impacts on Virginia tribes of over-fishing and environmental damage that inhibited the fish populations. The surveying and mapping that this PEIS contemplates should generally be used to

encourage more consideration of the tribe trust rights of Virginia Tribes and to evaluate tribal impacts of these fish population and species health issues.<sup>1</sup>

**3. NOAA acknowledges that the impacts of the activities permitted under this PEIS to cultural resources, historic properties, and Tribes could be severe, but does not provide much insight or specifics about how it intends to identify, evaluate, avoid, or mitigate these effects**

NOS states that this PEIS will have a moderate adverse impact on cultural and historical resources, but claims that this impact would be “insignificant.” In Section 3.3.6, NOS states that they will coordinate with the Advisory Council on Historic Preservation to develop approaches for addressing potential cultural resources impacts of these programmatic activities. In Section 3.11.2.2.3, NOAA acknowledges that the installation of tidal gauges could destroy part or all of historic properties in the project area. In Section 3.11.2.2.4, NOAA acknowledges that activities permitted under this PEIS could have effects on reservations or villages, impact tribal trust resources, affect facilities or entities owned or operated by tribes, affect Tribes, tribal governments, and traditional lifeways, and affect TCPs or traditional use areas.

NOAA should provide more information regarding how it intends to consult with ACHP and tribes, and should provide greater information regarding how the agency intends to identify tribes to reach out to for consultation on a given program or action. The Tribe requests that given NOAA’s acknowledgement that such significant impacts to Tribes and historic properties may occur, that the agency develop a separate report analyzing how permitted actions in the Surveying and Mapping program might have such effects and propose how it intends to identify and evaluate such effects.

**4. The Tribe requests that surveying and mapping projects include archaeological equipment, staff, and expertise wherever practicable**

While these activities provide significant risks to tribal, historic, and cultural resources, the planned surveying and mapping of the oceans off the coasts also provide an opportunity to evaluate submerged archaeological resources with very little additional cost, as the vessels and equipment will likely be making similar survey routes and using similar approaches for survey as would be needed for archaeological evaluations. The Tribe requests that NOAA examine ways that draped multibeam and sub-bottom profilers calibrated for archaeological data collection could be added to NOAA survey vessels wherever possible, and that NOAA comprehensively evaluates projects to identify situations where archaeological data gathering on paleochannels and paleolandscapes of interest to tribes could be added to other types of research. Currently, the coast of Virginia has received comparably much less marine archaeology evaluation compared with the northeast Atlantic and the Gulf Coast, and this is a needed corrective so that the

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<sup>1</sup> For more details, see Jenkins, Alexis. 2019. Remembering the River: Traditional Fishery Practices, Environmental Change and Sovereignty on the Pamunkey Indian Reservation. Undergraduate thesis. <https://scholarworks.wm.edu/cgi/viewcontent.cgi?article=2437&context=honorstheses>

potential impacts to offshore cultural resources of importance to tribes can be more readily identified.

Thank you for the opportunity to comment on the National Oceanic Service Survey and Mapping Draft Programmatic EIS.

Sincerely,

A handwritten signature in blue ink that reads "Marion F. Werkheiser". The signature is written in a cursive style with a large, looping 'M' and 'W'.

Marion F. Werkheiser  
Attorney at Law

### 2.8.2 *NOS Response*

**Fish-2:** Because of the location of Upper Mattaponi contemporary and ancestral territory, the Tribe is most concerned about potential impacts affecting the Virginia coastline, Chesapeake Bay, and any activities where anadromous fish or other species might return from to the James River watershed. This is predominantly in the Southeast Region, but may include small portions of the Greater Atlantic Region of the PEIS study areas especially for migratory species. The Tribe requests that NOAA evaluate more closely the Surveying and Mapping Projects' potential impacts on species of significance to Virginia Algonquian tribes, cultural and historic properties, and to tribes, tribal governments, and tribal trust resources...2. The Tribe is especially concerned about anadromous fish species and other potential environmental effects that could impact plants and animals of traditional significance to the Upper Mattaponi.

The Upper Mattaponi Indian Tribe is especially interested in the surveying results for species such as shad, striped and largemouth bass, sturgeon, blueback herring, and alewife.

**NOS Response:** EO 13175 and the NOAA Tribal Consultation Handbook provide required procedures for consultation with federally recognized Tribes in recognition of the sovereignty of federally recognized Tribes and the federal government's trust responsibility to those tribes. NOS intends to notify individual tribes and ANCs pursuant to EO 13175 before conducting any project that may have tribal implications. Federally recognized tribes may request government-to-government consultation at any time for a proposed action that may have tribal implications.

Section 3.7.2 of the Final PEIS discusses that underwater acoustic sources have not been known to cause direct injury or mortality to fish, and that direct injuries (e.g., barotrauma) from sound sources used by NOS are unlikely because of slow rise times, lack of strong shock waves, and relatively low peak pressures. The Final PEIS also discusses that vessels, ROVs, and survey equipment can disturb and displace nearby fish, interrupt feeding, cause other behavior modifications, and possibly mask biologically important signals; such impacts would vary among species as most fish cannot hear the higher frequencies emitted by vessel, ROV, and equipment sound, except for perhaps shad, river herring, and menhaden. Therefore, impacts are expected to be adverse and negligible as they would be limited to temporary behavioral and stress-startle responses to individual fish or schools of fish found within the project area. The severity of effects on shad, river herring, and menhaden (species that can potentially hear the higher frequencies of vessel sound), could be somewhat higher but are not expected to be more than minor, as impacts would still be temporary or short-term, may include some stress responses without permanent physiological damage, and may disturb breeding, feeding, or other activities but without any impacts on population levels. Any displacement of fish would be short term and limited to the NOS project area or its immediate surroundings.

NOS will initiate project-specific consultations under Section 106 of the NHPA before commencing any activity with the potential to affect cultural or historic resources.

This PEIS does not cover fisheries research, which is conducted by NOAA's Fisheries Science Centers. NOS conducts benthic habitat surveys, and results may be found at <https://products.coastalscience.noaa.gov/collections/benthic/default.aspx>.

**NEPA Process-9:** 1. NOAA should extend the comment deadline on this Environmental Impact Statement.

This PEIS is almost 700 pages long with over 260 pages of appendices and is highly technical. A sixty-day review time is not sufficient for such a broad PEIS of such complexity, and the Tribe requests that NOAA extends the review time for an additional 60 days.

**NOS Response:** After receiving your comment, NOS extended the original 60-day public comment period deadline by 90 days from August 24, 2021 to November 22, 2021. (86 FR 47299).

**Cultural and Historic Resources-16:** In addition, the Tribe recommends that National Historic Preservation Act consultation on this federal action should be accompanied by regional area meetings and presentations to allow tribal communities to discuss the proposed actions within their areas of interest in more detail.

**NOS Response:** NOS intends to notify individual tribes pursuant to EO 13175 before conducting any project that may have tribal implications. Federally recognized tribes may request government-to-government consultation at any time for a proposed action that may have tribal implications.

NOS will also initiate project-specific consultations under Section 106 of the NHPA before commencing any activity with the potential to affect cultural or historic resources.

NOS will consider providing regional meetings if interest is expressed after notice is provided or consultation is initiated.

**Fish-3:** The PEIS acknowledges that fish species with swim bladders (like sturgeon, herrings, and American shad) are susceptible to barotrauma from sound waves associated with some surveying equipment, and some have sensitive hearing and may be affected by hearing noises of survey systems. Some of these fish, like Atlantic sturgeon, are also threatened or endangered. The PEIS acknowledges that survey equipment, vessels, and ROV and autonomous vehicle operations may disturb animals from preferred feeding or breeding grounds or may cause discomfort for some species. However, the effects of these types of activities are routinely characterized as insignificant, minimal, or unlikely. The Tribe requests that reviews of specific surveying activities provide much more detail regarding the rationale for these minimal assessments of adverse effects.

**NOS Response:** The PEIS uses the best available science to evaluate impacts on fish species. As discussed in Section 3.7.2 of the Final PEIS, adverse effects from NOS activities are possible for the small numbers of individual fish that could occur in close proximity (i.e., within several meters) to an active sound source. Generally, adverse effects on a species can be considered significant if they result in a reduction in the overall health and viability of a population. However, given the localized and transient spatial scale of no more than a few NOS projects occurring at any one time, relative to the generally large-scale distribution of fish populations and the considerably narrow beam characteristics of

equipment such as echo sounders, no population level effects are expected on marine or freshwater fish.

**Environmental Justice-12:** The Tribe also observes that there are no references in the PEIS to fish hatchery, research, and restoration efforts conducted by Virginia Tidewater tribes. The EIS should be revised to include information regarding the Pamunkey NOAA Species Recovery grant to study Atlantic sturgeon, the shad fishery and hatchery on the Pamunkey and Mattaponi Indian reservations, and the impacts on Virginia tribes of over-fishing and environmental damage that inhibited the fish populations. The surveying and mapping that this PEIS contemplates should generally be used to encourage more consideration of the tribe trust rights of Virginia Tribes and to evaluate tribal impacts of these fish population and species health issues.

**NOS Response:** Thank you for your comment. Fish hatchery, research, and restoration efforts conducted by Virginia Tidewater tribes and the Pamunkey NOAA Species Recovery grant are not expected to be impacted by the Proposed Action.

NOS determined that a programmatic approach was appropriate because NOS conducts, authorizes, permits, and funds a suite of similar, ongoing data collection activities associated with recurring projects across a wide geographic area to characterize underwater features (e.g., habitat, bathymetry, marine debris). This Final PEIS is a comprehensive document that provides detailed programmatic effects analyses for surveying and mapping data collection activities based on regional conditions, habitat types, species, and other factors. However, the Final PEIS does not identify the specific time or place for individual projects or activities over the next five years. The analysis will be used to inform NOS leadership and the public on the environmental impacts of these activities before a decision is made on how to execute each project. All projects will require a project-specific review by NOS before proceeding.

NOS agrees that surveying and mapping data could be useful to evaluate and protect tribal trust fisheries resources. NOS coastal and marine data support ecosystem stewardship, such as fisheries research and restoration work by the Virginia Tidewater Tribes. For instance, bathymetric base layers provide valuable information about essential habitat for fish.

Tribes and the public can reach out to NOAA Navigation Managers to engage in the planning process for future surveying and mapping projects. Information regarding contacting NOAA Navigation Managers can be found at the following website: <https://nauticalcharts.noaa.gov/customer-service/regional-managers/index.html>.

NOS will initiate project-specific consultations under Section 106 of the NHPA before commencing any activity with the potential to affect cultural or historic resources.

NOS intends to notify individual tribes pursuant to EO 13175 before conducting any project that may have tribal implications. Federally recognized tribes may request government-to-government consultation at any time for a proposed action that may have tribal implications.

**Cultural and Historic Resources-17:** 3. NOAA acknowledges that the impacts of the activities permitted under this PEIS to cultural resources, historic properties, and Tribes could be severe, but does not provide much insight or specifics about how it intends to identify, evaluate, avoid, or mitigate these effects.

NOS states that this PEIS will have a moderate adverse impact on cultural and historical resources, but claims that this impact would be “insignificant.” In Section 3.3.6, NOS states that they will coordinate with the Advisory Council on Historic Preservation to develop approaches for addressing potential cultural resources impacts of these programmatic activities. In Section 3.11.2.2.3, NOAA acknowledges that the installation of tidal gauges could destroy part or all of historic properties in the project area. In Section 3.11.2.2.4, NOAA acknowledges that activities permitted under this PEIS could have effects on reservations or villages, impact tribal trust resources, affect facilities or entities owned or operated by tribes, affect Tribes, tribal governments, and traditional lifeways, and affect TCPs or traditional use areas.

NOAA should provide more information regarding how it intends to consult with ACHP and tribes, and should provide greater information regarding how the agency intends to identify tribes to reach out to for consultation on a given program or action

**NOS Response:** Significance criteria and determinations presented in the PEIS were developed for the purpose of compliance with the NEPA. Impacts that would be considered major and significant are defined in Table 3.11-1; none of the potential impacts from NOS activities were evaluated to be major and significant under NEPA.

While the Final PEIS will be used to inform NOS responsibilities under NHPA, NOS will comply with Section 106 of the NHPA for any activity that has the potential to affect cultural or historic resources as described in the regulations at 36 CFR 800.8. NOS will continue to conduct project-specific NHPA consultations before commencing any project with the potential to affect cultural or historic resources.

NOS intends to notify individual tribes before conducting any project that may have tribal implications. Federally recognized tribes may request government-to-government consultation under EO 13175 at any time.

**Cultural and Historic Resources-18:** The Tribe requests that given NOAA’s acknowledgement that such significant impacts to Tribes and historic properties may occur, that the agency develop a separate report analyzing how permitted actions in the Surveying and Mapping program might have such effects and propose how it intends to identify and evaluate such effects.

**NOS Response:** Adverse effects were analyzed as required for compliance with NEPA. No significant adverse impacts to cultural and historic resources are expected under any alternative of the Proposed Action (See Sections 3.11.2.2 - 3.11.2.4). NOS intends to notify individual tribes before conducting any project that may have tribal implications. Federally recognized tribes may request government-to-government consultation under EO 13175 at any time.

**Cultural and Historic Resources-19:** 4. The Tribe requests that surveying and mapping projects include archaeological equipment, staff, and expertise wherever practicable.

While these activities provide significant risks to tribal, historic, and cultural resources, the planned surveying and mapping of the oceans off the coasts also provide an opportunity to evaluate submerged archaeological resources with very little additional cost, as the vessels and equipment will likely be making similar survey routes and using similar approaches for survey as would be needed for archaeological evaluations. The Tribe requests that NOAA examine ways that draped multibeam and sub-bottom profilers calibrated for archaeological data collection could be added to NOAA survey vessels wherever possible, and that NOAA comprehensively evaluates projects to identify situations where archaeological data gathering on paleochannels and paleolandscapes of interest to tribes could be added to other types of research. Currently, the coast of Virginia has received comparably much less marine archaeology evaluation compared with the northeast Atlantic and the Gulf Coast, and this is a needed corrective so that the potential impacts to offshore cultural resources of importance to tribes can be more readily identified.

**NOS Response:** Adverse effects were analyzed as required for compliance with NEPA. No significant adverse impacts to cultural and historic resources are expected under any alternative of the Proposed Action (See Sections 3.11.2.2 - 3.11.2.4).

All data collected by NOS is made publicly available to the extent allowed by federal law. Tribes and the public can reach out to NOAA Navigation Managers to engage in the planning process for future surveying and mapping projects. Information regarding contacting NOAA Navigation Managers can be found at the following website: <https://nauticalcharts.noaa.gov/customer-service/regional-managers/index.html>.

## **2.9 Delaware State Historic Preservation Officer (Stephanie Soder)**

### *2.9.1 Comment Submission*

July 28, 2021

Ms. Giannina DiMaio  
Environmental Compliance Coordinator  
National Ocean and Atmospheric Administration, National Ocean Service  
1305 East-West Highway  
Silver Spring, MD 20910

**RE: NOAA Draft PEIS for NOS's Surveying and Mapping Projects in U.S. Waters  
NOAA-NOS-2021-0055  
SHPO Project Review #2021.06.25.01**

Dear Ms. DiMaio,

Thank you for your recent consultation with the Delaware State Historic Preservation Office (DE SHPO) on June 25, 2021 regarding changes to the Programmatic Environmental Impact Statement (PEIS) for Surveying and Mapping Projects in U.S. Waters for Coastal and Marine Data Acquisition. The PEIS demonstrates several alternatives that will aid in the National Ocean Service's (NOS) efforts to conduct surveying and mapping throughout the coastal and marine waters of the United States over a period of six years. The PEIS takes into consideration potential impacts that these activities may have to historic and cultural resources.

Upon review of the PEIS, DE SHPO believes that efforts to mitigate or avoid impacts to historical and cultural resources, both terrestrial and underwater, have been adequately addressed in the sections regarding bottom sampling and installation, maintenance, and removal of tidal gauges, buoys, and GPS Reference Stations. However, DE SHPO requests further clarification and re-review of the definition of *moderate* in Section 3.11.2.1 Methodology regarding its significance. Currently the PEIS defines *moderate impact* context, intensity, and likelihood as:

The action would diminish the integrity of a submerged cultural or historic resource or a historic property's location, design, setting, materials, workmanship, feeling, or association, resulting in the loss of diagnostic features or research potential.

While this definition is adequate to describe *moderate impact*, it is then categorized as *insignificant* under NOS- determined significance criteria. Under regulations 36 CFR Part 800 – Protection of Historic Properties, the definition of an *adverse effect* to historic properties is:

when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register [NRHP] in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association.

The definition of *adverse effect* under the regulations is closely matched to the NOS-determined definition of *moderate impact*, but NOS considers them *insignificant*. DE SHPO believes that the NOS should consider *moderate impact* as *significant* to appropriately relate to the regulations. This change would likely only impact anchoring practices and subsistence hunting and fishing areas under the PEIS, as it is determined that their impacts range from *negligible* to *moderate*. Given the protocol by NOS to anchor in previously surveyed areas to avoid impacting a historic property and ongoing consultation between THPOs and NOS, DE SHPO does not believe that a change in significance criteria for

*moderate impact* will alter the way in which these practices are conducted. DE SHPO does, however, believe that it is important to appropriately acknowledge the potential severity of impacts that *moderate impact* rated practices could have to historic properties.

DE SHPO would also like to advocate for the addition of data sharing initiatives in Section 3.11.2.2.1 Anchoring. We appreciate that NOS has included protocol for alerting SHPOs in the event that an object is discovered that may be eligible for listing on the NRHP in Section 3.11.2.2.2 Bottom Sampling. However, in the case that anchoring cannot be conducted within a previously surveyed area as proposed in the PEIS and SHPOs cannot be consulted beforehand, there may be an occasion where a historic property is discovered while anchoring. In this case, we request that NOS include protocol for data sharing in the PEIS.

Based on the outlined practices and mitigation efforts, DE SHPO concurs with all three alternatives presented by NOS, as they all indicate minimal effects to historical and cultural resources and adequate avoidance measures. DE SHPO prefers that Alternative 2 or Alternative 3 be considered over Alternative 1. Incorporating best practices and new technology into protocols may lead to an increase in non-disturbance survey practices, which will better protect historic and cultural resources, as well as natural resources.

Thank you for your consideration of these comments. If you have any questions or if the PEIS changes after public comment, please feel free to contact Gwen Davis at [gwen.davis@delaware.gov](mailto:gwen.davis@delaware.gov).

Sincerely,

A handwritten signature in black ink, appearing to read 'Soder', with a stylized flourish at the end.

Stephanie Soder, Archaeologist  
Cultural Preservation Specialist

cc: Gwennyth A. Davis, DE SHPO

### 2.9.2 *NOS Response*

**Cultural and Historic Resources-28:** Upon review of the PEIS, DE SHPO believes that efforts to mitigate or avoid impacts to historical and cultural resources, both terrestrial and underwater, have been adequately addressed in the sections regarding bottom sampling and installation, maintenance, and removal of tidal gauges, buoys, and GPS Reference Stations.

**NOS Response:** Thank you for your careful consideration and your input.

**Cultural and Historic Resources-29:** However, DE SHPO requests further clarification and re-review of the definition of moderate in Section 3.11.2.1 Methodology regarding its significance. Currently the PEIS defines moderate impact context, intensity, and likelihood as:

The action would diminish the integrity of a submerged cultural or historic resource or a historic property's location, design, setting, materials, workmanship, feeling, or association, resulting in the loss of diagnostic features or research potential.

While this definition is adequate to describe moderate impact, it is then categorized as insignificant under NOS- determined significance criteria. Under regulations 36 CFR Part 800 – Protection of Historic Properties, the definition of an adverse effect to historic properties is:

when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register [NRHP] in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association.

The definition of adverse effect under the regulations is closely matched to the NOS-determined definition of moderate impact, but NOS considers them insignificant. DE SHPO believes that the NOS should consider moderate impact as significant to appropriately relate to the regulations. This change would likely only impact anchoring practices and subsistence hunting and fishing areas under the PEIS, as it is determined that their impacts range from negligible to moderate.

**NOS Response:** Significance criteria and determinations presented in the PEIS were developed for the purpose of compliance with NEPA. Impacts that would be considered major and significant are defined in Table 3.11-1; none of the potential impacts from NOS activities were evaluated to be major and significant under NEPA.

While the Final PEIS will be used to inform NOS responsibilities under NHPA, NOS will comply with Section 106 of the NHPA for any activity that has the potential to affect cultural or historic resources as described in the regulations at 36 CFR 800.8, regardless of the NEPA impact category. NOS will conduct project-specific NHPA consultations before commencing any project with the potential to affect cultural or historic resources.

**Future Coordination-14:** DE SHPO would also like to advocate for the addition of data sharing initiatives in Section 3.11.2.2.1 Anchoring. We appreciate that NOS has included protocol for alerting SHPOs in the event that an object is discovered that may be eligible for listing on the NRHP in Section 3.11.2.2.2 Bottom Sampling. However, in the case that anchoring cannot be conducted within a previously surveyed area as proposed in the PEIS and SHPOs cannot be

consulted beforehand, there may be an occasion where a historic property is discovered while anchoring. In this case, we request that NOS include protocol for data sharing in the PEIS.

**NOS Response:** NOS will initiate project-specific consultations under Section 106 of the NHPA before commencing any activity with the potential to affect cultural or historic resources. NOS will also contact the relevant SHPOs in the event that NOS activities result in the recovery of a potentially historic resource or artifact.

All data collected by NOS is made publicly available to the extent allowed by federal law. The DE SHPO and the public can reach out to NOAA Navigation Managers to engage in the planning process for future surveying and mapping projects. Information regarding contacting NOAA Navigation Managers can be found at the following website: <https://nauticalcharts.noaa.gov/customer-service/regional-managers/index.html>.

**Cultural and Historic Resources-30:** Based on the outlined practices and mitigation efforts, DE SHPO concurs with all three alternatives presented by NOS, as they all indicate minimal effects to historical and cultural resources and adequate avoidance measures. DE SHPO prefers that Alternative 2 or Alternative 3 be considered over Alternative 1. Incorporating best practices and new technology into protocols may lead to an increase in non-disturbance survey practices, which will better protect historic and cultural resources, as well as natural resources.

**NOS Response:** Thank you for your careful consideration and your input on the alternatives to the Proposed Action.

## **2.10 Delaware Natural Resources and Environmental Control (DNREC) (Kimberly B. Cole)**

### *2.10.1 Comment Submission*



STATE OF DELAWARE  
**DEPARTMENT OF NATURAL RESOURCES AND  
ENVIRONMENTAL CONTROL**  
DIVISION OF CLIMATE, COASTAL & ENERGY  
STATE STREET COMMONS  
100 W. WATER STREET, SUITE 7B  
DOVER, DELAWARE 19904

PHONE  
(302) 739-9283

**DELAWARE COASTAL  
MANAGEMENT PROGRAM**

August 24, 2021

Giannina DiMaio  
National Ocean Service  
National Oceanic and Atmospheric Administration  
1305 East West Highway  
SSMC4-Station 13612  
Silver Spring, MD 20910

RE: Request for Comments on National Oceanic and Atmospheric Administration (NOAA) National Ocean Service (NOS) *Draft Programmatic Environmental Impact Statement (PEIS) for Surveying and Mapping Projects in U.S. Waters for Coastal and Marine Data Acquisition* (NOAA-NOS-2021-0055)

Dear Ms. DiMaio:

The Delaware Coastal Management Program (DCMP) of the Delaware Department of Natural Resources and Environmental Control (DNREC) appreciates the opportunity to review and comment on the above referenced Draft PEIS, received by this office on June 25, 2021. As specified in the June 25, 2021 publication in the Federal Register, NOAA NOS has prepared a Draft PEIS to analyze environmental impacts associated with NOS's recurring survey and data collection activities during a six-year time frame (2022-2027).

Although Delaware is a small state, its coast and marine resources yield a healthy and robust ocean environment, substantially contributing to the economy and livelihood of its citizens. Activities with the potential to impact these resources are carefully considered to ensure resource sustainability, while advancing Delaware's commitment to support and encourage data collection and research by scientists, organizations, and institutions for the purpose of informed decision-making.

DCMP recognizes the importance of responsible data collection activities for ocean planning purposes and frequently utilizes the Mid-Atlantic Regional Council on the Ocean (MARCO) Data

Portal to access comprehensive, regional information to aid in spatial visualizations. The importance of data sharing cannot be understated as development expands in offshore waters. DCMP urges NOS to continue coordination with MARCO to ensure the relevant data obtained in the proposed surveys is included in the Data Portal.

DCMP reviewed the Draft PEIS in the context of activities occurring in the Greater Atlantic Region. The Draft PEIS includes rivers; states' offshore waters; the U.S. territorial sea; the contiguous zone; and the U.S. Exclusive Economic Zone (U.S. EEZ) as the "action area". The action area also includes coastal and riparian lands for activities such as the installation, maintenance, and removal of tide gauges. It is unclear which surveying and mapping activities may be occurring on State-owned lands and waters (up to 3 nautical miles), where broader regulatory considerations would be necessary. To increase transparency, DCMP recommends the addition of a clearer description of activities occurring in State-owned lands and waters, including more detailed maps defining potential data collection locations.

When work occurs within State waters, DCMP requests that the activity complies with the State of Delaware's Surface Water Quality Standards. Additionally, in-water work should be coordinated with DNREC, Division of Water, Wetlands and Subaqueous Lands Section.

As it relates to affected living resources identified in the Draft PEIS, DCMP has the following comments:

#### *Fish*

Much concern has been raised at the Mid-Atlantic Fishery Management Council about the effect of hydroacoustic mapping on commercially and recreationally important structure-oriented fish species like Black Sea Bass and Summer Flounder. Anecdotal reports from fishermen suggest that such species leave any area in which hydroacoustic mapping is occurring. The Council has suggested a time of year restriction for Black Sea Bass of December 1st through mid-May, which corresponds to the recreational closed season for Black Sea Bass. Additionally, we ask that vessel strikes be listed as potential impacts to fish.

On page 260 of the Draft PEIS, herring-like fishes and cod-like fishes are listed as the most economically important in terms of commercial value. However, this is not necessarily true for Delaware and much of the Greater Atlantic Region. Based on 2016 data, key species for landings revenue in Delaware included American eel, blue crab, eastern oyster, quahog clam, striped bass, and whelks<sup>1</sup>. Many State of Delaware fishermen fish the U.S. EEZ. However, due to the lack of a port to support large scale commercial landings, residents are forced to land and report catch in adjacent states, often bringing their product back to Delaware for sale. Additionally, Delaware is home to one of Sea Watch International's (SWI) three processing plants. This Delaware founded company, has been granted the largest offshore clam allocation in the industry, utilizing 34 vessels for fishery harvests. SWI is also the nation's largest supplier of branded canned and frozen clams<sup>2</sup>. Although this product is not landed in Delaware, many of the harvested ocean quahog and surf clam come to Delaware for processing. As such, impacts that might affect commercial fishing

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<sup>1</sup> National Marine Fisheries Service (2018). Fisheries Economics of the United States, 2016. U.S. Dept. of Commerce, NOAA Tech. Memo. NMFS-F/SPO-187-a, 116p.

<sup>2</sup> <https://seawatch.com/about/>

resources in the U.S. EEZ have the potential to have significant impacts to our state's economy.

#### *Sea Turtles*

The Draft PEIS Section 3.6.1.2.1 Greater Atlantic Region indicates that there are no known sea turtle nest sites in the Greater Atlantic Region. However, there have been several occurrences of sea turtles nesting in Delaware, as well as in Maryland. Delaware's most recent instance occurred in 2018 when 48 loggerhead hatchlings emerged from a nest at Fenwick Island State Park.

#### *Seabirds, Shorebirds and Coastal Birds, and Waterfowl*

The Delaware shorelines and waterways are important sites for migrating and breeding shorebirds, marsh birds, and waterbirds. Delaware supports a number of federally-protected bird species including migrating rufa Red Knots (*Calidris canutus rufa*) and breeding Piping Plovers (*Charadrius melodus*). Hundreds of thousands of migrating shorebirds stop along the shorelines of Delaware Bay to refuel during their northward migration. Breeding secretive marsh birds, such as Saltmarsh Sparrows (*Ammodramus caudacutus*), are found within Delaware's saltmarshes. Pea Patch Island and smaller inland islands support large breeding heronries and waterbird colonies. Disturbance of key foraging locations and breeding areas may be detrimental to the survival and productivity of these birds. We suggest that any onshore or nearshore activities, such as the installation of monitoring stations, should avoid important foraging and breeding sites in Delaware.

With respect to potential impacts to cultural and historic resources analyzed by NOS in the Draft PEIS, in consultation with Delaware's State Historic Preservation Office (DE SHPO), DCMP suggests NOS re-define *moderate* in Section 3.11.2.1 Methodology regarding its significance. *Moderate impact* is categorized as *insignificant* under NOS-determined significance criteria.

The definition of *adverse effect* under regulations 36 CFR Part 800 – Protection of Historic Properties, is closely matched to the NOS-determined definition of *moderate impact*, but NOS considers them *insignificant*. In conjunction with DE SHPO, DCMP suggests that NOS should consider *moderate impact* as *significant* to appropriately relate to the regulations.

Additionally, DCMP shares the request of DE SHPO for similar data sharing initiatives in Section 3.11.2.2.1 Anchoring as in Section 3.11.2.2.2 Bottom Sampling. In the case that anchoring cannot be conducted within a previously surveyed area as proposed in the PEIS and SHPOs cannot be consulted beforehand, there may be an occasion where a historic property is discovered while anchoring. In this case, we request that NOS include protocol for data sharing in the PEIS.

DCMP is generally supportive of the preferred, Alternative B, under which NOS would increase the adoption of newer techniques and technologies to more efficiently perform surveying, mapping, charting, and related data gathering. As data collection activities are planned, DCMP expects NOS to submit federal consistency determinations for activities with reasonably foreseeable direct and/or indirect effects on any coastal use or resource (15 CFR § 930.33). DCMP is of the opinion that exploration, survey, and testing activities will have reasonably foreseeable coastal effects due to the potential to cause seafloor disturbance, temporary or permanent decrease in water or air quality, impacts to living resources and their habitats, and impacts to cultural and historical resources.

Thank you for your early coordination with the DCMP, implementing the federal consistency provision of the Coastal Zone Management Act, prior to official regulatory engagement. If you have any questions, please contact Kristi Lieske of my staff at (302) 739-9283.

Sincerely,



Kimberly B. Cole, Administrator  
Delaware Coastal Management Program

KBC/kl

cc: File FC 2021.0085

Samantha Robinson, DNREC DFW

Katie Esposito, DNREC DW

Gwen Davis, DOS HCA

### **2.10.2**    *NOS Response*

**Future Coordination-10:** DCMP recognizes the importance of responsible data collection activities for ocean planning purposes and frequently utilizes the Mid-Atlantic Regional Council on the Ocean (MARCO) Data Portal to access comprehensive, regional information to aid in spatial visualizations. The importance of data sharing cannot be understated as development expands in offshore waters. DCMP urges NOS to continue coordination with MARCO to ensure the relevant data obtained in the proposed surveys is included in the Data Portal.

**NOS Response:** NOS program offices intend to continue to collaborate with the Mid-Atlantic Regional Council on the Ocean (MARCO) to support efficient data sharing. The MARCO Data Portal is accessible via the Office for Coastal Management (OCM) Digital Coast website: <https://coast.noaa.gov/digitalcoast/contributing-partners/marco.html>.

**Scope-12:** It is unclear which surveying and mapping activities may be occurring on State-owned lands and waters (up to 3 nautical miles), where broader regulatory considerations would be necessary. To increase transparency, DCMP recommends the addition of a clearer description of activities occurring in State-owned lands and waters, including more detailed maps defining potential data collection locations.

**NOS Response:** NOS determined that a programmatic approach under NEPA was appropriate because NOS conducts, authorizes, permits, and funds a suite of similar, ongoing data collection activities associated with recurring projects across a wide geographic area including states' offshore waters (0 to 3 nautical miles [nm] offshore).

NOS has completed the Delaware CZMA Federal Consistency Form for the Proposed Action. This form was included with a CZMA Consistency Determination letter that was sent to the Delaware CMP. NOS provided CD letters to all coastal states and territories with approved CMPs. The CDs evaluate the coastal effects of proposed activities according to the relevant enforceable policies to make a consistency determination under CZMA.

**Future Coordination-11:** When work occurs within State waters, DCMP requests that the activity complies with the State of Delaware's Surface Water Quality Standards. Additionally, in-water work should be coordinated with DNREC, Division of Water, Wetlands and Subaqueous Lands Section.

**NOS Response:** NOS intends to comply with Delaware Surface Water Quality Standards as required in the enforceable policies of the Delaware Coastal Management Program (DCMP). Outside of those regulated materials required for normal vessel operation (diesel fuel, motor oil, etc.), no regulated, hazardous, or radioactive materials, or biological warfare agents would be used in the course of the Proposed Action. No part of the Proposed Action would require or involve a thermal discharge. The Proposed Action will not involve the discharge or dumping of any garbage, refuse, dead animal, poultry, trash, carton, bottle, container, box, lumber, timber, paper, or light material or other solid waste into state waters. NOS looks forward to future coordination with the State of Delaware through the CZMA process.

#### **Fish-4: Fish**

Much concern has been raised at the Mid-Atlantic Fishery Management Council about the effect of hydroacoustic mapping on commercially and recreationally important structure-oriented fish species like Black Sea Bass and Summer Flounder. Anecdotal reports from fishermen suggest that such species leave any area in which hydroacoustic mapping is occurring. The Council has suggested a time of year restriction for Black Sea Bass of December 1<sup>st</sup> through mid-May, which corresponds to the recreational closed season for Black Sea Bass. Additionally, we ask that vessel strikes be listed as potential impacts to fish.

**NOS Response:** The hearing frequency range of most fish is below approximately 1,500 hertz (Hz) with the most sensitive range below 800 Hz. The hearing range of pressure-sensing fish is typically extended to a few kHz (up to about 4 kilohertz [kHz]). NOS expects to use very high frequency (200 kHz+) sources in Delaware Bay that have not been known to cause direct injury or mortality to fish. Fish leaving the area in which surveys are being conducted could be due to disturbance from vessel presence, movement, and wake.

NOS assessed the potential impacts to fisheries, including fish, aquatic macroinvertebrates, essential fish habitat (EFH), and socioeconomic resources. Socioeconomic resources include commercial fishing, fish hatcheries and aquaculture, seafood processing, and seafood markets industries. Among the impacts assessed, effects to fish include some stress responses without permanent physiological damage, and some disturbance to breeding, feeding, or other activities, but without any impacts on population levels; additionally, there would not be long-term changes in habitat availability and use or in fish behavior. NOS also assessed the impact of interactions with fishing gear and survey equipment on the fishing industry. Effects to commercial and recreational fishing from gear interaction are very unlikely.

Data collected by NOS would have beneficial effects as that data is used to conserve, preserve, and restore ecological resources, including wildlife, fish, and habitat. The data would provide the public and private sectors with nautical charts, benthic habitat condition maps, current and tide charts, and other products that could support the management of fisheries. These products allow federal, state, and local governments to make informed decisions about fishing areas and other natural resource management issues.

NOS developed additional mitigation measures in coordination and consultation with expert agencies including NMFS and USFWS to avoid and minimize any potential effects. Mitigation measures to protect fisheries include implementing mandatory invasive species prevention procedures and following the International Convention for the Prevention of Pollution by Ships (MARPOL) discharge protocols. NOS considered time-area restrictions for Black Sea Bass as suggested by the Mid-Atlantic Fishery Management Council (FMC). An evaluation of potential effectiveness and practicability of such a geographic and temporal mitigation resulted in a determination that restrictions as presented by the commenter were not warranted and impracticable. Time-area restrictions would impact NOS' ability to collect data during suitable conditions for using acoustic sources and result in lost survey time.

NOS does not expect any mortality and very little injury of fish as a result of implementing any of the alternatives, including vessel strikes which are unlikely because of fish avoidance behavior. Vessel strikes are discussed in the PEIS in the cumulative impacts analysis in Section 3.2.4.

**Socioeconomic Resources-3:** On page 260 of the Draft PEIS, herring-like fishes and cod-like fishes are listed as the most economically important in terms of commercial value. However, this is not necessarily true for Delaware and much of the Greater Atlantic Region. Based on 2016 data, key species for landings revenue in Delaware included American eel, blue crab, eastern oyster, quahog clam, striped bass, and whelks. Many State of Delaware fishermen fish the U.S. EEZ. However, due to the lack of a port to support large scale commercial landings, residents are forced to land and report catch in adjacent states, often bringing their product back to Delaware for sale. Additionally, Delaware is home to one of Sea Watch International's (SWI) three processing plants. This Delaware founded company, has been granted the largest offshore clam allocation in the industry, utilizing 34 vessels for fishery harvests. SWI is also the nation's largest supplier of branded canned and frozen clams. Although this product is not landed in Delaware, many of the harvested ocean quahog and surf clam come to Delaware for processing. As such, impacts that might affect commercial fishing resources in the U.S. EEZ have the potential to have significant impacts to our state's economy.

**NOS Response:** Thank you for providing information regarding indirect effects to Delaware's commercial fishing industry. The values used to quantify the contribution to state gross domestic products (GDPs) were published by OCM in the NOAA Report on the U.S. Marine Economy which uses Economics: National Ocean Watch (ENOW) data. The purpose of this analysis was to review the economic impact of this programmatic action over the entire action area and the OCM data was the best available data for the entire action area. There may be discrepancies between state collected data and data collected by NOAA. The Proposed Action is not anticipated to have significant impacts to any commercially fished species.

NOS assessed the potential impacts to fisheries, including fish, aquatic macroinvertebrates, EFH, and socioeconomic resources. Socioeconomic resources include commercial fishing, fish hatcheries and aquaculture, seafood processing, and seafood markets industries. All surveying and mapping activities listed in Section 2.0 could impact fisheries. Detailed analysis can be found in the following sections of the Final PEIS: Section 3.7 (Fish), Section 3.8 (Aquatic Macroinvertebrates), Section 3.9 (Essential Fish Habitat), and Section 3.12 (Socioeconomic Resources). Among the impacts assessed, effects to fish include some stress responses without permanent physiological damage, and some disturbance to breeding, feeding, or other activities, but without any impacts on population levels; additionally, there would not be long-term changes in habitat availability and use or in fish behavior. NOS also assessed the impact of interactions with fishing gear and survey equipment on the fishing industry. Effects to commercial and recreational fishing from gear interaction are very unlikely.

Data collected by NOS would have beneficial effects as that data is used to conserve, preserve, and restore ecological resources, including wildlife, fish, and habitat. The data would provide the public and private sectors with nautical charts, benthic habitat condition maps, current and tide charts, and other products that could support the management of

fisheries. These products allow federal, state, and local governments to make informed decisions about fishing areas and other natural resource management issues.

NOS developed additional mitigation measures in coordination and consultation with expert agencies including NMFS and USFWS to avoid and minimize any potential effects. Mitigation measures to protect fisheries include implementing mandatory invasive species prevention procedures and following MARPOL discharge protocols. NOS communicates with the public on future survey projects through announcements such as the annual Office of Coast Survey story map<sup>1</sup> and, when appropriate, public “Notices to Mariners” to provide general information on timing and locations. This helps minimize interference with commercial and recreational fishing and reduces the potential for interactions with fishing gear like lobster traps. The full list of mitigation measures can be found in Appendix D of the Final PEIS.

Overall, the impacts to fishery resources would be adverse, minor and insignificant as defined in the Final PEIS. NOS data collection and the resulting improvements in charting and mapping are expected to have indirect, beneficial, and moderate impacts on the ocean economy.

### **Sea Turtles-1: Sea Turtles**

The Draft PEIS Section 3.6.1.2.1 Greater Atlantic Region indicates that there are no known sea turtle nest sites in the Greater Atlantic Region. However, there have been several occurrences of sea turtles nesting in Delaware, as well as in Maryland. Delaware’s most recent instance occurred in 2018 when 48 loggerhead hatchlings emerged from a nest at Fenwick Island State Park.

**NOS Response:** Thank you for providing an example of sea turtles nesting in Delaware. This information from this event has been incorporated into Section 3.6.1.2.1 of the Final PEIS.

### **Seabirds, Shorebirds & Coastal Birds, & Waterfowl-2: Seabirds, Shorebirds and Coastal Birds, and Waterfowl**

The Delaware shorelines and waterways are important sites for migrating and breeding shorebirds, marsh birds, and waterbirds. Delaware supports a number of federally-protected bird species including migrating rufa Red Knots (*Calidris canutus rufa*) and breeding Piping Plovers (*Charadrius melodus*). Hundreds of thousands of migrating shorebirds stop along the shorelines of Delaware Bay to refuel during their northward migration. Breeding secretive marsh birds, such as Saltmarsh Sparrows (*Ammodramus caudacutus*), are found within Delaware's saltmarshes. Pea Patch Island and smaller inland islands support large breeding heronries and waterbird colonies. Disturbance of key foraging locations and breeding areas may be detrimental to the survival and productivity of these birds. We suggest that any onshore or nearshore activities, such as the installation of monitoring stations, should avoid important foraging and breeding sites in Delaware.

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<sup>1</sup> <https://storymaps.arcgis.com/stories/33758b0990bb4e23a7b61323db3ae670>

**NOS Response:** NOS has engaged in consultation with USFWS on potential effects to birds listed on the Endangered Species Act (ESA), including those with key foraging locations and breeding areas in Delaware. NOS also considered the effects on birds protected by the Migratory Bird Treaty Act (MBTA).

Onshore installations would only occupy very small proportions of available habitat, and no long-term changes in bird habitat availability, quality, or use are expected as a result of onshore activities. During onshore projects, such as the installation, maintenance, and removal of shore-based Global Positioning System (GPS) reference stations and tide gauges, NOS would limit disturbance to foraging and breeding birds and take all necessary precautions to avoid wounding birds or disturbing nests during onshore activities.

Additionally, birds likely cannot hear the majority of sounds produced by active acoustic underwater sound sources; thus, impacts from acoustic sources during nearshore activities would be limited. Birds and their prey are expected to return to project areas after the completion of NOS project activities with no long-term changes in habitat availability, habitat use, or energy expenditure.

**Cultural and Historic Resources-20:** With respect to potential impacts to cultural and historic resources analyzed by NOS in the Draft PEIS, in consultation with Delaware's State Historic Preservation Office (DE SHPO), DCMP suggests NOS re-define moderate in Section 3.11.2.1 Methodology regarding its significance. Moderate impact is categorized as insignificant under NOS-determined significance criteria.

The definition of adverse effect under regulations 36 CFR Part 800 – Protection of Historic Properties, is closely matched to the NOS-determined definition of moderate impact, but NOS considers them insignificant. In conjunction with DE SHPO, DCMP suggests that NOS should consider moderate impact as significant to appropriately relate to the regulations.

**NOS Response:** Significance criteria and determinations presented in the PEIS were developed for the purpose of compliance with NEPA. Impacts that would be considered major and significant are defined in Table 3.11-1 under NEPA; none of the potential impacts from NOS activities were evaluated to be major and significant.

While the Final PEIS will be used to inform NOS responsibilities under NHPA, NOS will comply with Section 106 of the NHPA for any activity that has the potential to affect cultural or historic resources as described in the regulations at 36 CFR 800.8, regardless of the NEPA impact category. NOS will conduct project-specific NHPA consultations before commencing any project with the potential to affect cultural or historic resources.

NOS looks forward to working with the State of Delaware for the protection of cultural and historic resources.

**Cultural and Historic Resources-21:** Additionally, DCMP shares the request of DE SHPO for similar data sharing initiatives in Section 3.11.2.2.1 Anchoring as in Section 3.11.2.2.2 Bottom Sampling. In the case that anchoring cannot be conducted within a previously surveyed area as proposed in the PEIS and SHPOs cannot be consulted beforehand, there may be an occasion

where a historic property is discovered while anchoring. In this case, we request that NOS include protocol for data sharing in the PEIS.

**NOS Response:** NOS added language to Section 3.11.2.2.1 that “in the event anchoring results in the discovery of a cultural or historic property, the coordinates of the discovery would be noted and provided to the appropriate SHPO along with any information collected.”

**CZMA-24:** As data collection activities are planned, DCMP expects NOS to submit federal consistency determinations for activities with reasonably foreseeable direct and/or indirect effects on any coastal use or resource (15 CFR § 930.33). DCMP is of the opinion that exploration, survey, and testing activities will have reasonably foreseeable coastal effects due to the potential to cause seafloor disturbance, temporary or permanent decrease in water or air quality, impacts to living resources and their habitats, and impacts to cultural and historical resources.

**NOS Response:** NOS has completed the Delaware CZMA Federal Consistency Form for the Proposed Action. This form was included with the CZMA Consistency Determination letter sent to the Delaware CMP. NOS understands its responsibilities under CZMA. NOS provided CD letters to all coastal states and territories with approved CMPs. The CDs evaluate the coastal effects of proposed activities according to the relevant enforceable policies to make a consistency determination under CZMA.

## **2.11 Delaware Natural Resources and Environmental Control (DNREC) (Kristi Lieske)**

### ***2.11.1 Comment Submission***

**From:** [Lieske, Kristi M \(DNREC\)](#)  
**To:** [NOSAA Environmental Compliance - NOAA Service Account](#)  
**Cc:** [Michelle.Smyk@solvllc.com](mailto:Michelle.Smyk@solvllc.com); [Mensch, Laura \(DNREC\)](#)  
**Subject:** RE: NOAA National Ocean Service Releases Draft PEIS for Surveying and Mapping Projects  
**Date:** Friday, October 15, 2021 8:12:53 AM

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Good morning Giannina,

Thank you for the advanced notice. Delaware Coastal Programs looks forward to continued coordination for NOS survey activities. Please also include Laura Mensch, Regulatory Programs Manager, (cc'd above) on future communications.

Thank you,  
Kristi

**Kristi Lieske**  
Planner IV  
DNREC Delaware Coastal Programs  
100 W. Water St. Ste 7B, Dover, Delaware 19904  
(302) 739-9136

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**From:** NOSAA Environmental Compliance - NOAA Service Account <nosaa.ec@noaa.gov>  
**Sent:** Thursday, October 14, 2021 6:41 PM  
**To:** Lieske, Kristi M (DNREC) <Kristi.Lieske@delaware.gov>  
**Cc:** Michelle.Smyk@solvllc.com  
**Subject:** Re: NOAA National Ocean Service Releases Draft PEIS for Surveying and Mapping Projects

Ms. Lieske,

NOS will soon be submitting requests to all coastal states for General Consistency Concurrence under CZMA. We will be reaching out to you shortly regarding the process. Thank you!

v/r  
Giannina DiMaio  
*NOS Environmental Compliance Coordinator*  
Pronouns: she/her/hers

NOAA, National Ocean Service  
Office of the Assistant Administrator  
1305 East-West Hwy, SSMC4 13th Floor  
Silver Spring, MD 20910  
V: 240-533-0918  
[nosaa.ec@noaa.gov](mailto:nosaa.ec@noaa.gov)

On Wed, Jul 21, 2021 at 2:13 PM Lieske, Kristi M (DNREC) <[Kristi.Lieske@delaware.gov](mailto:Kristi.Lieske@delaware.gov)> wrote:

Good afternoon,

Thank you for inviting the Delaware Coastal Management Program to review and comment on the Draft PEIS for *Surveying and Mapping Projects in U.S. Waters for Coastal and Marine Data Acquisition*. I represent our federal consistency program and am responsible for coordinating our review. Does the geographic scope of data collection activities include State waters (0-3 nautical miles)? I've found several instances where the Draft PEIS says the scope includes "states' offshore waters" but I want to be sure I correctly understand the exact meaning.

Thank you for your help.

Kristi

**Kristi Lieske**

Environmental Scientist II  
DNREC Delaware Coastal Programs  
100 W. Water St. Ste 7B, Dover, Delaware 19904  
(302) 739-9136

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**From:** NOSAA Environmental Compliance - NOAA Service Account <[nosaa.ec@noaa.gov](mailto:nosaa.ec@noaa.gov)>

**Sent:** Friday, June 25, 2021 4:33 PM

**Subject:** NOAA National Ocean Service Releases Draft PEIS for Surveying and Mapping Projects

Dear Federal Consistency Coordinator,

The National Oceanic and Atmospheric Administration (NOAA) National Ocean Service (NOS) has prepared a Draft Programmatic Environmental Impact Statement (PEIS) for *Surveying and Mapping Projects in U.S. Waters for Coastal and Marine Data Acquisition* pursuant to the National Environmental Policy Act. The Draft PEIS is now available for a 60-day public comment ending August 24, 2021. The [Notice of Availability](#) was published today in the *Federal Register*.

The Draft PEIS analyzes the potential environmental impacts of recurring surveying and mapping data collection in United States coastal and marine waters over a period of six years. The analysis in this document covers the use of active acoustic equipment such as sub-bottom profilers, single beam and multibeam echo sounders, and side-scan sonars by NOS to collect data on the depths and shapes of underwater terrain, including the ocean, rivers, and lakes. The Draft PEIS analyzes impacts to critical environmental resources such as marine mammals, endangered and threatened species, and cultural and historic resources. The document can be found on the NOS Surveying and Mapping Draft PEIS website at <https://oceanservice.noaa.gov/about/environmental-compliance/surveying-mapping.html>.

Attached is the notification letter with additional information regarding the Draft

PEIS.

If you have any questions, please feel free to contact me by phone at 240-533-0918 or email at [nosaa.ec@noaa.gov](mailto:nosaa.ec@noaa.gov).

v/r

Giannina DiMaio

*NOS Environmental Compliance Coordinator*

Pronouns: she/her/hers

NOAA, National Ocean Service  
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1305 East-West Hwy, SSMC4 13th Floor  
Silver Spring, MD 20910  
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### **2.11.2**    *NOS Response*

**CZMA-3:** Delaware Coastal Programs looks forward to continued coordination for NOS survey activities. Please also include Laura Mensch, Regulatory Programs Manager, (cc'd above) on future communications.

**NOS Response:** NOS will continue to coordinate with Delaware Coastal Programs and will include Laura Mensch, Regulatory Programs Manager, on future communications.

**Scope-7:** Does the geographic scope of data collection activities include State waters (0-3 nautical miles)? I've found several instances where the Draft PEIS says the scope includes "states' offshore waters" but I want to be sure I correctly understand the exact meaning.

**NOS Response:** Yes, the PEIS analyzes the environmental impacts of a suite of surveying and mapping data collection activities that could occur in state waters.

## **2.12 Donlin Gold (Kristina Woolston)**

### **2.12.1 *Comment Submission***



November 22, 2021

DOC/NOAA/NOS Environmental Compliance Coordinator  
SSMC4-Station 13612  
1305 East West Highway  
Silver Spring, MD 20910

**Re: Comments on Draft Programmatic Environmental Impact Statement (PEIS) -  
Surveying and Mapping Projects in U.S. Waters for Coastal and Marine Data  
Acquisition, NOAA-NOS-2021-0055**

Dear Sir/Madam:

Thank you for the opportunity to provide these comments regarding the National Ocean Service's (NOS') Draft PEIS for Surveying and Mapping Projects in U.S. Waters for Coastal and Marine Data Acquisition. Donlin Gold, LLC (Donlin Gold) is in the process of advancing the Donlin Gold Project (Project) which includes marine barging in the coastal waters of western Alaska. Therefore, we are important stakeholders in NOS' efforts to better define the subsurface conditions in these waters.

The Project involves a large gold mine project along the Kuskokwim River about 300 miles west of Anchorage. The Project area is very remote with no road access. Therefore, cargo and diesel fuel would be transported by barge via the ocean and then up the Kuskokwim River. Ports would be constructed in Bethel and upriver near the Project site. We received our federal Joint Record of Decision in 2018 after a multi-year NEPA review process.

The Project's transportation plan has been designed for an annual volume of 115,000 tons of cargo during operations. The cargo would be shipped from Pacific Northwest (Seattle, WA and Vancouver, BC) ports via ocean barges towed by ocean-going tugs to Bethel. Each ocean barge would be 360 feet long by 100 feet wide and would have a net cargo capacity of 10,040 tons at a maximum draft of 16 feet. The Project also requires fuel, and the diesel transportation plan has been designed for a peak annual usage of 42.3 million gallons. Diesel would be shipped from the Pacific Northwest to Dutch Harbor, where it would be transferred to a double-hull, 2.94-million-gallon capacity ocean fuel barge for delivery to Bethel. Overall, the total number of ocean barges to Bethel would be 30 during Project construction (16 cargo barges plus 14 fuel barges), and 26 during operations (12 cargo barges plus 14 fuel barges).

The Project is located on Alaska Native lands. The Alaska Native Claims Settlement Act, or ANSCA, is now celebrating its 50 anniversary and represented an extraordinary

milestone in terms of allowing Alaska Natives to select their lands and resources for their shareholders. Calista Regional Corporation owns the minerals and some of the lands at Donlin. Remaining lands are owned by The Kuskokwim Corporation, or TKC, that represents the local villages in the Middle Kuskokwim area. We operate Donlin Gold under life-of-mine agreements with each of these corporations and they are our true partners in developing the Project.

Donlin Gold's comments on Draft PEIS include:

- Programmatic EISs serve an important function in allowing a detailed, often multi-year, NEPA review of similar activities that then facilitates efficient, project specific reviews and approvals of individual actions. In this case, the Draft PEIS provides an appropriately comprehensive analysis of the broader surveying activities planned for the next 6 years so that individual mapping projects can be approved and proceed in a timely manner. We, therefore, strongly urge NOS to finalize the FEIS and a Record of Decision.
- Donlin Gold recognizes that NOS has identified Alternative B as the preferred alternative considering current funding levels and supports this alternative based on using the latest technologies to conduct surveys. We, however, would prefer adoption of Alternative C to provide additional data if funding is available.
- The Draft PEIS properly recognizes that "Alaskan and U.S. Arctic waters are especially important survey targets...Alaska's approximately 55,000 kilometers (34,000 miles) of coastline contain oil, natural gas, minerals, fish, and other resources that will play an important future role in the U.S. economy, all of which must transit Alaska's waterways to reach domestic and international markets." Based on this, Donlin Gold strongly urges NOS to maintain or increase the proposed 583,072 nautical miles of Alaska survey work under Alternative B, and, if the funding becomes available, the 636,078 nautical miles proposed under Alternative C.
- As indicated in the Draft PEIS, the coast of Alaska provides very important habitat for migratory birds, marine mammals, and a range of fish species. We concur with the general finding that the proposed surveying and mapping can be done with negligible, insignificant, or minor effects on biological resources, especially with continued Endangered Species Act and Essential Fish Habitat consultation and appropriate mitigation measures developed with the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and, in Alaska, the Alaska Department of Fish and Game.
- NOS's Alaska Fact Sheet highlights the benefits of the proposed action by indicating that "the data collected by NOS surveying and mapping projects could provide valuable information for subsistence hunting and fishing activities in the form of nautical charts and topographic maps of the sea floor." We suggest expanding this to further recognize that much of the transport along the Alaska coast involves cargo that is critical to businesses and projects owned and operated by Alaska Natives. Accurate surveying and mapping data will, therefore, yield

[Recipient Name]  
November 22, 2021

additional social and economic benefits to these groups. This is consistent with the preceding language regarding supporting the economic stability of subsistence communities as well as the reference in Table ES-2 that the studies will have beneficial effects on Environmental Justice communities. These findings further support the importance and prioritization work in Alaskan coastal waters.

- We support the plan to avoid areas with active subsistence fishing and hunting and the continued communication with Alaska Natives in planning and performing surveying and mapping activities.
- Finally, we fully support comments submitted by Calista Regional Corporation, our Alaska Native Corporation partner in the Project.

Donlin Gold appreciates the opportunity to provide these comments and looks forward to working with NOS to plan and implement its important marine surveying and mapping efforts in Alaska coastal waters.

Sincerely,

Kristina Woolston  
External Affairs Manager

### **2.12.2**    *NOS Response*

**Cumulative Impacts-6:** Donlin Gold, LLC (Donlin Gold) is in the process of advancing the Donlin Gold Project (Project) which includes marine barging in the coastal waters of western Alaska. Therefore, we are important stakeholders in NOS' efforts to better define the subsurface conditions in these waters.

The Project involves a large gold mine project along the Kuskokwim River about 300 miles west of Anchorage. The Project area is very remote with no road access.

Therefore, cargo and diesel fuel would be transported by barge via the ocean and then up the Kuskokwim River. Ports would be constructed in Bethel and upriver near the Project site. We received our federal Joint Record of Decision in 2018 after a multi-year NEPA review process.

The Project's transportation plan has been designed for an annual volume of 115,000 tons of cargo during operations. The cargo would be shipped from Pacific Northwest (Seattle, WA and Vancouver, BC) ports via ocean barges towed by ocean-going tugs to Bethel.

Each ocean barge would be 360 feet long by 100 feet wide and would have a net cargo capacity of 10,040 tons at a maximum draft of 16 feet. The Project also requires fuel, and the diesel transportation plan has been designed for a peak annual usage of 42.3 million gallons. Diesel would be shipped from the Pacific Northwest to Dutch Harbor, where it would be transferred to a double-hull, 2.94-million-gallon capacity ocean fuel barge for delivery to Bethel. Overall, the total number of ocean barges to Bethel would be 30 during Project construction (16 cargo barges plus 14 fuel barges), and 26 during operations (12 cargo barges plus 14 fuel barges).

The Project is located on Alaska Native lands. The Alaska Native Claims Settlement Act, or ANSCA, is now celebrating its 50 anniversary and represented an extraordinary milestone in terms of allowing Alaska Natives to select their lands and resources for their shareholders. Calista Regional Corporation owns the minerals and some of the lands at Donlin. Remaining lands are owned by The Kuskokwim Corporation, or TKC, that represents the local villages in the Middle Kuskokwim area. We operate Donlin Gold under life-of-mine agreements with each of these corporations and they are our true partners in developing the Project.

**NOS Response:** Thank you for providing more information on the Donlin Gold Project occurring along the Kuskokwim River. Projects such as the Donlin Gold Project are considered in the cumulative impact scenario in the Final PEIS under Section 4.1.12, Coastal Development and 4.1.5 Commercial Shipping and Recreational Boating.

NOS recognizes its responsibility to conduct consultation when federal actions and decisions may have implications on ANCs. NOS would like to assure Donlin Gold that NOS recognizes its responsibility to conduct consultation with federally recognized ANCs on the same basis as federally recognized Indian tribes under EO 13175 (Public Law (Pub. L.) 108-199, 118 Stat. 452, as amended by Pub. L. 108-447, 118 Stat. 3267).

NOS understands that protecting Alaska Native subsistence resources is vital. NOS intends to notify individual tribes and ANCs pursuant to EO 13175 before conducting any project that may have tribal implications. Federally recognized tribes and ANCs may

request government-to-government consultation at any time for a proposed action that may have tribal implications.

**NEPA Process-12:** Programmatic EISs serve an important function in allowing a detailed, often multi-year, NEPA review of similar activities that then facilitates efficient, project specific reviews and approvals of individual actions. In this case, the Draft PEIS provides an appropriately comprehensive analysis of the broader surveying activities planned for the next 6 years so that individual mapping projects can be approved and proceed in a timely manner. We, therefore, strongly urge NOS to finalize the FEIS and a Record of Decision.

**NOS Response:** Thank you for your support of the analysis in the PEIS.

**Alternatives-5:** Donlin Gold recognizes that NOS has identified Alternative B as the preferred alternative considering current funding levels and supports this alternative based on using the latest technologies to conduct surveys. We, however, would prefer adoption of Alternative C to provide additional data if funding is available.

**NOS Response:** Thank you for your support of Alternative C in which NOS would adopt new techniques and technologies to encourage greater program efficiencies regarding surveying, mapping, charting, and related data gathering activities with an overall potential funding increase of 20 percent relative to Alternative B.

**Alternatives-6:** The Draft PEIS properly recognizes that "Alaskan and U.S. Arctic waters are especially important survey targets...Alaska's approximately 55,000 kilometers (34,000 miles) of coastline contain oil, natural gas, minerals, fish, and other resources that will play an important future role in the U.S. economy, all of which must transit Alaska's waterways to reach domestic and international markets." Based on this, Donlin Gold strongly urges NOS to maintain or increase the proposed 583,072 nautical miles of Alaska survey work under Alternative B, and, if the funding becomes available, the 636,078 nautical miles proposed under Alternative C.

**NOS Response:** NOS continues to prioritize mapping and surveying of the Alaskan and U.S. Arctic waters. Alaskan communities can reach out to the NOAA Alaska Navigation Manager to engage in the planning process for future surveying and mapping projects. Information regarding contacting NOAA Navigation Managers can be found at the following website: <https://nauticalcharts.noaa.gov/customer-service/regional-managers/index.html>.

**Mitigation Measures-20:** As indicated in the Draft PEIS, the coast of Alaska provides very important habitat for migratory birds, marine mammals, and a range of fish species. We concur with the general finding that the proposed surveying and mapping can be done with negligible, insignificant, or minor effects on biological resources, especially with continued Endangered Species Act and Essential Fish Habitat consultation and appropriate mitigation measures developed with the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and, in Alaska, the Alaska Department of Fish and Game.

**NOS Response:** Thank you for your comment concurring with our analysis. The Final PEIS has been updated to include additional mitigation measures; please see the appropriate resource sections and Appendix D to see the full range of mitigation measures that NOS

has developed to be implemented on each project as appropriate to minimize the impacts on species. The additional mitigation measures in the Final PEIS were developed with subject matter experts and in coordination with field crews and with NMFS, USFWS, and ONMS.

**Environmental Justice-14:** NOS's Alaska Fact Sheet highlights the benefits of the proposed action by indicating that "the data collected by NOS surveying and mapping projects could provide valuable information for subsistence hunting and fishing activities in the form of nautical charts and topographic maps of the sea floor." We suggest expanding this to further recognize that much of the transport along the Alaska coast involves cargo that is critical to businesses and projects owned and operated by Alaska Natives. Accurate surveying and mapping data will, therefore, yield additional social and economic benefits to these groups. This is consistent with the preceding language regarding supporting the economic stability of subsistence communities as well as the reference in Table ES-2 that the studies will have beneficial effects on Environmental Justice communities. These findings further support the importance and prioritization work in Alaskan coastal waters.

**NOS Response:** Thank you for your support of the NOS surveying and mapping projects in Alaskan waters. NOS has revised the Socioeconomics Environmental Consequences Section in the Final PEIS to add that the data collected as part of the Proposed Action would benefit transportation operations along the Alaska coast which involve cargo that is critical to businesses and projects owned and operated by Alaska Natives.

**Environmental Justice-15:** We support the plan to avoid areas with active subsistence fishing and hunting and the continued communication with Alaska Natives in planning and performing surveying and mapping activities.

**NOS Response:** Thank you for your comment. NOS is committed to ongoing communication with both federally recognized tribes and ANCs to understand the implications of NOS activities in Alaska and to mitigate the effects on subsistence activities, food security, and climate change. Please be assured that NOS will notify the appropriate ANC when surveying and mapping activities are planned for the coastal waters in Alaska.

**Future Coordination-13:** Donlin Gold appreciates the opportunity to provide these comments and looks forward to working with NOS to plan and implement its important marine surveying and mapping efforts in Alaska coastal waters.

**NOS Response:** Thank you for your comment and support of the Proposed Action.

## **2.13 U.S. Environmental Protection Agency (EPA) (Robert Tomiak)**

### ***2.13.1 Comment Submission***



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

OFFICE OF  
POLICY

August 18, 2021

Giannina DiMaio  
National Ocean Service, NOAA  
SSMC4-Station 13612  
1305 East West Highway  
Silver Spring, Maryland 20910

Dear Ms. DiMaio:

In accordance with our responsibilities under Section 309 of the Clean Air Act and the National Environmental Policy Act, the U.S. Environmental Protection Agency has reviewed the National Oceanic and Atmospheric Administration's (NOAA) Draft Programmatic Environmental Impact Statement (PEIS) for the Surveying and Mapping Projects in United States Waters for Coastal and Marine Data Acquisition (CEQ No. 20210083).

According to the draft PEIS, NOAA uses hydroacoustic surveys to map the ocean floor to provide reliable nautical charts, benthic habitat condition and distribution maps, fishery distribution maps, current and tide charts, and other products necessary for safe navigation, economic security, environmental sustainability, and sound marine resource decision-making in U.S. ocean and coastal waters. These charts and maps are needed to provide reliable navigation, ecosystem distribution and condition information to the public, private users, and decision makers. Up-to-date navigation charts are used to ensure safety, efficiency of transit, and economic well-being. The preferred alternative includes adoption of new techniques and technologies as well as continuing with current activities at a higher level of effort.

We appreciate the opportunity to review this draft PEIS and have no concerns on the proposed action. We look forward to reviewing the final PEIS related to this project. If you have any questions, please contact Jacob Widner, the lead reviewer for this review, at 202-564-4462 or by email at [Widner.Jacob@epa.gov](mailto:Widner.Jacob@epa.gov).

Sincerely,

*Nancy Abrams* for

Robert Tomiak  
Director  
Office of Federal Activities

### **2.13.2**    *NOS Response*

**Proposed Action-2:** The preferred alternative includes adoption of new techniques and technologies as well as continuing with current activities at a higher level of effort. We appreciate the opportunity to review this draft PEIS and have no concerns on the proposed action.

**NOS Response:** Thank you for your comment.

## **2.14 Indiana Department of Natural Resources (Cathy Draeger-Williams)**

### **2.14.1 *Comment Submission***

**From:** [NOSAA Environmental Compliance - NOAA Service Account](#)  
**To:** [Draeger-Williams, Cathy](#)  
**Subject:** Re: Draft PEIS for surveying and mapping  
**Date:** Tuesday, July 6, 2021 5:23:04 PM

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Cathy,

Thank you for providing these comments and concerns. We will certainly take this information into consideration as we are developing the programmatic approach for Section 106 and ensure you are part of the consultation process.

I look forward to working with you going forward.

v/r  
Giannina DiMaio  
*NOS Environmental Compliance Coordinator*  
Pronouns: she/her/hers

NOAA, National Ocean Service  
Office of the Assistant Administrator  
1305 East-West Hwy, SSMC4 13th Floor  
Silver Spring, MD 20910  
V: 240-533-0918  
[nosaa.ec@noaa.gov](mailto:nosaa.ec@noaa.gov)

On Tue, Jul 6, 2021 at 1:24 PM Draeger-Williams, Cathy <[CDraeger-Williams@dnr.in.gov](mailto:CDraeger-Williams@dnr.in.gov)> wrote:

Thank you for clarifying. We are willing to be a part of the consultation. Here are a few comments/concerns.

Surveying and mapping activities should strive to be non-intrusive.

Shipwrecks should be avoided by any ground disturbance, anchoring, equipment placement or other activity that would impact the components of the shipwreck. Depth of shipwreck components should be considered. The locations must also be kept confidential from public disclosure. Please be aware that field investigations on state property (i.e. the lakebed) must comply with state statutes.

If equipment placement is part of any terrestrial activities, would these be considered temporary and would they consider the visual effect of potential historic properties in the viewshed.

Who is evaluating if the activity fits under the PA and if resources are present or not? Does this person have access to the records?

Thanks.

Cathy Draeger-Williams

Archaeologist

Indiana Department of Natural Resources

Division of Historic Preservation and Archaeology

317 234-3791

[Cdraeger-williams@dnr.in.gov](mailto:Cdraeger-williams@dnr.in.gov)

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**From:** NOSAA Environmental Compliance - NOAA Service Account

<[nosaa.ec@noaa.gov](mailto:nosaa.ec@noaa.gov)>

**Sent:** Tuesday, July 6, 2021 12:44 PM

**To:** Draeger-Williams, Cathy <[CDraeger-Williams@dnr.in.gov](mailto:CDraeger-Williams@dnr.in.gov)>

**Subject:** Re: Draft PEIS for surveying and mapping

Cathy,

Thank you for taking the time to reach out to me regarding our plans for Section 106 Consultation under the NHPA. The Draft PEIS is not intended to substitute the requirement to consult with SHPOs. The document was provided to State Historic Preservation Offices and Tribal Historic Preservation Officers for information and awareness. The Draft PEIS was also provided to all federally recognized tribes in the action area as well as Native Hawaiian Organizations and Alaska Native tribes as part of our government-to-government consultation process.

NOS will be working on a programmatic approach with the Advisory Council on Historic Preservation (ACHP) and the National Conference of SHPOs. It is our understanding SHPOs will be part of this process. We would appreciate any

comments or assistance in identifying historic or cultural resources that may be potentially affected by NOS surveying and mapping activities in your area. Additionally, if you have any thoughts or suggestions on how we could minimize or avoid potential adverse impacts of our surveying and mapping activities to historic properties that would be helpful as we develop a programmatic agreement with SHPOs.

My apologies for the delayed response as I was on leave last week. Please feel free to contact me if you have any additional questions or would like to discuss the process further.

v/r

Giannina DiMaio

*NOS Environmental Compliance Coordinator*

Pronouns: she/her/hers

NOAA, National Ocean Service

Office of the Assistant Administrator

1305 East-West Hwy, SSMC4 13th Floor

Silver Spring, MD 20910

V: 240-533-0918

[nosaa.ec@noaa.gov](mailto:nosaa.ec@noaa.gov)

On Mon, Jun 28, 2021 at 11:57 AM Draeger-Williams, Cathy <[CDraeger-Williams@dnr.in.gov](mailto:CDraeger-Williams@dnr.in.gov)> wrote:

We would like to provide comments but also have a few questions. There may be cultural resources that might be affected by some of the proposed activities, such as anchoring or placing equipment depending on the locations. Will the typical Section 106 process be completed including consultation with the SHPO? Or is this PEIS more of a programmatic agreement to streamline the NEPA/Section 106 process? If this is part of a larger Nationwide PA with the ACHP, will the individual SHPOs be involved in consultation as well? I apologize for any misunderstanding. Thank you.

Cathy Draeger-Williams

Archaeologist

Indiana State Historic Preservation Office

Indiana Department of Natural Resources

Division of Historic Preservation and Archaeology

317 234-3791

[Cdraeger-williams@dnr.in.gov](mailto:Cdraeger-williams@dnr.in.gov)

### 2.14.2 *NOS Response*

**Mitigation Measures-4:** Surveying and mapping activities should strive to be non-intrusive.

**NOS Response:** NOS agrees and has implemented mitigation measures to be as non-intrusive as possible. As stated in Section 3.11.2 of the PEIS, most NOS actions were determined to have no potential to cause effects to historic properties include: operation of crewed vessels, operation of remotely operated vehicles and uncrewed/autonomous systems; use of echo sounders; use of acoustic doppler current profilers (ADCP), use of acoustic communication systems, use of sound speed data collection equipment, operation of drop/towed cameras and video systems, use of passive listening systems.

Substrate-disturbing activities, such as anchoring and bottom sampling, could have negligible to moderate adverse impacts depending upon the extent of damage caused to the resource and the cultural significance of the resource damaged. Although anchoring has the potential to impact submerged isolated artifacts from prehistoric or historic voyages, resources submerged as a result of sea level rise, or undocumented downed aircraft or shipwrecks, the likelihood of an anchor landing on a historic resource is low. When working in an un-surveyed area or in an area that has not been surveyed in many years, the ship would try to anchor in bays where data have already been collected, providing the ship with better information on where to drop the anchor. These practices would minimize the potential for adverse impacts to submerged cultural or historic resources. Likewise, when sampling the sea floor, samples would be obtained from only the top few inches of sediment. This is unlikely to disturb any objects that may be present, as it is likely that there is a thick layer of sediment over long-buried objects.

**Cultural and Historic Resources-5:** We would like to provide comments but also have a few questions. There may be cultural resources that might be affected by some of the proposed activities, such as anchoring or placing equipment depending on the locations. Will the typical Section 106 process be completed including consultation with the SHPO? Or is this PEIS more of a programmatic agreement to streamline the NEPA/Section 106 process? If this is part of a larger Nationwide PA with the ACHP, will the individual SHPOs be involved in consultation as well? I apologize for any misunderstanding.

**NOS Response:** Thank you for taking the time to reach out to NOS regarding our plans for Section 106 consultation under the NHPA. While the Final PEIS will be used to inform NOS responsibilities under NHPA, NOS will comply with Section 106 of the NHPA for any activity that has the potential to affect cultural or historic resources as described in the regulations at 36 CFR 800.8. The PEIS was provided to SHPOs, THPOs, federally recognized tribes, Native Hawaiian Organizations, and Alaska Native tribes and corporations for information and awareness.

While NOS may consider developing a PA for multiple undertakings in the future, NOS will initiate project-specific consultations under Section 106 of the NHPA before commencing any activity with the potential to affect cultural or historic resources.

**Cultural and Historic Resources-6:** Shipwrecks should be avoided by any ground disturbance, anchoring, equipment placement or other activity that would impact the components of the

shipwreck. Depth of shipwreck components should be considered. The locations must also be kept confidential from public disclosure.

**NOS Response:** NOS understands the potential for some surveying activities to affect historic properties. See 3.11.2 of the Final PEIS for more details on impacts to shipwrecks from anchoring, bottom sampling, tide gauges, buoys and GPS reference stations. NOS considers the depth and position of shipwrecks when avoiding their location. This PEIS considers the impacts to historical and cultural resources from data collection, as discussed in Chapter 3, Section 3.11, Cultural Resources. NOS understands the need for protecting sensitive data. NOAA, like other federal agencies, is required to comply with Section 304 of the NHPA, which protects certain sensitive information about historic properties from disclosure to the public when such disclosure could result in a significant invasion of privacy, damage to the historic property, or impede the use of a traditional religious site by practitioners. NOS will comply with Section 304 of the NHPA in the course of creating public data products.

**CZMA-4:** Please be aware that field investigations on state property (i.e. the lakebed) must comply with state statutes.

**NOS Response:** Pursuant to the CZMA, federal agencies must comply with approved state coastal enforceable policies, some of which contain state laws, to the maximum extent practicable. NOS provided CD letters to all coastal states and territories with approved CMPs. The CDs evaluate the coastal effects of proposed activities according to the relevant enforceable policies to make a consistency determination under CZMA.

**Cultural and Historic Resources-7:** If equipment placement is part of any terrestrial activities, would these be considered temporary and would they consider the visual effect of potential historic properties in the viewshed.

**NOS Response:** Installations of tide gauges, buoys, and GPS reference stations could be temporary or permanent, depending on the project. NOS understands that installations could affect the viewshed of a historic property or designed cultural landscape. NOS will initiate project-specific consultations under Section 106 of the NHPA before commencing any activity with the potential to affect cultural or historic resources.

**Cultural and Historic Resources-8:** Who is evaluating if the activity fits under the PA and if resources are present or not? Does this person have access to the records?

**NOS Response:** NOS-trained environmental compliance coordinators will evaluate proposed projects and review project areas for listed or eligible properties before commencing any project that has the potential to affect cultural or historic resources. NOS will contact the appropriate SHPO/THPO to identify cultural and historic properties. For offshore projects, NOS has access to charts and several databases of shipwrecks for reference during project planning.

## **2.15 Louisiana Department of Natural Resources (Charles Reulet)**

### **2.15.1 *Comment Submission***



**State of Louisiana**  
**DEPARTMENT OF NATURAL RESOURCES**  
**OFFICE OF COASTAL MANAGEMENT**

July 26, 2021

Giannina DiMaio  
National Ocean Service  
National Ocean and Atmospheric Administration  
1305 East West Highway, SSMC4 13<sup>th</sup> Floor  
Silver Spring, MD 20910  
Via email: [nosaa.ec@noaa.gov](mailto:nosaa.ec@noaa.gov)

RE: **C20210090**, Coastal Zone Consistency  
**NOAA National Ocean Service**  
Direct Federal Action  
Draft PEIS for Surveying and Mapping Projects in U.S. Waters for Coastal and Marine  
Data Acquisition  
**Offshore Louisiana**

Dear Ms. DiMaio:

The above referenced project has been reviewed for consistency with the Louisiana Coastal Resources Program in accordance with Section 307 (c) of the Coastal Zone Management Act of 1972, as amended. The project, as proposed in the application, is consistent with the LCRP.

If you have any questions concerning this determination please contact Jim Bondy of the Consistency Section at (225) 342-3870 or [james.bondy@la.gov](mailto:james.bondy@la.gov).

Sincerely,

**/S/ Charles Reulet**  
Administrator  
Interagency Affairs/Field Services Division

CR/MH/jab

cc: Dave Butler, LDWF

### **2.15.2**    *NOS Response*

**CZMA-5:** The above referenced project has been reviewed for consistency with the Louisiana Coastal Resources Program in accordance with Section 307 (c) of the Coastal Zone Management Act of 1972, as amended. The project, as proposed in the application, is consistent with the LCRP.

**NOS Response:** Thank you for your consideration and consistency determination. NOS provided CD letters to all coastal states and territories with approved CMPs. The CDs evaluate the coastal effects of proposed activities according to the relevant enforceable policies to make a consistency determination under CZMA.

## **2.16 Maryland Department of Natural Resources (Joseph Abe)**

### **2.16.1 *Comment Submission***

**From:** [NOSAA Environmental Compliance - NOAA Service Account](#)  
**To:** [Michelle.Smyk@solvllc.com](mailto:Michelle.Smyk@solvllc.com)  
**Subject:** Fwd: August 24 Deadline/Request Potential Extension  
**Date:** Friday, October 15, 2021 11:37:00 AM

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v/r  
Giannina DiMaio  
*NOS Environmental Compliance Coordinator*  
Pronouns: she/her/hers

NOAA, National Ocean Service  
Office of the Assistant Administrator  
1305 East-West Hwy, SSMC4 13th Floor  
Silver Spring, MD 20910  
V: 240-533-0918  
[nosaa.ec@noaa.gov](mailto:nosaa.ec@noaa.gov)

----- Forwarded message -----

From: **Joseph Abe -DNR-** <[joseph.abe@maryland.gov](mailto:joseph.abe@maryland.gov)>  
Date: Wed, Aug 4, 2021 at 12:36 PM  
Subject: August 24 Deadline/Request Potential Extension  
To: <[nosaa.ec@noaa.gov](mailto:nosaa.ec@noaa.gov)>  
Cc: Heather Nelson -MDE- <[hnelson@maryland.gov](mailto:hnelson@maryland.gov)>, McCall, Catherine <[catherine.mccall@maryland.gov](mailto:catherine.mccall@maryland.gov)>

Hi Giannina:

I am writing to inform you that Maryland just discovered (this week) your June 25 request for comments RE [NOAA/NOS' Programmatic Environmental Impact Statement \(PEIS\) for Surveying and Mapping Projects in U.S. Waters for Coastal and Marine Data Acquisition](#).

We found out via email communication from New York and Delaware. Who did you send the letter to in Maryland? Heather Nelson is Maryland's Federal Consistency Coordinator. Heather and I work together to manage Federal Consistency Reviews in Maryland.

We see that you have an August 24 deadline to receive comments. I've already contacted key Maryland folks to review and comment. Given our late notice, can we have an extension to get our comments in?

Thanks for considering of our request.

Best Regards, Joe

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MD Logo.png



[dnr.maryland.gov](http://dnr.maryland.gov)

Joseph Abe  
Coastal Policy Coordinator Chesapeake  
and Coastal Service  
Department of Natural Resources  
580 Taylor Avenue, E-2  
Annapolis, MD 21401  
[410-260-8740](tel:410-260-8740) (office)  
[443-534-4151](tel:443-534-4151) (cell)  
[joseph.abe@maryland.gov](mailto:joseph.abe@maryland.gov)

[Click here](#) to complete a three question customer experience survey.

***\*Beginning on Friday March 13th, 2020 state workers have been on mandatory telework. If you need to speak by phone please use my cell phone number or respond to my email with a request for a conference line number. Thank you.***

### **2.16.2**    *NOS Response*

**CZMA-6:** Heather Nelson is Maryland's Federal Consistency Coordinator. Heather and I work together to manage Federal Consistency Reviews in Maryland.

**NOS Response:** Thank you. NOS has updated the contact information for Maryland's Federal Consistency Coordinator.

**NEPA Process-7:** Given our late notice, can we have an extension to get our comments in?

**NOS Response:** NOS extended the original 60-day public comment period deadline by 90 days from August 24, 2021 to November 22, 2021 after receiving this comment.

## **2.17 Maine Department of Marine Resources (Meredith Mendelson)**

### *2.17.1 Comment Submission*



JANET T. MILLS  
GOVERNOR

STATE OF MAINE  
DEPARTMENT OF MARINE RESOURCES  
21 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0021

PATRICK C. KELIHER  
COMMISSIONER

August 24, 2021

Giannina DiMaio  
Environmental Compliance Coordinator  
U.S. Department of Commerce  
National Oceanic and Atmospheric Administration  
National Ocean Service  
SSMC4-Station 13612  
1305 East West Highway  
Silver Spring, MD 20910

Delivered by E-mail

RE: NOAA-NOS-2021-0055; Comments on Draft Programmatic Environmental Impact Statement for Surveying and Mapping Projects in U.S. Waters for Coastal and Marine Data Acquisition

Dear Ms. DiMaio:

I am writing in response to NOAA's notice of opportunity to comment on its *Draft Programmatic Environmental Impact Statement for Surveying and Mapping Projects in U.S. Waters for Coastal and Marine Data Acquisition* ("DPEIS").<sup>1</sup>

The Maine Department of Marine Resources' ("DMR") is "established to conserve and develop marine and estuarine resources; to conduct and sponsor scientific research; to promote and develop the Maine coastal fishing industries; to advise and cooperate with local, state, and federal officials concerning activities in coastal waters; and to implement, administer, and enforce the laws and regulations necessary for these purposes..."<sup>2</sup> Ocean and coastal data and information developed and shared by NOAA are key components in addressing each aspect of this multi-faceted statutory mission. Consequently, DMR has a direct and significant interest in how NOAA prioritizes and undertakes its ocean survey and mapping activities ("ocean surveys"), and a desire to continue and improve its coordination and cooperation with NOAA regarding those activities.

The following comments are offered in the spirit of helping NOAA to optimize the many benefits of its ocean surveys to DMR as well as many other state and federal agencies, local governments,

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<sup>1</sup> *Draft Programmatic Environmental Impact Statement for Surveying and Mapping Projects in U.S. Waters for Coastal and Marine Data Acquisition* (National Oceanic and Atmospheric Administration, National Ocean Service), June 2021 ("DPEIS"), noticed in 86 FR 33663 (June 25, 2021).

<sup>2</sup> 12 M.R.S. §6021.

commercial fishing, aquaculture, renewable ocean energy, and other private sector enterprises, academic institutions and researchers, and the general public.

I. Improve Coordination with Coastal States on Planning and Implementing Ocean Surveys to Avoid and Minimize Conflicts with Commercial Fishing Activities.

A. Acknowledge the potential for ocean survey-commercial fishing conflicts.

DMR suggests that the final PEIS's section on socioeconomic resources<sup>3</sup> and related sections as appropriate include discussion of the potential for conflicts between ocean surveys and commercial fishing activities.

DMR agrees with the DPEIS's overall assessment of the vital importance of NOAA's ocean surveys and their many, diverse, and significant socio-economic benefits to commercial fishing and allied industries and many others.<sup>4</sup> The DPEIS does not, however, adequately assess the potential for conflicts between ocean surveys and fishing gear and activities as a potential adverse impact. In DMR's experience, such conflicts have occurred, the potential for them remains a concern, and enhanced coordination can help avoid and minimize them. NOAA's preferred alternative (Alternative B) involves "continuation and an overall increase of all types of the activities and equipment currently used" as well as "more widespread adoption of new techniques and technologies", including some which appear to involve submerging survey instruments in or towing them through the water column and thus an increase in the potential for conflicts with fishing gear and activities.<sup>5</sup>

B. Make enhanced and timely pre-survey coordination with pertinent coastal states a standard element of ocean surveys.

DMR suggests that the final PEIS identify the type of enhanced coordination discussed below as a means to mitigate the potential for conflicts between ocean surveys and commercial fishing activities; include it as an element of its preferred alternative (DPEIS Alternative B); and subsequently make it a routine aspect of coordination with coastal states regarding ocean surveys.

In recent years, DMR has worked cooperatively and well with NOAA's Office of Coast Survey ("NOAA/OCS") to help avoid and minimize such conflicts in state and federal waters off the Maine coast. At DMR's request, using a cooperatively developed standard form, NOAA/OCS has on a case-by-case basis provided DMR activity-specific information prior to initiation of ocean surveys. Using this detailed information, DMR has in turn provided prior notice of ocean surveys to pertinent marine harvesters to enable them to plan for and take timely actions to reduce the potential for gear conflicts.

The Maine Lobstermen's Association has often pointed to coordination regarding the 2016 sand resource survey conducted in Penobscot Bay as a good example of how such communication helps avoid gear conflict, in that case in mid-summer in an area with dense deployment of lobster fishing gear.

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<sup>3</sup> See DPEIS, Section 3.12.

<sup>4</sup> See, e.g., DPEIS, p.569-71.

<sup>5</sup> See DPEIS, p.2.

DMR's coordination with the United States Army Corps of Engineers ("USACE") in recent years regarding establishment of haul routes for dredged materials from USACE's civil works projects also provides a useful, comparable example of successful federal-state coordination to avoid gear conflicts. Using a process which DMR and USACE are currently developing into a standard practice, the agencies have brought together USACE project managers, DMR Marine Patrol officers and other staff, and groups of area fishermen to discuss designation of a haul route that both minimizes the impact on fishing activity as well as navigational challenges for the contractor hauling the dredged materials. While, occasionally, this has been an iterative process, more commonly the issue has been resolved with one meeting and perhaps a quick follow-up to confirm details. This relatively small investment of time and energy serves to forestall last-minute calls and meetings and related frustrations and tensions when gear conflicts arise or are imminent.

While appreciating NOAA/OCS's openness to coordination on this issue case-by-case in recent years and recognizing its benefits, DMR believes that routinization of such pre-ocean survey coordination would have significant and additional benefits to NOAA/OCS as well as DMR and the state fishing industry. Effective communication with the fishing industry can result in gear being moved out of survey tows and help ensure that ocean surveys can be completed more efficiently and without added private and federal costs due to gear entanglement and lost or damaged survey equipment. DMR acknowledges that such communication is no panacea as it does not guarantee fishermen will move their gear. However, notice which provides adequate time (taking weather conditions into account) to move gear makes it more likely, manifests a good faith effort to avoid and minimize potential conflicts, and ideally helps foster cooperation more broadly. This approach is also consistent with and supports other NOAA policies and efforts, including its leadership on regional ocean planning and management, which encourage improved state-federal cooperation and identification and adoption of best practices to facilitate multiple existing and emerging uses of shared ocean space.

DMR-NOAA coordination in the past has helped to build relationships and create lines of communication that have been of great value on various issues. With federal and state resource managers facing a decade of difficult conversations about risk reduction for the protection of the Northern right whale, every small improvement in this relationship could be valuable. It is reasonable to assume that many commercial fishermen, like most other people, understandably do not see the various line offices within NOAA as different agencies with different purposes and missions. Consequently, if they do not receive timely communication about NOAA ocean surveys that may interfere with their commercial activities and thus their livelihood, there is resulting potential for increased tension on multiple issues. In prior years, senior leadership at DMR, including that of the Marine Patrol, have held in-person meetings with the new regional leadership for NOAA/OCS and hope to organize such a meeting in the near future as a way to foster enhanced communication on issues of mutual interest and concern.

## II. Improve coordination with coastal states in planning and designing ocean surveys to create synergies and efficiencies.

DMR suggests that the final PEIS include as an aspect of its preferred alternative enhanced consultation with pertinent coastal states in planning and designing the focus and purpose of ocean surveys. Such early coordination may help NOAA better address coastal states' identified ocean data and information needs. In addition, it may help optimize the ocean surveys' efficiency and effectiveness

and increase their overall benefit by identifying opportunities for state-federal collaboration, avoiding duplicative and facilitating synergistic efforts, and obtaining local, place-based information that may be useful for planning, design, or implementation purposes. A meeting of senior leadership at DMR and regional representatives of NOAA/OCS may provide a useful forum or help identify other timely opportunities for such an exchange of ideas. Sharing data from ocean surveys and other NOAA ocean research with the commercial fishing industry and public in more accessible, non-technical ways could also help increase the understanding of and share the benefits of this important work. Identification of ways in which DMR and NOAA/OCS may work together to do so would be a useful topic to explore.

### III. Capture the value of the living resources economy more accurately.

DMR suggests that NOAA reconsider the estimate of the value of the living resources economy provided in the DPEIS and revise it as needed to ensure that the final PEIS more accurately captures that value for the Northeast and perhaps other regions, particularly if it is intended to include supply chain-related benefits.

The table in the DPEIS which references the value of the living marine resources economy in the Northeast appears to significantly underestimate it.<sup>6</sup> Apparently using 2016 estimates, it notes approximately \$1.9 billion in contribution to GDP, a figure which the text seems to indicate includes the related supply chain. Even if it includes only ex-vessel revenues, it appears low. In 2016, the Maine lobster fishery alone contributed approximately about \$1.5 billion to the state GDP.<sup>7</sup>

\* \* \*

Thank you for the opportunity to comment on the DPEIS. We look forward to working closely with NOAA on its ocean survey and mapping activities and to helping ensure and enhance their many benefits to Maine's economy and environment.

Respectfully,



Meredith Mendelson  
Deputy Commissioner

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<sup>6</sup> PDEIS, Table 3.12-6 (Living Resources Economy by Region (2016), p. 428.

<sup>7</sup> See *Lobsters to Dollars: The Economic Impact of the Lobster Distribution Supply Chain in Maine*, p. 1 (landings value) and Table 12, p. 12 (Aggregation of Economic Impacts), - <https://www.colby.edu/economics/lobsters/Lobsters2DollarsFinalReport.pdf>

### 2.17.2 *NOS Response*

**Purpose and Need-4:** DMR has a direct and significant interest in how NOAA prioritizes and undertakes its ocean survey and mapping activities (“ocean surveys”), and a desire to continue and improve its coordination and cooperation with NOAA regarding those activities.

**NOS Response:** NOS selects areas to survey based on the need for more accurate data; an area selected for a survey project may have outdated or no previous survey data. We look forward to working with the State of Maine to determine charting and data needs.

**Socioeconomic Resources-1:** I. Improve Coordination with Coastal States on Planning and Implementing Ocean Surveys to Avoid and Minimize Conflicts with Commercial Fishing Activities.

A. Acknowledge the potential for ocean survey-commercial fishing conflicts.

DMR suggests that the final PEIS’s section on socioeconomic resources and related sections as appropriate include discussion of the potential for conflicts between ocean surveys and commercial fishing activities.

DMR agrees with the DPEIS’s overall assessment of the vital importance of NOAA’s ocean surveys and their many, diverse, and significant socio-economic benefits to commercial fishing and allied industries and many others.<sup>4</sup> The DPEIS does not, however, adequately assess the potential for conflicts between ocean surveys and fishing gear and activities as a potential adverse impact. In DMR’s experience, such conflicts have occurred, the potential for them remains a concern, and enhanced coordination can help avoid and minimize them. NOAA’s preferred alternative (Alternative B) involves “continuation and an overall increase of all types of the activities and equipment currently used” as well as “more widespread adoption of new techniques and technologies”, including some which appear to involve submerging survey instruments in or towing them through the water column and thus an increase in the potential for conflicts with fishing gear and activities.

**NOS Response:** NOS assessed the potential impacts to fisheries, including fish, aquatic macroinvertebrates, EFH, and socioeconomic resources. Socioeconomic resources include commercial fishing, fish hatcheries and aquaculture, seafood processing, and seafood markets industries. All surveying and mapping activities listed in Section 2.0 could impact fisheries. Detailed analysis can be found in the following sections of the Final PEIS: Section 3.7 (Fish), Section 3.8 (Aquatic Macroinvertebrates), Section 3.9 (Essential Fish Habitat), and Section 3.12 (Socioeconomic Resources). Among the impacts assessed, effects to fish include some stress responses without permanent physiological damage, and some disturbance to breeding, feeding, or other activities, but without any impacts on population levels; additionally, there would not be long-term changes in habitat availability and use or in fish behavior. NOS also assessed the impact of interactions with fishing gear and survey equipment on the fishing industry. Effects to commercial and recreational fishing from gear interaction are very unlikely.

Data collected by NOS would have beneficial effects as that data is used to conserve, preserve, and restore ecological resources, including wildlife, fish, and habitat. The data would provide the public and private sectors with nautical charts, benthic habitat condition

maps, current and tide charts, and other products that could support the management of fisheries. These products allow federal, state, and local governments to make informed decisions about fishing areas and other natural resource management issues.

NOS developed mitigation measures in coordination and consultation with expert agencies including NMFS and USFWS to avoid and minimize any potential effects. Mitigation measures to protect fisheries include implementing mandatory invasive species prevention procedures and following MARPOL discharge protocols. NOS communicates with the public on future survey projects through announcements such as the annual Office of Coast Survey story map<sup>2</sup> and, when appropriate, public “Notices to Mariners” to provide general information on timing and locations. This helps minimize interference with commercial and recreational fishing and reduces the potential for interactions with fishing gear like lobster traps.

Overall, the impacts to fishery resources would be adverse, minor and insignificant as defined in the Final PEIS. NOS data collection and the resulting improvements in charting and mapping are expected to have indirect, beneficial, and moderate impacts on the ocean economy.

**Future Coordination-4:** B. Make enhanced and timely pre-survey coordination with pertinent coastal states a standard element of ocean surveys.

DMR suggests that the final PEIS identify the type of enhanced coordination discussed below as a means to mitigate the potential for conflicts between ocean surveys and commercial fishing activities; include it as an element of its preferred alternative (DPEIS Alternative B); and subsequently make it a routine aspect of coordination with coastal states regarding ocean surveys.

In recent years, DMR has worked cooperatively and well with NOAA’s Office of Coast Survey (“NOAA/OCS”) to help avoid and minimize such conflicts in state and federal waters off the Maine coast. At DMR’s request, using a cooperatively developed standard form, NOAA/OCS has on a case-by-case basis provided DMR activity-specific information prior to initiation of ocean surveys. Using this detailed information, DMR has in turn provided prior notice of ocean surveys to pertinent marine harvesters to enable them to plan for and take timely actions to reduce the potential for gear conflicts...While appreciating NOAA/OCS’s openness to coordination on this issue case-by-case in recent years and recognizing its benefits, DMR believes that routinization of such pre-ocean survey coordination would have significant and additional benefits to NOAA/OCS as well as DMR and the state fishing industry. Effective communication with the fishing industry can result in gear being moved out of survey tows and help ensure that ocean surveys can be completed more efficiently and without added private and federal costs due to gear entanglement and lost or damaged survey equipment. DMR acknowledges that such communication is no panacea as it does not guarantee fishermen will move their gear. However, notice which provides adequate time (taking weather conditions into account) to move gear makes it more likely, manifests a good faith effort to avoid and minimize potential conflicts, and ideally helps foster cooperation more broadly. This approach is also consistent with and supports other NOAA policies and efforts, including its leadership on regional ocean planning and management,

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<sup>2</sup> <https://storymaps.arcgis.com/stories/33758b0990bb4e23a7b61323db3ae670>

which encourage improved state-federal cooperation and identification and adoption of best practices to facilitate multiple existing and emerging uses of shared ocean space....if they do not receive timely communication about NOAA ocean surveys that may interfere with their commercial activities and thus their livelihood, there is resulting potential for increased tension on multiple issues. In prior years, senior leadership at DMR, including that of the Marine Patrol, have held in-person meetings with the new regional leadership for NOAA/OCS and hope to organize such a meeting in the near future as a way to foster enhanced communication on issues of mutual interest and concern.

**NOS Response:** NOS communicates with the public on future survey projects through announcements such as the annual Office of Coast Survey story map<sup>3</sup> and, when appropriate, public “Notices to Mariners” to provide general information on timing and locations. This helps minimize interference with commercial and recreational fishing and reduces the potential for interactions with fishing gear like lobster traps. NOS proposes that, going forward, all NOS programs would coordinate with your office using the Notification of Field Work form that has been used by Coast Survey for several years. Discussion of gear interaction is included in the Final PEIS.

**Future Coordination-5:** II. Improve coordination with coastal states in planning and designing ocean surveys to create synergies and efficiencies.

DMR suggests that the final PEIS include as an aspect of its preferred alternative enhanced consultation with pertinent coastal states in planning and designing the focus and purpose of ocean surveys. Such early coordination may help NOAA better address coastal states’ identified ocean data and information needs. In addition, it may help optimize the ocean surveys’ efficiency and effectiveness and increase their overall benefit by identifying opportunities for state-federal collaboration, avoiding duplicative and facilitating synergistic efforts, and obtaining local, place-based information that may be useful for planning, design, or implementation purposes. A meeting of senior leadership at DMR and regional representatives of NOAA/OCS may provide a useful forum or help identify other timely opportunities for such an exchange of ideas. Sharing data from ocean surveys and other NOAA ocean research with the commercial fishing industry and public in more accessible, non-technical ways could also help increase the understanding of and share the benefits of this important work. Identification of ways in which DMR and NOAA/OCS may work together to do so would be a useful topic to explore.

**NOS Response:** Thank you for your comment; however, optimizing ocean surveying efficiency and effectiveness and data sharing is out of scope of this PEIS (environmental compliance) effort. States and the public can reach out to NOAA Navigation Managers to engage in the planning process for future surveying and mapping projects. Contact information for NOAA Navigation Managers can be found at the following website: <https://nauticalcharts.noaa.gov/customer-service/regional-managers/index.html>. Coordination with the State of Maine on the environmental impact to state resources will be conducted through the CZMA Federal Consistency process.

**References and Data-1:** III. Capture the value of the living resources economy more accurately.

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<sup>3</sup> <https://storymaps.arcgis.com/stories/33758b0990bb4e23a7b61323db3ae670>

DMR suggests that NOAA reconsider the estimate of the value of the living resources economy provided in the DPEIS and revise it as needed to ensure that the final PEIS more accurately captures that value for the Northeast and perhaps other regions, particularly if it is intended to include supply chain- related benefits.

The table in the DPEIS which references the value of the living marine resources economy in the Northeast appears to significantly underestimate it. Apparently using 2016 estimates, it notes approximately \$1.9 billion in contribution to GDP, a figure which the text seems to indicate includes the related supply chain. Even if it includes only ex-vessel revenues, it appears low. In 2016, the Maine lobster fishery alone contributed approximately about \$1.5 billion to the state GDP.

**NOS Response:** The values used to quantify the contribution of living resources to GDP were published by the OCM in the NOAA Report on the U.S. Marine Economy which uses ENOW data. The discrepancy may be the result of the contribution of self-employed workers which are a large part of the living resources sector; however, the referenced ENOW data looks exclusively at the component of the data that focuses on businesses with employees. The purpose of this analysis was to review the economic impact of this programmatic action over the entire action area and the OCM data was the best available data for the entire action area. There may be discrepancies between state-collected data and data collected by NOAA. NOS has updated the information in Table 3.12.1 of the Socioeconomic Section in the Final PEIS.

## **2.18 Michigan Department of Environment, Great Lakes, and Energy (EGLE) (Matt Smar)**

### *2.18.1 Comment Submission*



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF  
ENVIRONMENT, GREAT LAKES, AND ENERGY  
LANSING



LIESL EICHLER CLARK  
DIRECTOR

August 24, 2021

VIA E-MAIL

Ms. Giannina DiMaio  
DOC/NOAA/NOS Environmental Compliance Coordinator  
SSMC4 – Station 13612  
1305 East West Highway  
Silver Spring, Maryland 20910  
[nosaa.ec@noaa.gov](mailto:nosaa.ec@noaa.gov)

Dear Ms. DiMaio:

Staff of the Water Resources Division, Michigan Department of Environment, Great Lakes, and Energy (EGLE) has reviewed the Draft Programmatic Environmental Impact Statement (PEIS) for Surveying and Mapping Projects in U.S. Waters for Coastal and Marine Data Acquisition, prepared by the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service and dated June 2021. This letter presents EGLE's comments on the draft PEIS.

The geographic scope for the draft PEIS described in Section 2.3.1 contains waters and associated littoral and riparian lands within the Coastal Zone Boundary for Michigan's Coastal Management Program approved by NOAA pursuant to the Federal Coastal Zone Management Act (CZMA) of 1972 (P.L. 92-583). The area within the Boundary includes all waters and bottomlands of Michigan's Great Lakes and connecting channels, all islands in those waters, and lands and waters on Michigan's mainland within 1,000 feet of the Great Lakes and connecting channels. The Boundary extends further inland in certain areas of the mainland to encompass state-designated Critical Dune Areas and Sand Dune Areas, as well as other coastal features. Federally owned lands are excluded from the Boundary.

Under section 307 of the CZMA and 15 CFR Part 930, Michigan has the authority to review federal actions proposed within the Boundary that may have reasonably foreseeable effects on coastal resources and uses. The purpose of the review is to ensure that the proposed action is consistent with the enforceable policies of Michigan's Coastal Management Program. Michigan's enforceable policies are contained in more than 30 state statutes and administrative rules promulgated pursuant to those statutes.

Michigan's Enforceable Policies and Surveying and Mapping Activities

Collectively, the activities described in Section 2.4 of the draft PEIS, Activities Common to All Alternatives, are subject or may be subject to several of Michigan's enforceable policies. The relevant enforceable policies are parts of Michigan's environmental code,

the Natural Resources and Environmental Protection Act (NREPA), Public Act 451 of 1994, as amended. Generally, the enforceable policies that apply to a federal surveying and mapping project in Michigan's Coastal Zone depend on the details of the proposed project, including the specific activities to be conducted and location. Where the project may impact a plant or animal species protected under state law, the time of year may be an additional factor. Consultation with EGLE is recommended to identify the enforceable policies applicable to a proposed federal surveying and mapping project.

Many of the relevant enforceable policies include requirements to obtain a state permit or authorization prior to conducting a regulated activity. Surveying and mapping projects described in the draft PEIS may be subject to state permit or authorization requirements, specifically:

- Activities to be conducted below the ordinary high watermark of an inland lake, river, or stream, including the St. Marys River, St. Clair River, and Detroit River, that are subject to regulation under Part 301, Inland Lakes and Streams, of NREPA must be authorized by a permit required under section 324.30102 of the Michigan Compiled Laws (MCL).
- Activities to be conducted in a wetland that are subject to regulation under Part 303, Wetlands Protection, of NREPA must be authorized by a permit required under MCL 324.30304.
- Activities to be conducted in a designated Environmental Area or High-Risk Erosion Area that are subject to regulation under Part 323, Shorelands Protection and Management, of NREPA must be authorized by a permit required under MCL 324.32312.
- Activities to be conducted below the ordinary high watermark of a Great Lake or Lake St. Clair that are subject to regulation under Part 325, Great Lakes Submerged Lands, of NREPA must be authorized by a permit required under MCL 324.32512.
- The following activities are prohibited under Part 761, Aboriginal Records and Antiquities, of NREPA unless authorized under MCL 324.76105, 324.76107, 324.76108, and 324.76109: The recovery, alteration, or destruction of an abandoned vessel or other abandoned property, as defined in MCL 324.76101(a), which is in, on, under, or over the bottomlands of the Great Lakes, including those within a Great Lakes Bottomlands Preserve. Great Lakes Bottomland Preserves are established in administrative rules R 299.6001, R 299.6002, R 299.6003, R 299.6004, R 299.6005, R 299.6006, R 299.6007, R 299.6008, R 299.6009, R 299.6010, R 299.6011, R 299.6012, and R 299.6013 of the Michigan Administrative Code.

Activities that result in a discharge to Michigan's Great Lakes and all other surface waters must comply with the water quality standards promulgated pursuant to Part 31, Water Resources Protection, of NREPA, comprising administrative rules R 323.1041 to R 323.1117 of the Michigan Administrative Code. Generally, EGLE permits for activities below the ordinary high watermark of the Great Lakes and other surface waters include conditions for compliance with state water quality standards.

The following activities are prohibited under Michigan's enforceable policies:

- The discharge of any litter, sewage, oil, or other liquid or solid pollutants from any vessel, boat, or floating craft is prohibited pursuant to section 9502 of Part 95, Watercraft Pollution Control, of NREPA (MCL 324.9502).
- The following activities are prohibited pursuant to section 36505 of Part 365, Endangered Species Protection, of NREPA: Harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting of an animal subject to regulation under Part 365 or the attempt to engage in such activity; and the collecting, picking, cutting, digging up, or destroying in any manner of a plant subject to regulation under Part 365. (MCL 324.36505) Lists of animal and plant species subject to regulation are contained in administrative rules R 299.1021, R 299.1022, R 299.1023, R 299.1024, R 299.1025, R 299.1026, R 299.1027, and R 299.1028 of the Michigan Administrative Code.

Thank you for the opportunity to review the draft PEIS. If you have questions regarding these comments, please contact me at 517-230-7849; SmarM@Michigan.gov; or EGLE, P.O. Box 30458, Lansing, Michigan 48909-7958.

Sincerely,

A handwritten signature in black ink, appearing to read "Matt Smar", with a long horizontal flourish extending to the right.

Matt Smar, Federal Consistency Specialist  
Field Operations Support Section  
Water Resources Division

### **2.18.2**    *NOS Response*

**CZMA-7:** Generally, the enforceable policies that apply to a federal surveying and mapping project in Michigan’s Coastal Zone depend on the details of the proposed project, including the specific activities to be conducted and location. Where the project may impact a plant or animal species protected under state law, the time of year may be an additional factor. Consultation with EGLE is recommended to identify the enforceable policies applicable to a proposed federal surveying and mapping project.

**NOS Response:** Under the CZMA implementing regulations, “the amount of detail in the evaluation of the enforceable policies, activity description and supporting information shall be commensurate with the expected coastal effects of the activity.” 15 CFR 930.39(a). All effects are insignificant, and the adverse effects on the coastal resources or uses are anticipated to be of a similar nature and scale regardless of where or when the activity is conducted. The mitigation measures are designed to avoid or minimize impacts when conducting work in certain habitats or to avoid impacts on protected species.

**CZMA-8:** Many of the relevant enforceable policies include requirements to obtain a state permit or authorization prior to conducting a regulated activity. Surveying and mapping projects described in the draft PEIS may be subject to state permit or authorization requirements, specifically:

•Activities to be conducted below the ordinary high watermark of an inland lake, river, or stream, including the St. Mary’s River, St. Clair River, and Detroit River, that are subject to regulation under Part 301, Inland Lakes and Streams, of NREPA must be authorized by a permit required under section 324.30102 of the Michigan Compiled Laws (MCL).

- Activities to be conducted in a wetland that are subject to regulation under Part 303, Wetlands Protection, of NREPA must be authorized by a permit required under MCL 324.30304.
- Activities to be conducted in a designated Environmental Area or High-Risk Erosion Area that are subject to regulation under Part 323, Shorelands Protection and Management, of NREPA must be authorized by a permit required under MCL 324.32312.
- Activities to be conducted below the ordinary high watermark of a Great Lake or Lake St. Clair that are subject to regulation under Part 325, Great Lakes Submerged Lands, of NREPA must be authorized by a permit required under MCL 324.32512.
- The following activities are prohibited under Part 761, Aboriginal Records and Antiquities, of NREPA unless authorized under MCL 324.76105, 324.76107, 324.76108, and 324.76109: The recovery, alteration, or destruction of an abandoned vessel or other abandoned property, as defined in MCL 324.76101(a), which is in, on, under, or over the bottomlands of the Great Lakes, including those within a Great Lakes Bottomlands Preserve. Great Lakes Bottomland Preserves are established in administrative rules R 299.6001, R 299.6002, R 299.6003, R 299.6004, R 299.6005, R 299.6006, R 299.6007, R 299.6008, R 299.6009, R 299.6010, R 299.6011, R 299. 6012, and R 299.6013 of the Michigan Administrative Code.

**NOS Response:** Under the CZMA, federal agency activities with coastal effects are required to be consistent to the maximum extent practicable with federally approved enforceable policies of a State's Coastal Management Program. NOAA regulations at 15 CFR 930.39(e) clarify that unless required by a Federal law, neither the CZMA nor OCM's approval of state enforceable policies authorize the application of state permit requirements to federal agencies. The federal agency activities must be consistent to the maximum extent practicable with the standards that underlie a state's permit, but do not have to apply for or obtain a state permit (2020 OCM Federal Consistency Overview and 65 FR 77123, 77140 (2000)).

NOS provided CD letters to all coastal states and territories with approved CMPs. The CDs evaluate the coastal effects of proposed activities according to the relevant enforceable policies to make a consistency determination under the CZMA.

NOS evaluated consistency with relevant enforceable policies including regulation under Part 301, 303, 323, 325, and 761 of the Michigan CMP.

**CZMA-9:** Activities that result in a discharge to Michigan's Great Lakes and all other surface waters must comply with the water quality standards promulgated pursuant to Part 31, Water Resources Protection, of NREPA, comprising administrative rules R 323.1041 to R 323.1117 of the Michigan Administrative Code. Generally, EGLE permits for activities below the ordinary high watermark of the Great Lakes and other surface waters include conditions for compliance with state water quality standards.

**NOS Response:** NOS vessels would discharge treated sanitary domestic wastes from United States Coast Guard-approved Marine Sanitation Devices (MSDs), but could potentially spill oil, fuel, or chemicals into the water. The potential impacts to water quality from wastewater discharges and accidental spills would be minimized through compliance with MARPOL Annexes I, IV, and V. NOS adheres to NOAA's environmental procedures which comply with the MARPOL annexes and relevant water quality implementing legislation, regulations, and guidance listed in Section 3.14.1 of the Final PEIS. In addition, NOS projects are dispersed throughout the action area, which would minimize any impact from wastewater discharges or spills from a single vessel. NOS vessels also represent only a negligible portion of total oceanic vessel traffic, and any resulting impacts produced would be indistinguishable from those produced by all other vessels within the action area.

NOS evaluated consistency with relevant enforceable policies including regulation under Part 31 of the Michigan CMP. These determinations are described in the CD for National Ocean Service Mapping and Surveying Activities Undertaken in the Michigan Coastal Zone, 2023 – 2027.

**CZMA-10:** The following activities are prohibited under Michigan's enforceable policies:

- The discharge of any litter, sewage, oil, or other liquid or solid pollutants from any vessel, boat, or floating craft is prohibited pursuant to section 9502 of Part 95, Watercraft Pollution Control, of NREPA (MCL 324.9502).

- The following activities are prohibited pursuant to section 36505 of Part 365, Endangered Species Protection, of NREPA: Harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting of an animal subject to regulation under Part 365 or the attempt to engage in such activity; and the collecting, picking, cutting, digging up, or destroying in any manner of a plant subject to regulation under Part 365. (MCL 324.36505) Lists of animal and plant species subject to regulation are contained in administrative rules R 299.1021, R 299.1022, R 299.1023, R 299.1024, R 299.1025, R 299.1026, R 299.1027, and R 299.1028 of the Michigan Administrative Code.

**NOS Response:** Thank you for identifying the applicable federally enforceable policies for Michigan. NOS evaluated the coastal effects of proposed activities according to the relevant enforceable policies to make a consistency determination under CZMA.

## **2.19 New Jersey Department of Environmental Protection (Megan Brunatti)**

### ***2.19.1 Comment Submission***



## State of New Jersey

OFFICE OF PERMITTING AND PROJECT NAVIGATION

P.O. Box 420 Mail Code 401-07J Trenton, New Jersey 08625-0420

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PHILIP D. MURPHY  
Governor

SHEILA Y. OLIVER  
Lt. Governor

SHAWN M. LATOURETTE  
Commissioner

August 24, 2021

Ms. Giannina DiMaio  
Environmental Compliance Coordinator  
United States Department of Commerce  
National Oceanic and Atmospheric Administration  
National Ocean Service  
1305 East West Highway  
Silver Spring, Maryland 20910

**RE: National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS) Draft Programmatic Environmental Impact Statement (PEIS) for Surveying and Mapping Projects in U.S. Waters for Coastal and Marine Data Acquisition.**

Dear Ms. DiMaio:

The New Jersey Department of Environmental Protection's (Department) Office of Permitting and Project Navigation (OPPN) distributed, for review and comment the draft PEIS for Surveying and Mapping Projects in U.S. Waters for Coastal and Marine Data Acquisition. The NOS proposes to analyze the potential environmental impacts of recurring surveying and mapping data collection in United States coastal and marine waters over a period of six years. The analysis covers the use of active acoustic equipment such as sub-bottom profilers, single beam and multibeam echo sounders, and side-scan sonars by NOS to collect data on the depths and shapes of underwater terrain, including the ocean, rivers, and lakes.

Based on the information provided for review, the Department offers the following comments for your consideration:

### **Division of Land Resource Protection**

A Federal Consistency determination is required prior to performing the surveying and mapping activities.

If you have any questions, please contact Colleen Keller at [Colleen.Keller@dep.nj.gov](mailto:Colleen.Keller@dep.nj.gov).

### **New Jersey Division of Fish and Wildlife**

The NJ Division of Fish and Wildlife (DFW) in coordination with the NJ Endangered & Non-game Species Program (ENSP) agree that there will be some disturbance to birds (seabirds,

shorebirds, coastal birds, waterfowl) caused by aircraft sound, vessel presence/movement and onshore activities. Also, there may be impacts to birds, terrapins and other wildlife from accidental oil, fuel and/or chemical spills, but the document states that the chances are relatively minor for any of these to occur. Installation, maintenance, and removal of tide gauges may impact riparian habitat and may disturb a variety of species, including birds and terrapins. Bottom samplers may disrupt hibernating terrapins (November 1 to March 15) and freshwater mussels, depending on how far up rivers the NOS intends to sample. Many of these impacts can be minimized via timing restrictions. Without knowing exactly where/when surveys will occur, it's difficult to provide more detail at this time. The impacts identified appear to be relatively minor, excluding impacts to marine mammals/sea turtles.

If you have any questions, please contact Kelly Davis at [Kelly.Davis@dep.nj.gov](mailto:Kelly.Davis@dep.nj.gov).

### **Historic and Cultural Resources**

The Historic Preservation Office (HPO) has reviewed the documentation submitted and concurs with the National Oceanic and Atmospheric Administration's (NOAA) analysis and methodology laid out in the draft Programmatic Environmental Impact Statement. The HPO does not have any concerns at this time and looks forward to further consultation with NOAA, pursuant to Section 106 of the National Historic Preservation Act, as appropriate.

If additional consultation with the HPO is needed for this undertaking, please reference the HPO project number 21-1447 in any future calls, emails, submissions, or written correspondence to help expedite your review and response.

If you have any additional questions, please contact Jesse West-Rosenthal at [Jesse.West-Rosenthal@dep.nj.gov](mailto:Jesse.West-Rosenthal@dep.nj.gov).

### **Marine Fisheries Administration**

The Greater Atlantic Region is currently experiencing high rates of disturbance due to global climate change. The impacts from climate change will have unknown effects on all species, including marine mammals and sea turtles. While it is stated in the PEIS that the impacts from surveying and mapping activities will be adverse and minor, an increased vessel presence and the increased use of powerful echo-sounders could disrupt the behaviors of species of concern, such as the endangered North Atlantic right whale. Due to the sensitivity of these species, cumulative impacts introduced by all ocean users must be considered when selecting the best sampling alternative. In addition, submerged vegetation, oyster reefs, and shellfish aquaculture leases should be avoided.

The Marine Fisheries Administration is available to provide the most recent mapping products that document submerged vegetation beds, oyster reefs, aquaculture leases, artificial reefs, and other sensitive marine habitats of New Jersey.

If alterations to the survey and mapping activities are made, timing of proposed activities should avoid migratory pathways where Spring inshore/upriver migrations and spawning of anadromous fishes occurs. Particularly, activities that can negatively impact behavior of fishes that detect

high frequency sounds (e.g., river herrings and shad, as described on page 262-263), should avoid areas where these fish may be present during Spring migrations (listed below).

**Anadromous finfish timing restrictions by region in NJ:**

Area	Timing Restriction
(Anadromous I) Waters in the Delaware Bay up to the Delaware Memorial bridge, rivers flowing into the Delaware bay south of the Delaware memorial bridge, waters flowing into the Atlantic Ocean and associated bays. This excludes waters that are described as part of the NY/NJ harbor agreement.	March 1 through June 30
(Anadromous II) Waters in the Delaware River from the Delaware Memorial Bridge to the border of NY State and all tributaries flowing into the Delaware River north of the Delaware memorial bridge.	March 15 through June 30
(NY/NJ Harbor Agreement) Waters west of the Sandy Hook, east of the Washington Canal (40°28'19.60 N, 74°22'00.37 W) on the Raritan River, east of the NJ Turnpike on the Rahway River, Newark Bay, water east of NJ Turnpike on the Passaic River, waters south of Route 3 on the Hackensack River, and waters south of the George Washington Bridge on the Hudson River.	February 1 through May 31

If you have any additional questions, please contact Elizabeth Lange at [Elizabeth.Lange@dep.nj.gov](mailto:Elizabeth.Lange@dep.nj.gov).

**Air Mobile Sources**

Based on the information provided in the draft PEIS, the Bureau of Mobile Sources provides the following comments:

For the benefit of emission reductions, Crewed Vessel Operations, ferries, boats, etc. with 800 HP or more should meet EPA Tier 4 engine regulation standards to reduce NOx, PM, and HC.

Regarding actions to reduce diesel exhaust emissions from any and all construction equipment being used at the site, the Bureau of Mobile Sources provides the following comments:

1. Diesel exhaust contributes the highest cancer risk of all air toxics in New Jersey and is a major source of NOx within the state. Therefore, NJ DEP recommends that construction projects involving non-road diesel construction equipment, operating in a small geographic area over an extended period of time, implement the following measures to minimize the impact of diesel exhaust:
2. All on-road vehicles and non-road construction equipment operating at, or visiting, the construction site shall comply with the three-minute idling limit, pursuant to N.J.A.C. 7:27-14 and N.J.A.C. 7:27-15. Consider purchasing "No Idling" signs to post at the site

to remind contractors to comply with the idling limits. Signs are available for purchase from the Bureau of Mobile Sources at 609/292-7953 or <http://www.stophesoot.org/stsno-idle-sign.htm>.

3. All non-road diesel construction equipment greater than 100 horsepower used on the project for more than ten days should have engines that meet the USEP A Tier 4 non-road emission standards, or the best available emission control technology that is technologically feasible for that application and is verified by the USEP A or the CARB as a diesel emission control strategy for reducing particulate matter and/or NOx emissions.

4. All on-road diesel vehicles used to haul materials or traveling to and from the construction site should use designated truck routes that are designed to minimize impacts on residential areas and sensitive receptors such as hospitals, schools, daycare facilities, senior citizen housing, and convalescent facilities.

5. In accordance with N.J.A.C. 7:27-14 and 15, diesel vehicles should not idle for more than 15 consecutive minutes when the vehicle has been stopped for 3 or more hours and only if the temperature is <25 deg. F.

6. In accordance with N.J.A.C. 7:27-14 and 15, diesel vehicles can idle if the engine provides power for mechanical operations such as: refrigeration units for perishable goods, hydraulic lifts, "cherry pickers", or similar equipment.

If you have any additional questions, please contact Kris Dahl at [Kris.Dahl@dep.nj.gov](mailto:Kris.Dahl@dep.nj.gov).

Thank you for giving the New Jersey Department of Environmental Protection the opportunity to comment on the draft Programmatic Environmental Impact Statement for Surveying and Mapping Projects in U.S. Waters for Coastal and Marine Data Acquisition. Please contact Katherine Nolan at (609) 292-3600 if you have any additional questions or concerns.

Sincerely,



---

Megan Brunatti, Director  
Office of Permitting and Project Navigation

### **2.19.2**    *NOS Response*

**CZMA-11:** A Federal Consistency determination is required prior to performing the surveying and mapping activities.

**NOS Response:** NOS provided CD letters to all coastal states and territories with approved CMPs. The CDs evaluate the coastal effects of proposed activities according to the relevant enforceable policies to make a consistency determination under CZMA.

**Seabirds, Shorebirds & Coastal Birds, & Waterfowl-1:** The NJ Division of Fish and Wildlife (DFW) in coordination with the NJ Endangered & Non- game Species Program (ENSP) agree that there will be some disturbance to birds (seabirds, shorebirds, coastal birds, waterfowl) caused by aircraft sound, vessel presence/movement and onshore activities. Also, there may be impacts to birds, terrapins and other wildlife from accidental oil, fuel and/or chemical spills, but the document states that the chances are relatively minor for any of these to occur.

Many of these impacts can be minimized via timing restrictions. Without knowing exactly where/when surveys will occur, it's difficult to provide more detail at this time

**NOS Response:** NOS assessed the potential impacts to marine mammals; sea turtles; fish; aquatic macroinvertebrates; essential fish habitat; seabirds, shorebirds and coastal birds, and waterfowl; and their habitats. NOS has initiated consultation with USFWS under Section 7 of the ESA on the potential effects to endangered birds. As part of the consultation process, NOS developed additional mitigation measures in coordination with USFWS to avoid and minimize any potential effects to wildlife. Mitigation measures to protect wildlife, fish, and habitats include implementing mandatory invasive species prevention procedures, maintaining safe distances from protected species, following vessel speed restrictions in specific protected species habitats (e.g., North Atlantic right whale), and avoiding anchoring on sensitive bottoms. The full list of mitigation measures is included as Appendix D to the Final PEIS.

As stated in the comment, these impacts are analyzed in detail in Sections 3.5.2.2.4, 3.6.2.2.4, 3.7.2.2.4, 3.8.2.2.4, 3.9.2.2.4, and 3.10.2.2.4 of the Final PEIS.

**Habitats-1:** Installation, maintenance, and removal of tide gauges may impact riparian habitat and may disturb a variety of species, including birds and terrapins. Bottom samplers may disrupt hibernating terrapins (November 1 to March 15) and freshwater mussels, depending on how far up rivers the NOS intends to sample. Many of these impacts can be minimized via timing restrictions. Without knowing exactly where/when surveys will occur, it's difficult to provide more detail at this time.

**NOS Response:** Only very small areas would be disturbed during the installation, maintenance, and removal of tide gauges and GPS reference stations, most of which are affixed to existing docks and piers or secured to rocks in more remote locations. Any affected habitat components would be expected to recover post-installation. Before commencing any installation, NOS considers the presence of protected species. Collection of bottom grab samples typically involves disturbing a negligible amount of sediment from a 6" by 6" grab sampler. NOS would pay particularly close attention to

sensitive bottom habitats and avoid sampling these areas. NOS developed mitigation measures in coordination and consultation with expert agencies including NMFS and USFWS to avoid and minimize any potential effects from bottom grab sampling and the installation, maintenance, and removal of tide gauges and GPS reference stations.

NOS does not expect that a significant percentage of the total future survey effort would take place in freshwater habitat. For each NOS project being proposed in freshwater, an ESA species list would be requested from the USFWS Information for Planning and Consultation (IPaC) report system. From this information, NOS would determine if any ESA-listed species are present in a proposed project area that have not already been addressed in the programmatic consultation. If any such species are identified, NOS would consider possible impacts to ESA-listed species in the context of that specific project. If appropriate, NOS would then initiate a Section 7 consultation with the appropriate USFWS field office(s). Additional mitigation measures may be developed and implemented for these projects through the ESA consultation process with USFWS and through the CZMA process with New Jersey.

**Marine Mammals-3:** The impacts identified appear to be relatively minor, excluding impacts to marine mammals/sea turtles. Marine mammals in the U.S. face an overwhelming number of direct human-caused threats, including fisheries bycatch, vessel strikes, noise pollution, oil and gas exploration and development, plastics and other pollutants, and habitat destruction and degradation. In addition, evidence suggests that marine mammals are already profoundly impacted by climate change in myriad ways and that these impacts will continue to intensify. In certain circumstances, climate change will exacerbate the risk of direct human threats, essentially placing species in “double jeopardy.” Despite decades of federal protection, marine mammal species and stocks at high risk of extinction occur in virtually every region of the U.S. Further, 11 marine mammal species are endemic to the Arctic and the capacity of these species to adapt to ecosystem alteration caused by rapid warming remains an open question; for some species, the level of adaptation necessary to avoid extinction may not be possible.

**NOS Response:** Thank you for your comment. As summarized in Table ES-1 in the Final PEIS, NOS found the overall impacts to marine mammals and sea turtles to be adverse, negligible to minor, and insignificant under all alternatives. As for Arctic species, adverse, moderate impacts on marine mammals could occur in the very unlikely event of a vessel strike, a walrus stampede, if polar bears are disturbed at denning sites, or if polar bear-human interactions occur. Adverse, moderate impacts on sea turtles could occur in the very unlikely event of an accidental oil, fuel, or chemical spill or a vessel strike.

Section 4.2.2 of the PEIS includes a detailed discussion of cumulative impacts on marine mammals. This discussion includes the effects analysis for cumulative actions including fisheries bycatch, vessel strikes, noise pollution, oil and gas exploration and development, plastics and other pollutants, and habitat destruction and degradation.

The effects analysis for Arctic marine mammals is discussed by species in Section 3.5.2. Climate change is addressed as a cumulative action and the effects analysis is discussed Section 4.1.4.

**Cultural and Historic Resources-10:** The Historic Preservation Office (HPO) has reviewed the documentation submitted and concurs with the National Oceanic and Atmospheric Administration's (NOAA) analysis and methodology laid out in the draft Programmatic Environmental Impact Statement.

**NOS Response:** Thank you for your careful consideration and your input.

**Future Coordination-6:** The HPO does not have any concerns at this time and looks forward to further consultation with NOAA, pursuant to Section 106 of the National Historic Preservation Act, as appropriate.

If additional consultation with the HPO is needed for this undertaking, please reference the HPO project number 21-1447 in any future calls, emails, submissions, or written correspondence to help expedite your review and response.

**NOS Response:** Thank you for your comment. NOS will initiate project-specific consultations under Section 106 of the NHPA before commencing any activity with the potential to affect cultural or historic resources. The project number 21-1447 will be used for any future coordination with the New Jersey Historic Preservation Office (HPO).

**Endangered Species Act-1:** While it is stated in the PEIS that the impacts from surveying and mapping activities will be adverse and minor, an increased vessel presence and the increased use of powerful echo-sounders could disrupt the behaviors of species of concern, such as the endangered North Atlantic right whale.

**NOS Response:** NOS considered behavioral impacts to species of concern in Chapter 3. The analysis in the Final PEIS includes mitigation measures, such as approach restrictions, that would further reduce adverse impacts on all species, including the North Atlantic right whale. NOS would maintain a vessel speed of 10 knots or less when conducting projects onboard a vessel 65 feet or longer in any right whale seasonal management area, when those areas are active. Additionally, NOS would report entry into North Atlantic right whale critical habitat to the Mandatory Ship Reporting System. Sightings of the North Atlantic right whale will also be reported to NMFS within two hours of occurrence when practicable and no later than 24 hours after occurrence. See the mitigation measures required by NMFS at <https://www.fisheries.noaa.gov/national/endangered-species-conservation/reducing-vessel-strikes-north-atlantic-right-whales>.

Echo sounder use has been modeled in detail as described in Section 3.5.2 and Appendix E of the Final PEIS. For the simulated animals exposed above the 160 decibels (dB) threshold, the average time above threshold is under two minutes, and often under one minute. The disturbances, therefore, are expected to be transient, and surveys, once completed in an area, would not generally be repeated, thus limiting an individual's behavioral disruption. Behavioral exposures need to occur over the timespan of weeks to have a population level effect on marine mammals, including the North Atlantic right whale. Impacts would be very small and further mitigated by mitigation measures.

Also, please note that there would not be a substantial increase in vessel presence or use of echo sounders under the NOS Proposed Action as compared to current ongoing activities.

**Cumulative Impacts-2:** The Greater Atlantic Region is currently experiencing high rates of disturbance due to global climate change. The impacts from climate change will have unknown effects on all species, including marine mammals and sea turtles. While it is stated in the PEIS that the impacts from surveying and mapping activities will be adverse and minor, an increased vessel presence and the increased use of powerful echo-sounders could disrupt the behaviors of species of concern, such as the endangered North Atlantic right whale. Due to the sensitivity of these species, cumulative impacts introduced by all ocean users must be considered when selecting the best sampling alternative.

**NOS Response:** The cumulative impact scenario (Section 4.1 in the Final PEIS) considers past, present, and reasonably foreseeable future actions that must be addressed in a cumulative effects analysis because their environmental effects may combine with the effects of the Proposed Action. Due to the high volume and diversity of these cumulative actions across the action area, NOS identified specific projects and programs, both public and private sector, but also relevant environmental and economic trends; however, an exhaustive list of all ocean users would not be feasible to consider. NOS believes that the cumulative effects analysis present in the document is sufficient to consider impacts on all aspects of the human environment. NOS has assessed the potential for cumulative impacts of the proposed action on marine mammals (Section 4.2.2), on sea turtles (Section 4.2.3) from climate change (Section 4.1.4), from vessel presence (discussed throughout Section 4.1 for a wide variety of cumulative actions), and from acoustic sources (Section 4.1.1).

**Habitats-2:** In addition, submerged vegetation, oyster reefs, and shellfish aquaculture leases should be avoided.

The Marine Fisheries Administration is available to provide the most recent mapping products that document submerged vegetation beds, oyster reefs, aquaculture leases, artificial reefs, and other sensitive marine habitats of New Jersey.

**NOS Response:** Thank you for the additional information on available mapping products. Impacts to marine and freshwater habitats would be limited to very small-scale bottom disturbance from anchoring, taking bottom grab samples, and installing buoys or moorings. NOS would ensure that all instruments in contact with the sea floor are properly secured to minimize bottom disturbance. NOS would not collect bottom samples for sediment verification on coral reefs, shipwrecks, obstructions, or hard bottom areas. When NOS anchors, it seeks to do so over bottom types like sticky mud or sand, as those characteristics allow the flukes of the anchor to dig into the bottom and hold the chain in place. When working in an un-surveyed area or in an area that has not been surveyed in many years, the ship would try to anchor in bays where data have already been collected, providing the ship with better information on where to drop the anchor. NOS would not anchor in coral critical habitat or other known areas of coral and would avoid anchoring in sea grass.

NOS developed additional mitigation measures in consultation with NMFS for ESA and EFH under Magnuson-Stevens Fishery Conservation and Management Act (MSA). Additional mitigation measures may be developed and implemented for these projects in consultation with New Jersey through the CZMA process.

**Fish-1:** If alterations to the survey and mapping activities are made, timing of proposed activities should avoid migratory pathways where Spring inshore/upriver migrations and spawning of anadromous fishes occurs. Particularly, activities that can negatively impact behavior of fishes that detect high frequency sounds (e.g., river herrings and shad, as described on page 262-263), should avoid areas where these fish may be present during Spring migrations (listed below).

**NOS Response:** The hearing frequency range of most fish is below approximately 1,500 Hz with the most sensitive range below 800 Hz. The hearing range of pressure-sensing fish is typically extended to a few kHz (up to about 4 kHz). It should be noted, however, that at least three species of herring-like fishes detect sounds above 20 kHz. NOS expects to use very high frequency (200 kHz+) sources in Delaware Bay and New Jersey Rivers that have not been known to cause direct injury or mortality to fish.

Section 3.7.2 of the PEIS explains that direct injuries (e.g., barotrauma) from sound sources used by NOS are unlikely because of slow rise times, lack of strong shock waves, and relatively low peak pressures. Because the sensory hair cells of the inner ear in fishes are regularly replaced over time when they are damaged, unlike in mammals where sensory hair cell loss is permanent, any hearing loss in fish may be temporary and the fish does not become deaf but requires a louder sound stimulus to detect a sound within the affected frequencies. Adverse effects are possible for the small numbers of individual fish that could occur in close proximity (i.e., within several meters) to an active sound source. These effects on a species can be considered significant if they result in a reduction in the overall health and viability of a population. However, given the localized and transient spatial scale of no more than a few NOS projects occurring at any one time relative to the generally large-scale distribution of fish populations and the considerably narrow beam characteristics of equipment such as echo sounders, no population level effects are expected on marine or freshwater fish.

Vessels used by NOS would likely represent a negligible proportion of all vessel traffic in New Jersey rivers.

**Mitigation Measures-5:** For the benefit of emission reductions, Crewed Vessel Operations, ferries, boats, etc. with 800 HP or more should meet EPA Tier 4 engine regulation standards to reduce NO<sub>x</sub>, PM, and HC.

**NOS Response:** Some NOAA vessels have generators that comply with Tier 4 standards. NOS recognizes the benefits of Tier 4 standards; however, due to project needs, NOS contractors and grantees may use vessels that do not meet them.

**Mitigation Measures-6:** NJ DEP recommends that construction projects involving non-road diesel construction equipment, operating in a small geographic area over an extended period of time, implement the following measures to minimize the impact of diesel exhaust:

2. All on-road vehicles and non-road construction equipment operating at, or visiting, the construction site shall comply with the three-minute idling limit, pursuant to N.J.A.C. 7:27-14 and N.J.A.C. 7:27-15. Consider purchasing ""No Idling"" signs to post at the site to remind contractors to comply with the idling limits. Signs are available for purchase from the Bureau of Mobile Sources at 609/292-7953 or <http://www.stopthesoot.org/stsno-idle-sign.htm>.

3. All non-road diesel construction equipment greater than 100 horsepower used on the project for more than ten days should have engines that meet the USEP A Tier 4 non-road emission standards, or the best available emission control technology that is technologically feasible for that application and is verified by the USEP A or the CARB as a diesel emission control strategy for reducing particulate matter and/or NOx emissions.

4. All on-road diesel vehicles used to haul materials or traveling to and from the construction site should use designated truck routes that are designed to minimize impacts on residential areas and sensitive receptors such as hospitals, schools, daycare facilities, senior citizen housing, and convalescent facilities.

5. In accordance with N.J.A.C. 7:27-14 and 15, diesel vehicles should not idle for more than 15 consecutive minutes when the vehicle has been stopped for 3 or more hours and only if the temperature is <25 deg. F.

6. In accordance with N.J.A.C. 7:27-14 and 15, diesel vehicles can idle if the engine provides power for mechanical operations such as: refrigeration units for perishable goods, hydraulic lifts, "cherry pickers", or similar equipment.

**NOS Response:** NOS does not expect to use terrestrial vehicles or construction equipment in a small area over any extended period of time. All activities included in the PEIS occur on the water, except for a small amount of near-coastal work to install tide gauges. Therefore, these standards for diesel construction do not apply.

## **2.20 Nottawaseppi Huron Band of the Potawatomi (Douglas R. Taylor)**

### ***2.20.1 Comment Submission***

**Regulations.gov Comment ID**

NOAA-NOS-2021-0055-0002

**Regulations.gov Tracking Number**

kqg-olou-pxih

**Comment from Nottawaseppi Huron Band of the Potawatomi - 1301 T Dr. S, Fulton, Michigan 49052**

Greetings,

Ref: NOAA-NOS-2021-0055

Thank you for including the Nottawaseppi Huron Band of the Potawatomi in your consultation process. From the description of your proposed project, it does not appear as if any cultural or religious concerns of the Tribe's will be affected. We therefore have no objection to the project. Of course, if the project scope is significantly changed or inadvertent findings are discovered during the course of the project, please contact us for further consultation.

Very Respectfully  
Douglas R. Taylor

### **2.20.2**    *NOS Response*

**Cultural and Historic Resources-15:** From the description of your proposed project, it does not appear as if any cultural or religious concerns of the Tribe's will be affected. We therefore have no objection to the project.

**NOS Response:** Thank you for your careful consideration and your input. NOS intends to notify individual tribes pursuant to EO 13175 before conducting any project that may have tribal implications. Federally recognized tribes may request government-to-government consultation at any time for a proposed action that may have tribal implications.

**Future Coordination-9:** Of course, if the project scope is significantly changed or inadvertent findings are discovered during the course of the project, please contact us for further consultation.

**NOS Response:** Thank you for your comment, NOS would notify all interested parties if there is a significant change in scope and would notify the Nottawaseppi Huron Band of the Potawatomi if there is an inadvertent finding discovered during the course of a project with connections to the tribe.

## **2.21 Natural Resources Defense Council (Francine Kershaw)**

### **2.21.1 *Comment Submission***

***Submitted via the Federal e-Rulemaking Portal***

November 22, 2021

Ms. Giannina DiMaio  
DOC/NOAA/NOS Environmental Compliance Coordinator  
SSMC4-Station 13612  
1305 East West Highway  
Silver Spring, MD 20910

**RE:       Comments on the Draft Programmatic Environmental Impact Statement for  
          Surveying and Mapping Projects in U.S. Waters for Coastal and Marine Data  
          Acquisition**

Dear Ms. DiMaio,

On behalf of the Natural Resources Defense Council and Ocean Conservation Research, and our millions of members, we respectfully submit our recommendations on the National Oceanic and Atmospheric Administration (“NOAA”) National Ocean Service (“NOS”) Draft Programmatic Environmental Impact Statement (“PEIS”) for Surveying and Mapping Projects in U.S. Waters for Coastal and Marine Data Acquisition. 86 Fed. Reg. 33,633 (Jun. 24, 2021); 86 Fed. Reg. 47,299 (Aug. 24, 2021).

Our comments focus on the implications of the Proposed Action for marine mammals. The Draft PEIS analyzes the potential environmental impacts associated with the NOS’s recurring data collection projects to characterize submerged features (*e.g.*, habitat, bathymetry, marine debris).<sup>1</sup> As part of the Proposed Action, NOS may use several types of active acoustic equipment that emit sound within the hearing range of marine mammal taxa, and which could potentially result in injury or harassment.<sup>2</sup> The scope of the “action area” is extensive and encompasses the U.S. rivers, states’ offshore waters, the U.S. territorial sea, the contiguous zone, the U.S. Exclusive Economic Zone (“EEZ”), and coastal and riparian lands.<sup>3</sup> Thus, the Proposed Action has the potential to impact *all* marine mammal taxa found in U.S. waters, including acoustically sensitive Arctic species,<sup>4</sup> endangered and threatened species and populations listed under the Endangered Species Act (“ESA”),<sup>5</sup> stocks designated as “depleted” and “strategic” under the Marine Mammal Protection Act (“MMPA”),<sup>6</sup> and small and resident populations disproportionately vulnerable to disturbance.<sup>7</sup>

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<sup>1</sup> 86 Fed. Reg. 47,299 (Aug. 24, 2021)

<sup>2</sup> NOAA NOS, “Draft Programmatic Environmental Impact Statement for Surveying and Mapping Projects in U.S. Waters for Coastal and Marine Data Acquisition,” June 2021, (hereinafter “Draft PEIS”), at Appendix C, p. 3. Table 1.

<sup>3</sup> Draft PEIS at 32.

<sup>4</sup> Halliday, William D., Matthew K. Pine, and Stephen J. Insley. "Underwater noise and Arctic marine mammals: review and policy recommendations." *Environmental Reviews* 28.4 (2020): 438-448.

<sup>5</sup> 16 U.S.C. 1531-1544, 87 Stat. 884.

<sup>6</sup> 16 U.S.C. §§1361-1383b, 1401-1406, 1411-1421h.

<sup>7</sup> Forney, Karin A., et al. "Nowhere to go: noise impact assessments for marine mammal populations with high site fidelity." *Endangered Species Research* 32 (2017): 391-413.

Marine mammals in the U.S. face an overwhelming number of direct human-caused threats, including fisheries bycatch, vessel strikes, noise pollution, oil and gas exploration and development, plastics and other pollutants, and habitat destruction and degradation.<sup>8</sup> In addition, evidence suggests that marine mammals are already profoundly impacted by climate change in myriad ways and that these impacts will continue to intensify.<sup>9</sup> In certain circumstances, climate change will exacerbate the risk of direct human threats, essentially placing species in “double jeopardy.”<sup>10</sup> Despite decades of federal protection, marine mammal species and stocks at high risk of extinction occur in virtually every region of the U.S.<sup>11</sup> Further, 11 marine mammal species are endemic to the Arctic and the capacity of these species to adapt to ecosystem alteration caused by rapid warming remains an open question; for some species, the level of adaptation necessary to avoid extinction may not be possible.<sup>12</sup>

The need for accurate assessment of the additional and cumulative impacts that the Proposed Action will pose for already struggling marine mammal species and stocks, as well as the implementation of effective measures to avoid, minimize, and mitigate impacts to the full extent practicable, is paramount. We note that while consistency across regions is a clear goal of any programmatic permit, differences in data availability, marine mammal vulnerability, and mitigation needs occur between the “operational areas” included within the action area and need to be recognized and accounted for by NOS in the Final PEIS.

The following comments are intended to support NOS in undertaking its data collection projects in a manner that is sufficiently protective of marine mammals, in line with the agency’s mandate to meet the requirements of the National Environmental Policy Act (“NEPA”), as well as other relevant statutes, namely the MMPA and the ESA.

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<sup>8</sup> Avila, Isabel C., Kristin Kaschner, and Carsten F. Dormann. "Current global risks to marine mammals: taking stock of the threats." *Biological Conservation* 221 (2018): 44-58.

<sup>9</sup> Albouy, Camille, et al. "Global vulnerability of marine mammals to global warming." *Scientific Reports* 10.1 (2020): 1-12.

<sup>10</sup> *Id. See, e.g.*, Santora, Jarrod A., et al. "Habitat compression and ecosystem shifts as potential links between marine heatwave and record whale entanglements." *Nature Communications* 11.1 (2020): 1-12; Guilpin, Marie, et al. "Repeated vessel interactions and climate-or fishery-driven changes in prey density limit energy acquisition by foraging blue whales." *Frontiers in Marine Science* 7 (2020): 626; Record, Nicholas R., et al. "Rapid climate-driven circulation changes threaten conservation of endangered North Atlantic right whales." *Oceanography* 32.2 (2019): 162-169.

<sup>11</sup> North Atlantic right whales numbered 336 individuals in 2020; Gulf of Mexico whales (*Balaenoptera ricei*) currently number approximately 50 individuals; in the eastern North Pacific, Southern Resident killer whales currently number 74 individuals, approximately 30-35 individuals remain of the eastern stock North Pacific right whales, and Cook Inlet beluga whales numbered only 279 individuals in 2019; the population of Hawaiian monk seals currently represents only approximately 1,400 individuals and is considered endangered throughout its range. See NOAA Fisheries, “Endangered and Threatened Species Directory,” available at: <https://www.fisheries.noaa.gov/species-directory/threatened-endangered>; New England Aquarium Press Release, “Population of North Atlantic right whales continues its downward trajectory,” available at: <https://www.neaq.org/about-us/news-media/press-kit/press-releases/population-of-north-atlantic-right-whales-continues-its-downward-trajectory/>; Marine Mammal Commission, “Southern Resident Killer Whale,” available at: <https://www.mmc.gov/priority-topics/species-of-concern/southern-resident-killer-whale/>

<sup>12</sup> Moore, Sue E., and Randall R. Reeves. "Tracking arctic marine mammal resilience in an era of rapid ecosystem alteration." *PLoS Biology* 16.10 (2018): e2006708.

We are particularly concerned with the lack of mitigation measures proposed in the Draft PEIS.<sup>13</sup> In order to satisfy NEPA, mitigation measures must be developed as part of the EIS process and not shunted to processes that may be required under other statutes, with their different scopes and standards, some of which, as with the interagency consultation provisions of the ESA, do not provide notice and opportunity for public comment.<sup>14</sup> Mitigation measures should be made available for public comment as a supplemental document to the Draft PEIS prior to being incorporated in the Final EIS.

To assist NOS in this task, we recommend the following requirements for active acoustic sources that emit sound levels with the potential to injure or harass marine mammals (<200 kHz):

- Time-area restrictions on survey activities in habitat areas and during times of biological importance to marine mammals, including, at minimum, critical habitat areas designated under the ESA and Biologically Important Areas (“BIAs”) designated by NOAA.
- A prohibition on commencing surveys at night and during periods of low visibility to maximize the probability that marine mammals are detected and confirmed clear of the exclusion zone.
- A requirement to establish and monitor an exclusion zone around each sound source with a radial distance that will minimize behavioral disturbance.
- A requirement that a combination of visual monitoring by Protected Species Observers (“PSOs”) and passive acoustic monitoring is implemented at all times that survey work is underway.
- A requirement that four PSOs adhere to a two-on/two-off shift schedule to ensure no individual PSO is responsible for visually monitoring more than 180° of the exclusion zone at any one time.
- A requirement that the developer selects sub-bottom profiling systems, and operates those systems at power settings, that achieve the lowest practicable source level for the objective.
- A requirement that all vessels associated with the Proposed Action, regardless of size, observe a mandatory 10 knot speed restriction at all times.

## **I. The National Environmental Policy Act**

Enacted by Congress in 1969, NEPA establishes a national policy to “encourage productive and enjoyable harmony between man and his environment” and promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man.” 42 U.S.C. § 4321. In

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<sup>13</sup> Draft PEIS at 58. “Additionally, this analysis concludes that the Proposed Action is not anticipated to result in significant impacts for any resource. As such, NOS has not proposed a discrete set of additional mitigation measures for this Draft PEIS ... Additional mitigation measures would likely be identified through these consultations. Mitigation measures and BMPs developed through consultation, as well as measures suggested through public comment, will be considered as part of the analysis in the Final PEIS.”

<sup>14</sup> 43 C.F.R. § 1502.14; see also *id.* at § 1507.4 (noting that “NEPA requires consideration of mitigation”).

order to achieve its broad goals, NEPA mandates that “to the fullest extent possible” the “policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with [NEPA].” 42 U.S.C. § 4332. As the Supreme Court explained,

NEPA’s instruction that all federal agencies comply with the impact statement requirement – and with all the requirements of § 102 – “to the fullest extent possible” [cit. omit.] is neither accidental nor hyperbolic. Rather the phrase is a deliberate command that the duty NEPA imposes upon the agencies to consider environmental factors not be shunted aside in the bureaucratic shuffle.

*Flint Ridge Development Co. v. Scenic Rivers Ass’n*, 426 U.S. 776, 787 (1976). Central to NEPA is its requirement that, before any federal action that “may significantly degrade some human environmental factor” can be undertaken, agencies must prepare an environmental impact statement. *Steamboaters v. F.E.R.C.*, 759 F.2d 1382, 1392 (9th Cir. 1985) (emphasis in original).

The fundamental purpose of an EIS is to force the decision-maker to take a “hard look” at a particular action – at the agency’s need for it, at the environmental consequences it will have, and at more environmentally benign alternatives that may substitute for it – before the decision to proceed is made. See 40 C.F.R. §§ 1500.1(b), 1502.1; *Baltimore Gas & Electric v. NRDC*, 462 U.S. 87, 97 (1983). This “hard look” requires agencies to obtain high-quality information and accurate scientific analysis. See 40 C.F.R. § 1500.1(b). “General statements about possible effects and some risks do not constitute a hard look absent a justification regarding why more definitive information could not be provided.” *Klamath-Siskiyou Wilderness Center v. Bureau of Land Management*, 387 F.3d 989,994 (9th Cir. 2004) (quoting *Neighbors of Cuddy Mountain v. United States Forest Service*, 137 F.3d 1372, 1380 (9th Cir. 1998)). The law is clear that the EIS must be a pre-decisional, objective, rigorous, and neutral document, not a work of advocacy to justify an outcome that has been foreordained.

To comply with NEPA, an EIS must *inter alia* include a “full and fair discussion” of direct and indirect environmental impacts (40 C.F.R. § 1502.1), consider the cumulative effects of reasonably foreseeable activities in combination with the proposed action (*id.* § 1508.7), analyze all reasonable alternatives that would avoid or minimize the action’s adverse impacts (*id.* § 1502.1), address measures to mitigate those adverse effects (*id.* § 1502.14(f)), and assess possible conflicts with other federal, regional, state, and local authorities (*id.* § 1502.16(c)).

In addition to NEPA, NOS is obligated under both the ESA and the MMPA to protect marine mammals from additional harmful impacts of human activities and required by the MMPA to consider the full range of potential impacts on all marine mammal species that are known to utilize the action area. Further, appropriate avoidance, minimization, mitigation, and monitoring measures are required. NOS must use the best available scientific information on marine mammal presence, density, and population status, as

required by law.<sup>15</sup> NOS must also ensure that any potential stressors and cumulative impacts posed by the proposed surveys are mitigated to effectuate the least practicable impact on affected species and stocks.<sup>16</sup>

## II. Effects of the Proposed Action on Marine Mammals in U.S. Waters

The Draft PEIS identifies several potential impact producing factors that may have consequences for marine mammals in the action area.<sup>17</sup> While we note that NEPA requires all identified impact producing factors be analyzed and mitigated, we focus our comments on the factors that represent, in our view, the greatest risk to marine mammals posed by the Proposed Action: impacts of underwater noise on cetaceans; and vessel strike risk to large whales.

### A. Impacts of underwater noise generated by the Proposed Action on cetaceans

The NOS proposes to use up to forty different active acoustic equipment sources that emit sound within the hearing range of cetaceans when conducting the oceanographic surveys included in the Proposed Action, including echo sounders, acoustic doppler current profilers (ADCPs), and acoustic communication systems.<sup>18</sup> Equipment operated at or below 200 kHz overlaps with the hearing range of marine mammals and potentially pose a risk of injury or harassment (*see* Figure 1).

Exposure to noise from geophysical surveys used for oceanographic surveys can damage the hearing and sensory abilities of some species, cause stress and negative health effects, disrupt vital behaviors, or displace marine mammals from habitat.<sup>19</sup> These effects are particularly concerning for acoustically sensitive species, such as those endemic to the Arctic and deep-diving cetaceans,<sup>20</sup> as well as those taxa coping with climate-driven shifts in prey distribution, including endangered and threatened large whales, for which displacement from preferred feeding areas or known migratory paths could have a disproportionately negative effect on their energy budget.<sup>21</sup> Moreover, extensive high resolution geophysical (“HRG”) surveys associated with the Proposed Action will take place concurrently with other sources of noise occurring in marine mammal habitat,<sup>22</sup> making the cumulative impacts posed by these activities a significant concern.

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<sup>15</sup> 16 U.S.C. § 1362(19), § 1362(27).

<sup>16</sup> 16 U.S.C. § 1371(a)(5)(D)(ii)(I).

<sup>17</sup> Draft PEIS at 145.

<sup>18</sup> Draft PEIS, Appendix C, at 3, Table 1.

<sup>19</sup> Erbe, Christine, Rebecca Dunlop, and Sarah Dolman. "Effects of noise on marine mammals." *Effects of anthropogenic noise on animals*. Springer, New York, NY, 2018. 277-309.

<sup>20</sup> Halliday, William D., et al., *supra*; Simonis, Anne E., et al. "Co-occurrence of beaked whale strandings and naval sonar in the Mariana Islands, Western Pacific." *Proceedings of the Royal Society B* 287.1921 (2020): 20200070.

<sup>21</sup> Meyer-Gutbrod, Erin L., et al. "Ocean regime shift is driving collapse of the North Atlantic right whale population." *Oceanography* 34.3 (2021): 22-31; NOAA Fisheries, "Gray Whale Unusual Mortality Event along the West Coast and Alaska," available at: <https://www.fisheries.noaa.gov/national/marine-life-distress/2019-2021-gray-whale-unusual-mortality-event-along-west-coast-and>.

<sup>22</sup> Duarte, Carlos M., et al. "The soundscape of the Anthropocene ocean." *Science* 371.6529 (2021).

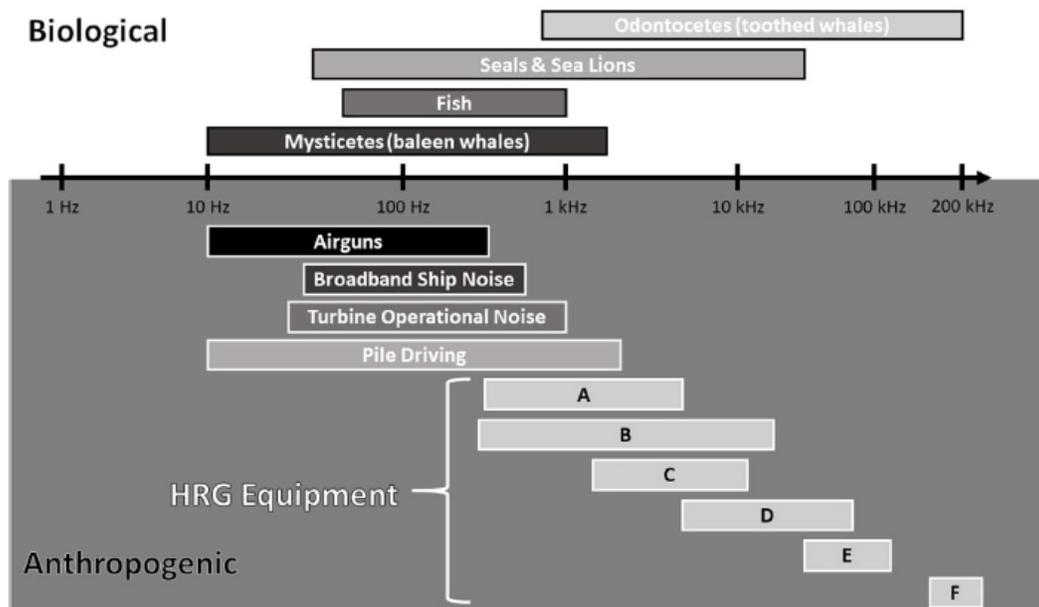


Figure 1. Frequency ranges over which groups of marine mammals call (top) and the primary frequency ranges over which some anthropogenic sound sources (bottom) overlap. The bracketed boxes correspond to the following HRG survey equipment sound sources: A) Sparkers/Boomers; B) Non-parametric sub-bottom profilers; C) Acoustic corers; D) Acoustic positioning systems; E) Parametric sub-bottom profilers; and F) Multibeam echosounders and sidescan sonar. Figure adapted from van Parijs et al. (2021).<sup>23</sup>

### B. Vessel strike risk to large whales from the Proposed Action

Vessel strikes are a leading cause of large whale injury and mortality, and a direct driver of the current decline of several endangered large whales species and stocks in U.S. waters.<sup>24</sup> The number of recorded vessel collisions of large whales each year is likely a significant underestimate of the actual number of animals struck, as animals struck, but not recovered or thoroughly examined, cannot be accounted for.<sup>25</sup> Mortality or serious injury—considered by NOAA Fisheries to be an injury from which the animal is not

<sup>23</sup> Van Parijs, Sofie. "NOAA and BOEM Minimum Recommendations for Use of Passive Acoustic Listening Systems in Offshore Wind Energy Development Monitoring and Mitigation Programs." *Frontiers in Marine Science* (2021): 1575.

<sup>24</sup> NOAA Fisheries, "2017-2021 North Atlantic Right Whale Unusual Mortality Event," available at: <https://www.fisheries.noaa.gov/national/marine-life-distress/2017-2021-north-atlantic-right-whale-unusual-mortality-event>; NOAA Fisheries, "2016-2021 Humpback Whale Unusual Mortality Event Along the East Coast," available at: <https://www.fisheries.noaa.gov/national/marine-life-distress/2016-2021-humpback-whale-unusual-mortality-event-along-atlantic-coast>; Rockwood, R. Cotton, et al. "Estimating effectiveness of speed reduction measures for decreasing whale-strike mortality in a high-risk region." *Endangered Species Research* 43 (2020): 145-166.

<sup>25</sup> Pace III, Richard M., et al. "Cryptic mortality of North Atlantic right whales." *Conservation Science and Practice* 3.2 (2021): e346. Observed carcasses of North Atlantic right whales from all causes of death may have only accounted for 36 percent of all estimated death during 1990-2017, with detection rates dropping to 29 percent for the period of 2010-2017. Detection rates may be similarly low for other large whale species, and even lower for species that receive relatively less surveillance effort.

expected to recover<sup>26</sup>—can occur from a collision with a vessel traveling above 10 knots, irrespective of length,<sup>27</sup> and vessels of any length travelling below this speed can still inflict lethal harm.<sup>28</sup>

The survey vessels associated with the Proposed Action pose a risk of collision to large whales that must be mitigated. The Draft PEIS states that vessel transit speeds vary by location, but are typically lower than 25 knots, and that vessels are typically limited to speeds of 13 knots during survey activities.<sup>29</sup> These speeds far exceed the 10-knot limit that best available scientific information indicates is necessary to reduce the probability of mortality and serious injury resulting from a vessel strike when it does occur.

The Draft PEIS also states that vessel transits and project activities may occur at either day or night.<sup>30</sup> Nighttime transits and survey activities increase vessel strike risk to all large whales due to the reduced probability of detection during periods of darkness, and particularly for those large whale species that exhibit nighttime behaviors that further increase their risk level. For example, the North Atlantic right whale and the Gulf of Mexico whale (*Balaenoptera ricei*)—two of the nation’s most critically endangered species and for which vessel strikes are a major driver of their current decline—spend the majority of their time at night residing just beneath the surface within the uppermost few meters of the water column.<sup>31</sup> This behavior places these species in the direct path of a vessel’s hull during periods of darkness, when they would be virtually impossible to detect by the vessel captain or other visual observer.

### III. Recommended Improvements to the Impact Analysis

Fundamental to satisfying NEPA’s requirement of fair and objective review, agencies must ensure the “professional integrity, including scientific integrity,” of the discussions and analyses that appear in environmental impact statements. 40 C.F.R. § 1502.24. To this end, they must make every attempt to obtain and disclose data necessary to their analysis. The simple assertion that “no information exists” will not suffice; unless the costs of obtaining the information are exorbitant, NEPA requires that it be obtained. *See* 40 C.F.R. § 1502.22(a). Agencies are further required to identify their methodologies, indicate when necessary information is incomplete or unavailable, acknowledge scientific disagreement and data gaps, and evaluate indeterminate adverse impacts based upon approaches or methods “generally accepted in the scientific community.” 40 C.F.R. §§ 1502.22(2), (4), 1502.24. Further, it is not enough, for purposes of this discussion, to consider the proposed action in isolation, divorced from other public and private activities that impinge on the same resource; rather, it is incumbent on NOS to assess cumulative impacts as well, including the “impact on the environment which results from the

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<sup>26</sup> NOAA Fisheries, “Process for distinguishing serious from non-serious injury for marine mammals,” July 2014, available at: <https://media.fisheries.noaa.gov/dam-migration/02-238.pdf>.

<sup>27</sup> Conn, P. B., and G. K. Silber. "Vessel speed restrictions reduce risk of collision-related mortality for North Atlantic right whales." *Ecosphere* 4.4 (2013): 1-16.

<sup>28</sup> Kelley, D.E., Vlastic, J.P. and Brilliant, S.W., “Assessing the lethality if ship strikes on whales using simple biophysical models,” *Marine Mammal Science*, vol. 37, pp. 251-267 (2020).

<sup>29</sup> Draft PEIS at 34.

<sup>30</sup> *Id.*

<sup>31</sup> Soldevilla, Melissa S., et al. "Spatial distribution and dive behavior of Gulf of Mexico Bryde’s whales: potential risk of vessel strikes and fisheries interactions." *Endangered Species Research* 32 (2017): 533-550; Parks, Susan E., et al. "Dangerous dining: surface foraging of North Atlantic right whales increases risk of vessel collisions." *Biology Letters* 8.1 (2012): 57-60.

incremental impact of the action when added to other past, present, and reasonably foreseeable future significant actions.” *Id.* § 1508.7.

*A. NOS should be more precautionary in the assessment of acoustic impacts*

NOS should be more precautionary in its assessment of potential acoustic impacts from the survey activities in the Proposed Action on marine mammals and incorporate the following into its impact analyses: *First*, the potential for concurrent impulsive exposures to be experienced by the animal as continuous exposure should be accounted for.<sup>32</sup> We note that potential exposure to continuous noise would set the regulatory acoustic impact threshold at 120dB.<sup>33</sup> *Second*, NOS should not underestimate the potential for high frequency exposures due to higher attenuation rates over distance, as attenuation rates may be less efficient when propagation characteristics are accounted for.<sup>34</sup> Exposures should be modeled for each operational area using region-specific information on propagation conditions.

In addition, NOAA should acknowledge the limitations of current NOAA Fisheries’ acoustic thresholds for behavioral impacts and develop and use updated guidelines on thresholds for marine mammal behavioral disturbance (*i.e.*, Level B take)<sup>35</sup> that are sufficiently protective and consistent with the best available scientific information. Multiple marine mammal species have been observed to exhibit strong, and in some cases, lethal, behavioral reactions to sound levels well below the 160 dB threshold defined by NOAA Fisheries for Level B take,<sup>36</sup> leading to calls from the scientific community for the agency to revise its guidelines.<sup>37</sup> Acceptance of the current NOAA Fisheries’ acoustic threshold for Level B take will result in NOS’s significant underestimation of the impacts to marine mammals and potentially the permitting, recommendation, or prescription of ineffective mitigation measures (*e.g.*, under protective exclusion zones).

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<sup>32</sup> Hastie, Gordon, et al. "Effects of impulsive noise on marine mammals: investigating range-dependent risk." *Ecological Applications* 29.5 (2019): e01906.

<sup>33</sup> NOAA Fisheries, “Revisions to: Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0): Underwater Thresholds for Onset of Permanent and Temporary Threshold Shifts.” U.S. Dept. of Commerce, NOAA. NOAA Technical Memorandum NMFS-OPR-59, 167 p (2018).

<sup>34</sup> *See, e.g.*, Shapiro, G., F. Chen, and R. Thain. "The effect of ocean fronts on acoustic wave propagation in the Celtic Sea." *Journal of Marine Systems* 139 (2014): 217-226.

<sup>35</sup> As defined pursuant to the Marine Mammal Protection Act “any act of pursuit, torment, or annoyance which has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering but which does not have the potential to injure a marine mammal or marine mammal stock in the wild.” 50 C.F.R. § 216.3.

<sup>36</sup> Gomez, Catalina, et al. "A systematic review on the behavioural responses of wild marine mammals to noise: the disparity between science and policy." *Canadian Journal of Zoology* 94.12 (2016): 801-819.

<sup>37</sup> *E.g.*, England, Gordon R., et al. "Joint interim report Bahamas marine mammal stranding event of 15-16 March 2000." US Department of Commerce, US Secretary of the Navy (2001); Nowacek, Douglas P., Mark P. Johnson, and Peter L. Tyack. "North Atlantic right whales (*Eubalaena glacialis*) ignore ships but respond to alerting stimuli." *Proceedings of the Royal Society of London. Series B: Biological Sciences* 271.1536 (2004): 227-231; Parsons, E. C. M., et al. "Navy sonar and cetaceans: Just how much does the gun need to smoke before we act?." *Marine Pollution Bulletin* 56.7 (2008): 1248-1257; Tougaard, Jakob, Andrew J. Wright, and Peter T. Madsen. "Cetacean noise criteria revisited in the light of proposed exposure limits for harbour porpoises." *Marine Pollution Bulletin* 90.1-2 (2015): 196-208; Wright, Andrew J. "Sound science: maintaining numerical and statistical standards in the pursuit of noise exposure criteria for marine mammals." *Frontiers in Marine Science* 2 (2015): 99.

*B. NOS must incorporate additional data sources into calculations of marine mammal density and take*

In determining the proportion of marine mammal species and stocks taken by the proposed activities, NOS relies on information on species abundance and distribution obtained from NOAA and U.S. Fish and Wildlife Service Stock Assessment Reports (“SARs”).<sup>38</sup> Species and stock densities within the NOS operational areas were derived by distributing SARs abundance estimates over the portion of the operational area that coincides with the habitat preference and associated depth category for the species or stock. If a species or stock occupied an area larger than the operational area, the conservative assumption was made that the abundance of the species or stock occurred wholly within the operational areas under assessment.<sup>39</sup> Densities derived from information provided by the SARs were compared with habitat-based density estimates when available but were not found to correspond in a consistent manner.<sup>40</sup>

The simple approach of averaging abundance estimates over the extent of a species’ or stock’s distribution or depth preference does not bring to bear the best available scientific information for the purposes of impact assessment. Our concerns are threefold:

*First*, NOS does not consider important habitat areas where marine mammal density may be elevated relative to other areas either year-round or seasonally, and where concomitant survey activities would result in disproportionately higher impacts and number of takes. Multiple data sources describe important habitat areas for marine mammals (*see* Section IV.A. for further discussion) and this information should be incorporated into the impact analysis.

*Second*, the habitat-based density models produced by Duke University for marine mammals from several regions of the U.S. (*i.e.*, the “Roberts et al.” models), while still requiring improvement, represent a more sophisticated methodology for density estimation compared with NOS’s approach of averaging abundance estimates from the SARs. NOS should not default to the lowest common denominator in selecting a single methodology to estimate take across all operational areas. Rather, for those operational areas where improved density estimates are available, NOS should use those estimates in the impact assessment.

*Third*, a number of marine mammal species and stocks in the U.S. are considered data poor and have uncertain or outdated abundance estimates. It is not precautionary to assume that density and take levels can be reliably estimated for these species and stocks. Rather, NOS should explicitly note which species are data deficient in the Draft PEIS and, based on this, indicate that potential impacts on these species and stocks cannot be evaluated at this time.

NOS should update the impact assessment based on these recommendations to ensure that the PEIS aligns with the requirements set forth under NEPA, and other relevant statutes, including the MMPA and ESA.

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<sup>38</sup> Draft PEIS, Appendix C, at 10.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

*C. NOS must afford special consideration to potential direct and cumulative impacts on Arctic species and stocks*

The Arctic is a unique acoustic environment and maintaining its acoustic integrity should be a primary goal of NOS. Ambient sound levels in the Arctic are some of the lowest on Earth and Arctic marine species have had limited exposure to ocean noise pollution caused by human activities.<sup>41</sup> This naivete means Arctic marine mammals, and their prey, will likely be disproportionately impacted by any increase in ocean noise.<sup>42</sup> Many Arctic marine mammals are in serious jeopardy from additional seemingly intractable climate change impacts, including the diminishment of sea ice habitat,<sup>43</sup> and impacts from noise will further undermine the possibility of their survival.

The strong international interest in developing an increasingly ice-free Arctic means that Arctic marine mammals may face significant and rapid increases in ocean noise pollution.<sup>44</sup> For example, noise from shipping increased substantially in multiple locations across the Arctic between 2013 and 2019, and some areas of the Arctic are now twice as loud as they were in 2013.<sup>45</sup> Climate change is also changing the Arctic acoustic environment in other ways. Loss of sea ice reduces propagation loss and increases ambient sound levels due to increased interaction between the surface and the atmosphere. The Arctic is also becoming stormier during the ice-free season and increased wind speeds may lead to greater ambient sound levels.<sup>46</sup>

NOS must take these considerations into account when analyzing impacts of the Proposed Action on endemic Arctic species. In doing so, NOS must revise its take estimates for Arctic species based on the increased sensitivity to noise of those species relative to species in other regions. Further, NOS must fully evaluate the disproportionate impacts of climate change on Arctic marine mammal species and stocks and their habitat, as well as the unprecedented foreseeable industrial development, as part of the cumulative impacts analysis. For mitigation purposes, and in addition to the recommendations outlined in Section IV, NOS should consider limiting survey activities in the Arctic region overall and set more protective noise limits and stricter procedural mitigation measures for any survey activities that are undertaken.

#### **IV. Recommendations for Mitigation and Monitoring**

At bottom, an EIS must “inform decision-makers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment.” 40 C.F.R. §

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<sup>41</sup> PAME, “Underwater noise in the Arctic: A state of knowledge report,” Roveniemi (May 2019), Protection of the Arctic Marine Environment (PAME) Secretariat, Akureyri.

<sup>42</sup> *Id.*

<sup>43</sup> Moore and Reeves, *supra*.

<sup>44</sup> Halliday, et al., *supra*.

<sup>45</sup> PAME, “Underwater noise pollution from shipping in the Arctic report,” Submitted by the Protection of the Arctic Marine Environment Working Group of the Arctic Council to the Chairman of the SAOs and the Arctic Council SAOs, Reykjavik, Iceland (Feb. 18, 2021).

<sup>46</sup> Halliday et al. *supra*.

1502.1. This requirement has been described in regulation as “the heart of the environmental impact statement.” *Id.* § 1502.14. The courts describe the alternatives requirement equally emphatically, citing it early on as the “linchpin” of the EIS. *Monroe County Conservation Council v. Volpe*, 472 F.2d 693 (2d Cir. 1972). The agencies must therefore “[r]igorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.” *Id.* § 1502.14(a). Consideration of alternatives is required by (and must conform to the independent terms of) both sections 102(2)(C) and 102(2)(E) of NEPA. In addition, agencies must discuss measures designed to mitigate their action’s impact on the environment. *See* 42 C.F.R. § 1502.14(f).

No mitigation measures for marine mammals are included in the Draft PEIS. Rather, as the “analysis concludes that the Proposed Action is not anticipated to result in significant impacts for any resource [...] NOS has not proposed a discrete set of mitigation measures...”<sup>47</sup> Additional mitigation measures and best management practices (“BMPs”) are expected to be developed through various interagency consultation as well as through public comment and “will be considered as part of the analysis in the Final EIS.”<sup>48</sup>

The predetermination by NOS that the Proposed Action is “not anticipated to result in significant impacts for any resource” prior to consultation and public comment, as well as the lack of inclusion of *any* mitigation measures in the Draft PEIS for evaluation by the public, fails to satisfy the requirement for sufficient notice and comment set forth under NEPA.<sup>49</sup>

In order to satisfy NEPA, mitigation measures must be developed as part of the EIS process and not shunted to processes that may be required under other statutes, with their different scopes and standards, some of which, as with the interagency consultation provisions of the ESA, do not provide notice and opportunity for public comment.<sup>50</sup> **Mitigation measures should be made available for public comment as a supplemental document to the Draft PEIS prior to being incorporated in the Final EIS.**

We recommend the following mitigation measures be considered for acoustic sources that could injure or harass endangered and protected species and stocks of marine mammals (*i.e.*, <200 kHz).

*A. Restrict survey activities in areas and during times of year when marine mammals have higher relative vulnerability*

It is most protective to avoid and reduce impacts in the first instance by separating harmful activities from the species and stocks potentially affected. **NOS should define and implement time-area restrictions to limit survey activities involving survey equipment with the potential to injure or harass marine mammals in areas and/or during times of highest risk to endangered and protected species and stocks.**

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<sup>47</sup> Draft PEIS at 58.

<sup>48</sup> *Id.*

<sup>49</sup> 43 C.F.R. § 1502.14; see also *id.* at § 1507.4 (noting that “NEPA requires consideration of mitigation”).

<sup>50</sup> *Id.*

Time-area restrictions should be informed, at minimum, by critical habitat designated under the ESA and BIAs designated by NOAA, which comprise reproductive areas, feeding areas, migratory corridors, and areas in which small and resident populations are concentrated.<sup>51</sup> BIAs offer a necessary complement to habitat-based density models (e.g., NOAA CetMap); in addition to high density areas, BIAs may capture areas of critical importance to the survival of a species or stock where density of individuals may be low. BIA designations are not comprehensive, however, and are intended to be periodically reviewed and updated to reflect the best available scientific information.<sup>52</sup> Indeed, BIAs are currently undergoing review, a process that may yield new or revised BIAs for several species and stocks in December 2021.<sup>53</sup> NOS should incorporate the revised BIAs into the necessary development of mitigation measures for the Proposed Action. We further recommend NOS synthesize multiple data sources when making determinations about the importance of marine mammal habitat (e.g., aerial survey data, acoustic detections, opportunistic data), rather than relying solely designated ESA critical habitat and BIAs.

When implementing time-area restrictions, it is also imperative that NOS fully account for the consequences of those restrictions on other protected species and stocks not the original target of the restriction (i.e., the potential for displacing or concentrating survey activities in other areas or during times of year that may elevate risk to other species and stocks must be fully considered).

We also recommend NOS, and NOAA Fisheries, work to advance a robust and effective near real-time monitoring and mitigation system for endangered and protected species and stocks of large whales that will be more responsive to ongoing dynamic distributional shifts resulting from climate change,<sup>54</sup> as well as provide more flexibility in the survey window. There are several technologies in various stages of development that would allow near real-time detection of large whales and convey that information to decision-makers,<sup>55</sup> and near real-time monitoring systems are already being deployed to mitigate risks to some species, including the North Atlantic right whale.<sup>56</sup> We recommend NOS invest in and coordinate with NOAA Fisheries and other relevant agencies, experts, and stakeholders, to develop a near real-time large whale monitoring and mitigation system. The system should be capable of detecting and alerting vessels, stationary platforms, and enforcement agencies of the location of large whales on a near real-time basis, informing sector-specific mitigation protocols that can effectively reduce take of large whales, and continually integrate improved technology. The development of the system could begin with a pilot program that incorporates all the necessary precautions (e.g., vessel speed limit of 10 knots) focused on

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<sup>51</sup> Van Parijs, Sofie M. "Letter of introduction to the biologically important areas issue." *Aquatic Mammals* 41.1 (2015): 1-2.

<sup>52</sup> *Id.*

<sup>53</sup> See <https://oceannoise.noaa.gov/biologically-important-areas>.

<sup>54</sup> van Weelden, Celine, Jared R. Towers, and Thijs Bosker. "Impacts of climate change on cetacean distribution, habitat and migration." *Climate Change Ecology* (2021): 100009.

<sup>55</sup> E.g., Woods Hole Oceanographic Institution, *Robots4Whales*, available at <http://dcs.whoi.edu/>; Seatrac Systems Inc., available at <https://www.seatrac.com/>; Mysticetus, LLC., available at <https://www.mysticetus.com/>

<sup>56</sup> See, e.g., *Underwater glider helps save North Atlantic Right Whales from Ship Strikes*, CBC News (Aug. 30, 2020), available at <https://www.cbc.ca/news/canada/new-brunswick/nb-north-atlantic-right-whales-underwater-glider-1.5701984>. An unmanned acoustic glider capable of auto-detecting North Atlantic right whale calls is currently informing decisions being made by Transport Canada on when to impose vessel speed restrictions in the Laurentian Channel. Ten-knot speed restrictions can be issued within an hour of North Atlantic right whales being detected.

the critically endangered North Atlantic right whale and then be expanded to other whales and geographies once the approach is tested and proven.

*B. Commence survey activities during daylight and good visibility conditions*

**NOS should require that work commence, with ramp up, only during daylight hours and periods of good visibility to maximize the probability that marine mammals are detected and confirmed clear of any exclusion zone before activities begin.** The activity can then continue into periods of darkness and low visibility if monitoring technologies effective in low visibility conditions are used (*see* Section IV.C. for more discussion of the use of infrared technologies for monitoring).<sup>57</sup> If the activity is halted or delayed because of documented or suspected presence of protected species and stocks in the area, NOS should wait until daylight hours and good visibility conditions to recommence survey activities.

*C. Require an exclusion zone that will minimize behavioral disturbance with both visual and acoustic monitoring*

As discussed in Section III.A., the 160 dB threshold for behavioral harassment is not supported by best available scientific information<sup>58</sup> and grossly underestimates Level B take. **NOS should establish and monitor an exclusion zone around the sound source with a radial distance that will minimize behavioral disturbance to the species expected to be present in the operational area.**

NOS must also adequately monitor the exclusion zones. Studies suggest that marine mammals exhibit behaviors that reduce their likelihood of detection by PSOs. These behavioral responses may be heightened when whales are in the proximity of the acoustic disturbance, meaning that animals may be less detectable by observers during the survey period relative to other times.<sup>59</sup> There are also sighting condition limitations. For even the most conspicuous large whale species, estimates of relative detection probability for a Beaufort Sea State of six is less than half that for a Beaufort Sea State of zero.<sup>60</sup> Given

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<sup>57</sup> Verfuss, Ursula K., et al. "Comparing methods suitable for monitoring marine mammals in low visibility conditions during seismic surveys." *Marine Pollution Bulletin* 126 (2018): 1-18.

<sup>58</sup> Blackwell, Susanna B., et al. "Effects of airgun sounds on bowhead whale calling rates: evidence for two behavioral thresholds." *PloS One* 10.6 (2015): e0125720.

<sup>59</sup> Robertson, Frances C., et al. "Seismic operations have variable effects on dive-cycle behavior of bowhead whales in the Beaufort Sea." *Endangered Species Research* 21.2 (2013): 143-160.

<sup>60</sup> Barlow, Jay. "Inferring trackline detection probabilities,  $g(0)$ , for cetaceans from apparent densities in different survey conditions." *Marine Mammal Science* 31.3 (2015): 923-943; Baumgartner, Mark F., et al. "North Atlantic right whale habitat in the lower Bay of Fundy and on the SW Scotian Shelf during 1999-2001." *Marine Ecology Progress Series* 264 (2003): 137-154. Sea state has been demonstrated to have a direct effect on the sighting probability of North Atlantic right whales in the Lower Bay of Fundy and in Roseway Basin of the Southwest Scotian Shelf (Baumgartner et al. 2003). In line with Barlow (2015), the probability of sighting a North Atlantic right whale in this area changed by a factor of 0.628 (95% CI: 0.428-0.921) for every unit increase in sea state. These studies indicate the effect of increasing Beaufort Sea State in reducing the probability of detection of large whales, including the North Atlantic right whale. From the findings of Baumgartner et al. (2003), a reduction in detection probability of North Atlantic right whales by up to 84.5 percent based on an average Beaufort Sea State of 4 would be expected, relative to ideal sighting conditions (*i.e.*, Beaufort sea state = 0). Notably, the detectability of North Atlantic right whales even under ideal sighting conditions is likely to be significantly less than 100 percent given availability and perception biases other than those involving sea state.

these data, observers alone are certain to underestimate the total number of marine mammals in the mitigation area based on sea state.

**At minimum, NOS should require a combination of agency-approved PSOs to visually detect marine mammals and passive acoustic monitoring to detect vocalizations in near-real time when noise levels that could result in injury or harassment to the species are being conducted.**

Specifically, NOS should require a minimum of four PSOs following a two-on, two-off rotation, each responsible for scanning no more than 180° of the horizon, and require the use of infrared equipment to support visual monitoring by PSOs during periods of darkness;<sup>61</sup> we also recommend the use of infrared technology during daylight hours to help maximize probability of detection.<sup>62</sup> NOS should also require passive acoustic monitoring *at all times* to maximize the probability of detection for endangered and protected species and stocks, including during periods of fog, precipitation, and high sea states, when PSOs and infrared technologies are less effective. The passive acoustic protocol should be designed so the hydrophone is not masked by vessel or survey noise, and in line with other minimum requirements developed by agency scientists.<sup>63</sup>

*D. Underwater noise levels should be minimized to the full extent practicable*

The Draft PEIS sets no requirement to minimize the impacts of underwater noise through the use of best available technology and other methods to minimize sound levels from geophysical surveys.

According to NOAA's "Ocean Noise Strategy Roadmap:"

“[W]here noise is concerned, mitigation should be broadly designed to do one of two things: (1) reduce the temporal or spatial overlap of ensonified areas with marine taxa (or acoustic habitat) in particular times, places or circumstances, and/or (2) reduce the sound level at the source (which may include replacing the source with a different type of source capable of the same function).”<sup>64</sup>

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<sup>61</sup> Lathlean, Justin, and Laurent Seuront. "Infrared thermography in marine ecology: methods, previous applications and future challenges." *Marine Ecology Progress Series* 514 (2014): 263-277; Smith, Heather R., et al. "A field comparison of marine mammal detections via visual, acoustic, and infrared (IR) imaging methods offshore Atlantic Canada." *Marine Pollution Bulletin* 154 (2020): 111026; Zitterbart, Daniel P., et al. "Scaling the Laws of Thermal Imaging-Based Whale Detection." *Journal of Atmospheric and Oceanic Technology* 37.5 (2020): 807-824. In addition, NMFS must consider the limitations of the infrared system proposed and ensure that the detection of marine mammals is possible at distances out to and beyond the exclusion zones, in the geographic region in question, and for all relevant endangered and protected species. These technologies have not been well tested for detection of North Atlantic right whales, and may be relatively ineffective for detecting minke whales, both species of concern in light of the current UMEs declared for the Atlantic coast. Further, NMFS should encourage developers to partner with scientists and collect data that increases our understanding of the effectiveness of infrared technologies, with a view towards greater reliance on these technologies to commence surveys during nighttime hours in the future.

<sup>62</sup> Smith, H.R., et al., *id.*

<sup>63</sup> Van Parijs, Sofie, et al., *supra*,

<sup>64</sup> Gedamke, Jason., et al., "Ocean Noise Strategy Roadmap," NOAA Fisheries, (2016), at 23, available at: [https://cetsound.noaa.gov/Assets/cetsound/documents/Roadmap/ONS\\_Roadmap\\_Final\\_Complete.pdf](https://cetsound.noaa.gov/Assets/cetsound/documents/Roadmap/ONS_Roadmap_Final_Complete.pdf).

In addition, simulation studies comparing the level of risk reduction associated with technologies that allow for reduced source levels and current exclusion zone mitigation practices indicate that there will be very few instances where mitigation using visual observers can achieve a greater risk reduction than would be achieved by a reduction in source level.<sup>65</sup> Thus, reducing sound emissions at the source is one the most effective means of mitigating the impacts of noise on protected species.

**NOS should select HRG survey systems, and operate those systems at power settings, that achieve the lowest practicable source level for the objective. NOS should also minimize sound levels from the proposed survey activities to the fullest extent feasible using best available technologies and methods.**

*E. A 10-knot speed restriction should be required for all vessels at all times*

As discussed in Section II.B., vessel strikes pose an unacceptable risk of mortality and serious injury for large whales. In some operational areas, activities associated with the proposed action will increase the risk of vessel strike to species for which any additional human-caused mortality or serious injury will lead to population-level consequences and directly increase extinction risk.<sup>66</sup> While the number of vessels associated with the Proposed Action will be low relative to other sources of U.S. vessel traffic (the Draft PEIS notes that compared to AIS data for commercial vessels in 2017, vessels used or funded by NOS account for 0.3 percent of all nautical miles travelled within the EEZ<sup>67</sup>), any interaction between a vessel and whale poses a risk of serious injury or mortality, and this is true irrespective of the number of other vessels operating in the same location.

The dire conservation status of several species and stocks of large whale within the action area means that even a single vessel strike may have population-level consequences. Even a single vessel traveling at speeds over 10 knots therefore poses an unacceptable risk. In addition, mariner compliance with voluntary speed reduction measures is extremely low<sup>68</sup> indicating mandatory speed reduction requirements are necessary to provide protection. **NOS should therefore act conservatively and require all vessels associated with the Proposed Action, regardless of size, to observe a 10-knot speed restriction during the entire survey period, including transits to and from the survey area.**

## V. Conclusion

Thank you for considering our comments. To comply with its statutory obligations, our organizations urge NOS to revise its impact analysis in the Final PEIS for the reasons stated above, as well as develop

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<sup>65</sup> Leaper, Russell, Susannah Calderan, and Justin Cooke. "A Simulation Framework to Evaluate the Efficiency of Using Visual Observers to Reduce the Risk of Injury from Loud Sound Sources." *Aquatic Mammals* 41.4 (2015).

<sup>66</sup> Examples include the North Atlantic right whale and the Gulf of Mexico whale (*B. ricei*).

<sup>67</sup> Draft PEIS at 34.

<sup>68</sup> NOAA Fisheries, "North Atlantic Right Whale (*Eubalaena glacialis*) Vessel Speed Rule Assessment," June 2020, available at: [https://media.fisheries.noaa.gov/2021-01/FINAL\\_NARW\\_Vessel\\_Speed\\_Rule\\_Report\\_Jun\\_2020.pdf?null](https://media.fisheries.noaa.gov/2021-01/FINAL_NARW_Vessel_Speed_Rule_Report_Jun_2020.pdf?null); McKenna, Megan F., et al. "Response of commercial ships to a voluntary speed reduction measure: are voluntary strategies adequate for mitigating ship-strike risk?" *Coastal Management* 40.6 (2012): 634-650.

Ms. Giannina DiMaio  
November 22, 2021  
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mitigation measures and publish those measures in a supplemental to the Draft PEIS for public notice and comment prior to the issuance of the Final PEIS.

Sincerely,

A handwritten signature in black ink, appearing to read "Francine Kershaw". The signature is fluid and cursive, with a large loop at the end.

Francine Kershaw, Ph.D.  
Staff Scientist, Marine Mammal Protection Project, Oceans Division  
Natural Resources Defense Council

A handwritten signature in black ink, appearing to read "Michael Stocker". The signature is cursive and includes a long horizontal stroke at the end.

Michael Stocker  
Director  
Ocean Conservation Research

### 2.21.2 *NOS Response*

**Marine Mammals-4:** We note that while consistency across regions is a clear goal of any programmatic permit, differences in data availability, marine mammal vulnerability, and mitigation needs occur between the “operational areas” included within the action area and need to be recognized and accounted for by NOS in the Final PEIS.

**NOS Response:** NOS understands that there are local differences in densities and distribution across the action area and the analysis in the PEIS accounts for the differences in data availability, marine mammal vulnerability, and mitigation needs across regions.

Detailed data were used in the acoustic modeling for marine mammal presence, density, and population status using the best available information which inherently contained regional differences. NOS, in consultation with NMFS, has incorporated additional data sources into the calculations of marine mammal density and exposures. The revised exposure numbers are being used for consultation under the MMPA and ESA. These data have been updated for the Final PEIS. For the east coast of the U.S. and the Gulf of Mexico, the acoustic modeling for the Final PEIS uses densities obtained using the Duke University Marine Geospatial Ecology Laboratory model results (i.e., the “Roberts et al.” models). For the Pacific and Alaska regions, species abundance and distribution were obtained from the 2021 draft Stock Assessment Reports (SARs) for cetaceans and pinnipeds.

In coordination with NMFS and USFWS, NOS has developed additional mitigation measures. Mitigation measures include maintaining safe distances from marine mammals achieved by decreasing vessel speeds, vessel maneuvering, and observing time-area restrictions in specific protected species habitats (e.g., North Atlantic right whale). The Final PEIS has been updated to include additional mitigation measures in the effects analysis of the applicable resource sections. A complete list of mitigation measures can be found in Appendix D of the Final PEIS.

**Mitigation Measures-8:** We are particularly concerned with the lack of mitigation measures proposed in the Draft PEIS. In order to satisfy NEPA, mitigation measures must be developed as part of the EIS process and not shunted to processes that may be required under other statutes, with their different scopes and standards, some of which, as with the interagency consultation provisions of the ESA, do not provide notice and opportunity for public comment. Mitigation measures should be made available for public comment as a supplemental document to the Draft PEIS prior to being incorporated in the Final EIS.

**NOS Response:** The Final PEIS has been updated to include additional mitigation measures developed through interagency coordination and consultations, and information received through public comment. Although the Draft PEIS did not include a discrete set of mitigation measures, NOS did include best management practices as part of the Proposed Action as explained in Section 3.2.3. These BMPs were discussed in the effects analysis where relevant, such as avoiding bottom sampling on coral reefs, shipwrecks, obstructions, or hard bottom areas and ensuring that all instruments placed in contact with the sea floor are properly secured to minimize bottom disturbance.

The Draft PEIS explained that regulatory agencies, including those with jurisdiction over marine mammals, may request or require additional mitigation measures that are necessary or prudent under other laws, such as the ESA or the MMPA.

Following publication of the Draft PEIS, NOS initiated interagency consultations under the ESA, Magnuson-Stevens Fishery Conservation and Management Act (MSA), and the National Marine Sanctuaries Act (NMSA). NOS also submitted applications for incidental take authorization under the MMPA. Through this process, additional mitigation measures were identified to further minimize the impacts of project activities on sensitive species. These additional mitigation measures have been incorporated into the effects analysis in the appropriate resource sections of the Final PEIS. The full list of mitigation measures is included as Appendix D in the Final PEIS.

The incorporation of additional mitigation measures in the Final PEIS as a result of interagency coordination does not represent a significant change to the Proposed Action or new information relevant to environmental concerns and therefore, per 40 CFR 1502.9(d)(4), NOS is not required to publish a supplement to the Draft PEIS. Additional mitigation measures incorporated into the Final PEIS generally result in a reduction of any adverse environmental impacts previously analyzed.

**Mitigation Measures-9:** To assist NOS in this task, we recommend the following requirements for active acoustic sources that emit sound levels with the potential to injure or harass marine mammals (<200 kHz):

**NOS Response:** The Final PEIS has been updated to include additional mitigation measures; please see the appropriate resource sections and Appendix D to see the additional mitigation measures that NOS has developed to be implemented on each project as appropriate to minimize the impacts of project activities. The additional mitigation measures in the Final PEIS were developed with subject matter experts and in coordination with field crews and with NMFS, USFWS, and ONMS. Some of the measures suggested by NRDC are included as mitigation measures; however, some of the mitigation measures suggested are not practicable.

**Mitigation Measures-10:** Time-area restrictions on survey activities in habitat areas and during times of biological importance to marine mammals, including, at minimum, critical habitat areas designated under the ESA and Biologically Important Areas (“BIAs”) designated by NOAA...We recommend the following mitigation measures be considered for acoustic sources that could injure or harass endangered and protected species and stocks of marine mammals (i.e., <200 kHz).

A. Restrict survey activities in areas and during times of year when marine mammals have higher relative vulnerability

It is most protective to avoid and reduce impacts in the first instance by separating harmful activities from the species and stocks potentially affected. NOS should define and implement time-area restrictions to limit survey activities involving survey equipment with the potential to injure or harass marine mammals in areas and/or during times of highest risk to endangered and protected species and stocks.

Time-area restrictions should be informed, at minimum, by critical habitat designated under the ESA and BIAs designated by NOAA, which comprise reproductive areas, feeding areas, migratory corridors, and areas in which small and resident populations are concentrated. BIAs offer a necessary complement to habitat-based density models (e.g., NOAA CetMap); in addition to high density areas, BIAs may capture areas of critical importance to the survival of a species or stock where density of individuals may be low. BIA designations are not comprehensive, however, and are intended to be periodically reviewed and updated to reflect the best available scientific information. Indeed, BIAs are currently undergoing review, a process that may yield new or revised BIAs for several species and stocks in December 2021. NOS should incorporate the revised BIAs into the necessary development of mitigation measures for the Proposed Action. We further recommend NOS synthesize multiple data sources when making determinations about the importance of marine mammal habitat (e.g., aerial survey data, acoustic detections, opportunistic data), rather than relying solely designated ESA critical habitat and BIAs.

When implementing time-area restrictions, it is also imperative that NOS fully account for the consequences of those restrictions on other protected species and stocks not the original target of the restriction (i.e., the potential for displacing or concentrating survey activities in other areas or during times of year that may elevate risk to other species and stocks must be fully considered).

**NOS Response:** When applying significance criteria for the effects analysis, NOS considered the geographic extent of marine mammal exposures and whether the exposures are expected to occur in designated critical habitat or other biologically important areas (BIAs) such as preferred breeding, feeding, and nursery grounds or migratory routes. BIAs are discussed in Section 3.5.1.1.2 of the Final PEIS. NOS agrees that BIAs provide valuable information on locations where particular species engage in biologically important behaviors either year-round or seasonally. BIAs were created to help NOAA, other federal agencies, and the public in the analyses and planning used to characterize and minimize the impacts of anthropogenic activities on cetaceans and to achieve conservation and protection goals. BIAs occur in every region throughout the NOS action area, but they do not present the totality of important habitat throughout the marine mammals' full range. Recognition of an area as biologically important for some species activity does not cause the area to rise to the designation of critical habitat under the ESA. The stated intention is for the BIAs to serve as a resource management tool and for their currently identified boundaries to be considered dynamic and subject to change based on any new information.

NOS has considered the best available information on potential effects of acoustic and other stressors on biologically important behaviors as part of its impact analysis. Marine mammal responses to acoustic stressors from the Proposed Action are anticipated to be minor and temporary, regardless of where the activity is conducted. Time-area restrictions are only effective if there are marine mammals present in an area when and where an activity would otherwise occur. Given the variability in the presence of marine mammals, time-area restrictions would not necessarily be effective in reducing the potential impacts of surveying and mapping activities within BIAs.

NOS has concluded that impacts to marine mammals are primarily limited to minor, temporary behavioral disturbances from active acoustics, and NOS has adopted a suite of

mitigation measures to further minimize exposures. NOS also concludes that vessel strike is unlikely but possible, and employs mitigation measures to avoid strike. In addition, NOS employs additional mitigation measures for particularly vulnerable species like the North Atlantic Right Whale and Rice's Whale. NOS considered the potential effectiveness and practicability of additional mitigation measures in BIAs for those species for which Level A exposure was predicted in the PEIS. Only the harbor porpoise has designated BIAs in regions where Level A exposure was predicted. The BIAs are Morro and Monterey Bay in the West Coast Region, which was identified as two separate small resident populations found year-round in this area. The other BIA for harbor porpoise is a small and resident population in the Greater Atlantic Region, concentrated in waters less than 150 m deep in the Gulf of Maine between July and September. These designations reflect a concentration of marine mammals rather than an area where marine mammals engage in biologically important behaviors that could result in stronger behavioral reactions from Level A exposures. There are no other designated BIAs where Level A exposures were predicted.

NOS determined that avoiding harbor porpoise BIAs entirely would be impracticable. Time-area restrictions for these BIAs would significantly impact NOS' ability to collect data during suitable conditions for using acoustic sources, result in lost survey time, and affect the crew's ability to work safely. In particular, the BIAs for harbor porpoises in Morro and Monterey Bays are year-round, and avoiding these areas would mean that these areas could not be surveyed and important information that supports habitat research and vessel safety would not be collected. NOS also considered the necessity and practicality of additional management measures for these areas. NOS already uses the lowest power appropriate to perform surveys, and employs mitigation measures including protected species observers to ensure that marine mammals are not within the vicinity of the vessel when active acoustics are being used (which is where Level A exposures could occur). During nighttime operations, NOS uses the appropriate lighting to comply with navigation rules and best safety practices. All project areas would be continually monitored for protected species by posted crewmembers during vessel operations. NOS believes that the mitigation measures that will be used during projects will minimize Level A exposures or vessel strikes to harbor porpoises in these BIAs.

In coordination with NMFS and USFWS, NOS has developed additional mitigation measures. Mitigation measures include maintaining safe distances from marine mammals achieved by decreasing vessel speeds, vessel maneuvering, and observing time-area restrictions in specific protected species habitats (e.g., North Atlantic right whale). Any further mitigation, including entirely prohibiting mapping and surveying data collection or time-area restriction within the BIAs as discussed above, is unwarranted and impracticable due to safety concerns. Additionally, time-area restrictions for BIAs affect data collection and continuity and result in lost survey time. For example, surveying in the Arctic is limited to summer and early fall when conditions are safe. NOS believes that the implementation of additional mitigation measures to further reduce the minor and temporary expected impacts will provide substantial protection for marine mammals during NOS surveying and mapping activities.

**Mitigation Measures-11:** A prohibition on commencing surveys at night and during periods of low visibility to maximize the probability that marine mammals are detected and confirmed clear of the exclusion zone...The Draft PEIS also states that vessel transits and project activities may

occur at either day or night. Nighttime transits and survey activities increase vessel strike risk to all large whales due to the reduced probability of detection during periods of darkness, and particularly for those large whale species that exhibit nighttime behaviors that further increase their risk level...Commence survey activities during daylight and good visibility conditions.

NOS should require that work commence, with ramp up, only during daylight hours and periods of good visibility to maximize the probability that marine mammals are detected and confirmed clear of any exclusion zone before activities begin. The activity can then continue into periods of darkness and low visibility if monitoring technologies effective in low visibility conditions are used (see Section IV.C. for more discussion of the use of infrared technologies for monitoring). If the activity is halted or delayed because of documented or suspected presence of protected species and stocks in the area, NOS should wait until daylight hours and good visibility conditions to recommence survey activities.

**NOS Response:** Restrictions on nighttime operations are included as necessary and appropriate for the protection of the environment. For example, NOS developed additional mitigation measures in coordination with NMFS for the restriction of nighttime operations in Rice's whale habitat in the Gulf of Mexico.

A blanket prohibition on surveys at night or during periods of low visibility would significantly degrade NOS's ability to gather accurate data in a timely manner as indicated in the purpose and need of the PEIS. NOS believes the additional mitigation measures in the Final PEIS developed with subject matter experts and in coordination with field crews and with NMFS and USFWS are appropriate for reducing potential impacts to the environment. Additional mitigation measures such as equipment ramp-up (i.e., slowly increasing the sound of acoustic equipment to allow animals to exit the area) or use of passive acoustic monitoring would not appreciably reduce the impact to marine mammals.

Ramp-up, which is sometimes used for sources that are omni-directional with a large exposure radius, would do little to reduce impacts from NOS operations because of the directional nature and small exposure radius of NOS sources. It is not practicable for NOS to power-down active acoustic sources upon sighting a marine mammal within a certain radius of the vessel because data continuity would be lost and NOS already employs approach restrictions that are larger than the exposure radius.

Due to the small radius for Level A and B exposures, and the use of approach distances, passive monitoring in addition to PSOs is unnecessary. NOS has adopted a suite of effective mitigation measures that include maintaining safe distances from marine mammals achieved by decreasing vessel speeds, vessel maneuvering, and observing time-area restrictions in specific protected species habitats (e.g., North Atlantic right whale). NOS is continuing to improve its capabilities to detect marine animals, but due to the current state of the technology, it is not effective or practicable for NOS to require passive acoustic monitoring or infrared technologies for the purpose of real-time mitigation.

The full list of mitigation measures can be found in Appendix D of the Final PEIS.

**Mitigation Measures-12:** A requirement to establish and monitor an exclusion zone around each sound source with a radial distance that will minimize behavioral disturbance...Require an exclusion zone that will minimize behavioral disturbance with both visual and acoustic monitoring.

As discussed in Section III.A., the 160 dB threshold for behavioral harassment is not supported by best available scientific information and grossly underestimates Level B take. NOS should establish and monitor an exclusion zone around the sound source with a radial distance that will minimize behavioral disturbance to the species expected to be present in the operational area...NOS must also adequately monitor the exclusion zones.

**NOS Response:** As discussed in Appendix E: Technical Acoustic Analysis of Oceanographic Surveys, the radius for Level A and B exposures for multibeam surveys is very small, especially when compared with the ensonification areas for other acoustic sources not used by NOS such as air guns or tactical sonar.

In coordination with NMFS and USFWS, NOS has developed additional mitigation measures. Mitigation measures include maintaining safe distances from marine mammals achieved by decreasing vessel speeds, vessel maneuvering, and observing time-area restrictions in specific protected species habitats (e.g., North Atlantic right whale). The implementation of these mitigation measures makes an exclusion zone unnecessary. Exclusion zones affect data continuity and result in lost survey time.

NOS acknowledges that behavioral responses to sound are complex and nuanced. The 160 dB threshold is what is currently applied by NMFS/NOAA (based on NMFS 2018 Revision to: Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) Underwater Thresholds for Onset of Permanent and Temporary Threshold Shifts), and it is what NOS used to evaluate exposures for this analysis.

**Mitigation Measures-13:** A requirement that a combination of visual monitoring by Protected Species Observers (“PSOs”) and passive acoustic monitoring is implemented at all times that survey work is underway.

A requirement that four PSOs adhere to a two-on/two-off shift schedule to ensure no individual PSO is responsible for visually monitoring more than 180° of the exclusion zone at any one time...Studies suggest that marine mammals exhibit behaviors that reduce their likelihood of detection by PSOs. These behavioral responses may be heightened when whales are in the proximity of the acoustic disturbance, meaning that animals may be less detectable by observers during the survey period relative to other times. There are also sighting condition limitations. For even the most conspicuous large whale species, estimates of relative detection probability for a Beaufort Sea State of six is less than half that for a Beaufort Sea State of zero. Given these data, observers alone are certain to underestimate the total number of marine mammals in the mitigation area based on sea state...At minimum, NOS should require a combination of agency-approved PSOs to visually detect marine mammals and passive acoustic monitoring to detect vocalizations in near-real time when noise levels that could result in injury or harassment to the species are being conducted.

Specifically, NOS should require a minimum of four PSOs following a two-on, two-off rotation, each responsible for scanning no more than 180° of the horizon, and require the use of infrared equipment to support visual monitoring by PSOs during periods of darkness; we also recommend the use of infrared technology during daylight hours to help maximize probability of detection...NOS should also require passive acoustic monitoring at all times to maximize the probability of detection for endangered and protected species and stocks, including during periods of fog, precipitation, and high sea states, when PSOs and infrared technologies are less effective. The passive acoustic protocol should be designed so the hydrophone is not masked by vessel or survey noise, and in line with other minimum requirements developed by agency scientists.

**NOS Response:** In coordination with NMFS and USFWS, NOS has developed additional mitigation measures that include implementing Protected Species Observer (PSO) requirements for all survey projects, as indicated in the Final PEIS. Vessel crew must maintain at least one PSO at all times. PSOs will use all necessary and appropriate means to enhance visibility (e.g., spotlights, night vision), and will be trained as appropriate. In order to maintain safety of navigation and avoid interactions with marine mammals and other sensitive species during transit, the vessel crew are instructed to remain vigilant to the presence of marine mammals.

PSOs will communicate with the crew to assist in the implementation of the appropriate mitigation measures. Prior to and during deployment of project equipment, PSOs will document occurrences of marine mammals and their behaviors and provide this documentation to regulators, such as NMFS. NOS checks with various communication media for general information regarding avoiding ship strikes and specific information regarding North Atlantic right whale sighting locations. These include NOAA weather radio, U.S. Coast Guard NAVTEX broadcasts and Notices to Mariners

Due to the small radius for Level A and B exposures, the use of PSOs, and the use of approach distances, NOS has determined that adding passive monitoring is unnecessary. NOS has adopted a suite of effective mitigation measures that include maintaining safe distances from marine mammals achieved by decreasing vessel speeds, vessel maneuvering, and observing time-area restrictions in specific protected species habitats (e.g., North Atlantic right whale).

NOS is continuing to improve its capabilities to detect marine animals, but due to the current state of the technology, it is not effective or practicable for NOS to require passive acoustic monitoring or infrared technologies for the purpose of real-time mitigation.

Restrictions on nighttime operations are included as necessary and appropriate for the protection of the environment. For example, NOS developed mitigation measures in coordination with NMFS for the restriction of nighttime operations in Rice's whale habitat in the Gulf of Mexico.

**Mitigation Measures-14:** A requirement that the developer selects sub-bottom profiling systems, and operates those systems at power settings, that achieve the lowest practicable source level for the objective...In addition, simulation studies comparing the level of risk reduction associated with technologies that allow for reduced source levels and current exclusion zone mitigation

practices indicate that there will be very few instances where mitigation using visual observers can achieve a greater risk reduction than would be achieved by a reduction in source level. Thus, reducing sound emissions at the source is one the most effective means of mitigating the impacts of noise on protected species.

**NOS Response:** NOS considers the project objectives to determine the best-suited equipment and protocols. NOS has a responsibility to gather data necessary for nautical charts and other public data products, with consideration for the human environment. Surveying vessels and equipment are designed to minimize noise, and NOS uses the lowest appropriate power and ping rate for its acoustic sources while gathering data.

**Mitigation Measures-15:** A requirement that all vessels associated with the Proposed Action, regardless of size, observe a mandatory 10 knot speed restriction at all times...The survey vessels associated with the Proposed Action pose a risk of collision to large whales that must be mitigated. The Draft PEIS states that vessel transit speeds vary by location, but are typically lower than 25 knots, and that vessels are typically limited to speeds of 13 knots during survey activities. These speeds far exceed the 10-knot limit that best available scientific information indicates is necessary to reduce the probability of mortality and serious injury resulting from a vessel strike when it does occur....A 10-knot speed restriction should be required for all vessels at all times.

As discussed in Section II.B., vessel strikes pose an unacceptable risk of mortality and serious injury for large whales. In some operational areas, activities associated with the proposed action will increase the risk of vessel strike to species for which any additional human-caused mortality or serious injury will lead to population-level consequences and directly increase extinction risk. While the number of vessels associated with the Proposed Action will be low relative to other sources of U.S. vessel traffic (the Draft PEIS notes that compared to AIS data for commercial vessels in 2017, vessels used or funded by NOS account for 0.3 percent of all nautical miles traveled within the EEZ), any interaction between a vessel and whale poses a risk of serious injury or mortality, and this is true irrespective of the number of other vessels operating in the same location.

The dire conservation status of several species and stocks of large whale within the action area means that even a single vessel strike may have population-level consequences. Even a single vessel traveling at speeds over 10 knots therefore poses an unacceptable risk. In addition, mariner compliance with voluntary speed reduction measures is extremely low indicating mandatory speed reduction requirements are necessary to provide protection. NOS should therefore act conservatively and require all vessels associated with the Proposed Action, regardless of size, to observe a 10-knot speed restriction during the entire survey period, including transits to and from the survey area.

**NOS Response:** In coordination with NMFS, USFWS, and ONMS, NOS has developed additional mitigation measures. Mitigation measures include maintaining safe distances from marine mammals, decreasing vessel speeds, vessel maneuvering, and observing time-area restrictions in specific protected species habitats (e.g., North Atlantic right whale). Limits on vessel speeds of 10 knots regardless of size and at all times are highly restrictive and unnecessary. Vessel speed limitations would particularly impact the use of smaller vessels because they cannot safely anchor in survey areas overnight. As such, observing a mandatory 10 knot speed restriction or less for all vessels at all times would

be impracticable due to safety and stability concerns. Additionally, reduced vessel speeds would affect data continuity and result in lost survey time.

The mitigation measures in the Final PEIS include limiting vessel speed to 10 knots and steering away when an ESA-listed whale is within 500 yards of the forward path of the vessel, and limiting speed to 10 knots when operating a vessel of 65 ft or larger in an active North Atlantic right whale seasonal management area. If any cetacean is sighted while a vessel is underway, the vessel operator must remain parallel to the animal's course if feasible, and avoid excessive speed or abrupt changes in direction until the cetacean has left the area.

As discussed in Section 3.5.2 of the Final PEIS, animal approach restrictions and decreasing vessel speeds would help reduce the potential for ship strikes of protected species. During NOS projects, waters surrounding the vessel would be visually monitored for any marine mammals as at least one individual observing the area for protected species at all times. While vessel strikes would pose a direct threat to marine mammals, the likelihood of a collision between a project vessel and a marine mammal would be extremely unlikely because relatively low vessel speeds (particularly within seasonally restricted areas and inshore waterways and during data collection) and visual observation during all vessel operations (regardless of size) would avoid vessel strikes with all marine mammal species.

**Marine Mammals-5:** NOS must use the best available scientific information on marine mammal presence, density, and population status, as required by law. NOS must also ensure that any potential stressors and cumulative impacts posed by the proposed surveys are mitigated to effectuate the least practicable impact on affected species and stocks.

**NOS Response:** NOS, in consultation with NMFS, has incorporated additional data sources into the calculations of marine mammal density and exposures. The revised exposure numbers are being used for consultation under the ESA and for the LOA application and an ITR request under the MMPA, and have been added to the Final PEIS. The 2021 SARs and Roberts data for cetaceans and pinnipeds represent the best available science.

The Final PEIS has been updated to include additional mitigation measures developed through interagency coordination and consultations, and information received through public comment. Although the Draft PEIS did not include a discrete set of mitigation measures, NOS did include best management practices as part of the Proposed Action as explained in Section 3.2.3. These BMPs were discussed in the effects analysis where relevant, such as avoiding bottom sampling on coral reefs, shipwrecks, obstructions, or hard bottom areas and ensuring that all instruments placed in contact with the sea floor are properly secured to minimize bottom disturbance.

The Draft PEIS explained that regulatory agencies, including those with jurisdiction over marine mammals, may request or require additional mitigation measures that are necessary or prudent under other laws, such as the ESA or the MMPA.

Following publication of the Draft PEIS, NOS initiated interagency consultations under the ESA, MSA, and NMSA. NOS also submitted applications for incidental take authorizations under the MMPA. Through this process, additional mitigation measures were identified to further minimize the impacts of project activities on sensitive species. These additional mitigation measures have been incorporated into the effects analysis in the appropriate resource sections of the Final PEIS. The full list of mitigation measures is included as Appendix D to the Final PEIS.

**Cumulative Impacts-3:** Moreover, extensive high resolution geophysical (“HRG”) surveys associated with the Proposed Action will take place concurrently with other sources of noise occurring in marine mammal habitat, making the cumulative impacts posed by these activities a significant concern.

**NOS Response:** The cumulative impact scenario (Section 4.1 in the Final PEIS) considers past, present, and reasonably foreseeable future actions that must be addressed in a cumulative effects analysis because their environmental effects may combine with the effects of the Proposed Action. Due to the volume and diversity of these cumulative actions, NOS identified specific projects and programs, both public and private sector, but also relevant environmental and economic trends; however, an exhaustive list of all ocean users would not be feasible to consider.

As discussed in Section 4.2.2, increasing ambient sound levels in the marine environment may steadily erode marine mammals’ abilities to communicate, find food, mate, and navigate. If NOS projects occurred at the same time and place as noise from other sources, they could synergistically contribute to adverse cumulative sonic impacts on marine mammals within a small radius of the NOS acoustic source; if they do not occur at the same time and place, they could additively contribute to adverse cumulative impacts. However, the vast majority of impacts expected from underwater noise are behavioral in nature (versus injury), temporary, and relatively infrequent. Other cumulative actions are unlikely to overlap in time and space with NOS projects because these activities are dispersed and the sound sources are intermittent. It is likely that distant shipping sound, which is more universal and continuous, would overlap in time and space with actions under the NOS Proposed Action. However, the NOS Proposed Action would likely only contribute negligible cumulative impacts due to disturbance and behavior modification of marine mammals.

**Marine Mammals-6:** NOS should be more precautionary in the assessment of acoustic impacts

NOS should be more precautionary in its assessment of potential acoustic impacts from the survey activities in the Proposed Action on marine mammals and incorporate the following into its impact analyses: First, the potential for concurrent impulsive exposures to be experienced by the animal as continuous exposure should be accounted for. We note that potential exposure to continuous noise would set the regulatory acoustic impact threshold at 120dB.

**NOS Response:** NOS disagrees with the assertion that concurrent impulsive exposures can be experienced by an animal as a continuous exposure. Concurrent impulsive exposures are not equivalent to continuous sound. The exposure analysis does not include an evaluation of either concurrent sources or continuous sound sources (e.g., vessels).

NMFS Office of Protected Resources (OPR) recommended that all NOS active acoustic sources be assessed using the intermittent source criteria (i.e., using a behavioral disruption exposure threshold of 160 dB). If the sources were modeled as continuous sound sources, then the 120 dB threshold would have been used.

**Marine Mammals-7:** Second, NOS should not underestimate the potential for high frequency exposures due to higher attenuation rates over distance, as attenuation rates may be less efficient when propagation characteristics are accounted for. Exposures should be modeled for each operational area using region-specific information on propagation conditions.

**NOS Response:** The best available information on region-specific propagation parameters was used in the technical acoustic analysis, including sound speed profiles, geoacoustic parameterization, and regional bathymetry. Sound fields were generated considering the combination of source-specific beam patterns and sound levels, and site-specific transmission loss. A description of region-specific parameters considered is provided in Appendix E: Technical Acoustic Analysis of Oceanographic Surveys.

**Marine Mammals-8:** NOAA should acknowledge the limitations of current NOAA Fisheries' acoustic thresholds for behavioral impacts and develop and use updated guidelines on thresholds for marine mammal behavioral disturbance (i.e., Level B take) that are sufficiently protective and consistent with the best available scientific information. Multiple marine mammal species have been observed to exhibit strong, and in some cases, lethal, behavioral reactions to sound levels well below the 160 dB threshold defined by NOAA Fisheries for Level B take, leading to calls from the scientific community for the agency to revise its guidelines. Acceptance of the current NOAA Fisheries' acoustic threshold for Level B take will result in NOS's significant underestimation of the impacts to marine mammals and potentially the permitting, recommendation, or prescription of ineffective mitigation measures (e.g., under protective exclusion zones).

**NOS Response:** NOS acknowledges that behavioral response to sound is complex and nuanced. NMFS OPR recommended that all NOS active acoustic sources be assessed using the intermittent source criteria. The 160 dB threshold is the most current recommended threshold for non-impulsive sources by NMFS based on the NMFS 2018 Technical Guidance. This threshold was used to evaluate exposures for this analysis. Therefore, NOS used the best available science in the technical acoustic analysis. NOS disagrees with the assertion that using this threshold will result in underestimating impacts to marine mammals and adopting ineffective mitigation measures.

**Marine Mammals-9:** NOS must incorporate additional data sources into calculations of marine mammal density and take

In determining the proportion of marine mammal species and stocks taken by the proposed activities, NOS relies on information on species abundance and distribution obtained from NOAA and U.S. Fish and Wildlife Service Stock Assessment Reports ("SARs"). Species and stock densities within the NOS operational areas were derived by distributing SARs abundance estimates over the portion of the operational area that coincides with the habitat preference and associated depth category for the species or stock. If a species or stock occupied an area larger than the operational area, the conservative assumption was made that the abundance of the species or stock occurred wholly within the operational areas under assessment. Densities

derived from information provided by the SARs were compared with habitat- based density estimates when available but were not found to correspond in a consistent manner.

The simple approach of averaging abundance estimates over the extent of a species' or stock's distribution or depth preference does not bring to bear the best available scientific information for the purposes of impact assessment...the habitat-based density models produced by Duke University for marine mammals from several regions of the U.S. (i.e., the "Roberts et al." models), while still requiring improvement, represent a more sophisticated methodology for density estimation compared with NOS's approach of averaging abundance estimates from the SARs. NOS should not default to the lowest common denominator in selecting a single methodology to estimate take across all operational areas. Rather, for those operational areas where improved density estimates are available, NOS should use those estimates in the impact assessment.

**NOS Response:** Detailed data were used in the acoustic modeling for marine mammal presence, density, and population status using the best available information which inherently contained regional differences. NOS, in consultation with NMFS, has incorporated additional data sources into the calculations of marine mammal density and exposures. The revised exposure numbers are being used for consultation under the MMPA and ESA. These data have been updated for the Final PEIS. For the east coast of the U.S. and the Gulf of Mexico, the acoustic modeling for the Final PEIS uses densities obtained using the Duke University Marine Geospatial Ecology Laboratory model results (i.e., the "Roberts et al." models). For the Pacific and Alaska regions, species abundance and distribution were obtained from the 2021 SARs for cetaceans and pinnipeds.

In coordination with NMFS and USFWS, NOS has developed additional mitigation measures. Mitigation measures include maintaining safe distances from marine mammals, decreasing vessel speeds, vessel maneuvering, and observing time-area restrictions in specific protected species habitats (e.g., North Atlantic right whale). The Final PEIS has been updated to include additional mitigation measures in the effects analysis of the applicable resource sections.

Although some projects may result in more exposures than others, the exposure estimates represent the average expected exposures from all projects in the program. Natural variability due to seasonal changes is expected.

**Marine Mammals-10:** NOS does not consider important habitat areas where marine mammal density may be elevated relative to other areas either year-round or seasonally, and where concomitant survey activities would result in disproportionately higher impacts and number of takes. Multiple data sources describe important habitat areas for marine mammals (see Section IV.A. for further discussion) and this information should be incorporated into the impact analysis.

**NOS Response:** When applying significance criteria for the effects analysis, NOS considered the geographic extent of marine mammal exposures and whether the exposures are expected to occur in designated critical habitat or other biologically important areas (BIAs) such as preferred breeding, feeding, and nursery grounds or migratory routes. BIAs are discussed in Section 3.5.1.1.2 of the Final PEIS. NOS agrees that BIAs provide valuable information on locations where particular species engage in biologically important behaviors either year-round or seasonally. BIAs were created to help

NOAA, other federal agencies, and the public in the analyses and planning used to characterize and minimize the impacts of anthropogenic activities on cetaceans and to achieve conservation and protection goals. BIAs occur in every region throughout the NOS action area, but they do not present the totality of important habitat throughout the marine mammals' full range. Recognition of an area as biologically important for some species activity does not cause the area to rise to the designation of critical habitat under the ESA. The stated intention is for the BIAs to serve as a resource management tool and for their currently identified boundaries to be considered dynamic and subject to change based on any new information.

NOS has considered the best available information on potential effects of acoustic and other stressors on these biologically important behaviors as part of its impact analysis. Marine mammal responses to acoustic stressors from the Proposed Action are anticipated to be minor and temporary, regardless of where the activity is conducted. Time-area restrictions are only effective if there are marine mammals present in an area when and where an activity would otherwise occur. Given the variability in the presence of marine mammals, time-area restrictions would not necessarily be effective in reducing the potential impacts of surveying and mapping activities within BIAs.

NOS has concluded that impacts to marine mammals are primarily limited to minor, temporary behavioral disturbances from active acoustics, and NOS has adopted a suite of mitigation measures to further minimize exposures. NOS also concludes that vessel strike is unlikely but possible, and employs mitigation measures to avoid strike. In addition, NOS employs additional mitigation measures for particularly vulnerable species like the North Atlantic Right Whale and Rice's Whale. NOS considered the potential effectiveness and practicability of additional mitigation measures in BIAs for those species for which Level A exposure was predicted in the PEIS. Only the harbor porpoise has designated BIAs in regions where Level A exposure was predicted. The BIAs are Morro and Monterey Bay in the West Coast Region, which was identified as two separate small resident populations found year-round in this area. The other BIA for harbor porpoise is a small and resident population in the Greater Atlantic Region, concentrated in waters less than 150 m deep in the Gulf of Maine between July and September. These designations reflect a concentration of marine mammals rather than an area where marine mammals engage in biologically important behaviors that could result in stronger behavioral reactions from Level A exposures. There are no other designated BIAs where Level A exposures were predicted.

NOS determined that avoiding harbor porpoise BIAs entirely would be impracticable. Time-area restrictions for these BIAs would significantly impact NOS' ability to collect data during suitable conditions for using acoustic sources, result in lost survey time, and affect the crew's ability to work safely. In particular, the BIAS for harbor porpoises in Morro and Monterey Bays are year-round, and avoiding these areas would mean that these areas could not be surveyed and important information that supports habitat research and vessel safety would not be collected. NOS also considered the necessity and practicality of additional management measures for these areas. NOS already uses the lowest power appropriate to perform surveys, and employs mitigation measures including protected species observers to ensure that marine mammals are not within the vicinity of the vessel when active acoustics are being used (which is where Level A exposures could occur). During nighttime operations, NOS uses the appropriate lighting to comply with navigation

rules and best safety practices. All project areas would be continually monitored for protected species by posted crewmembers during vessel operations. NOS believes that the mitigation measures that will be used during projects will minimize Level A exposures or vessel strikes to harbor porpoises in these BIAs.

In coordination with NMFS and USFWS, NOS has developed additional mitigation measures. Mitigation measures include maintaining safe distances from marine mammals achieved by decreasing vessel speeds, vessel maneuvering, and observing time-area restrictions in specific protected species habitats (e.g., North Atlantic right whale). Any further mitigation, including entirely prohibiting mapping and surveying data collection or time-area restriction within the BIAs as discussed above, is unwarranted and impracticable due to safety concerns. Additionally, time-area restrictions for BIAs affect data collection and continuity and result in lost survey time. For example, surveying in the Arctic is limited to summer and early fall when conditions are safe. NOS believes that the implementation of mitigation measures to further reduce the minor and temporary expected impacts will provide substantial protection for marine mammals during NOS surveying and mapping activities.

**Marine Mammals-11:** a number of marine mammal species and stocks in the U.S. are considered data poor and have uncertain or outdated abundance estimates. It is not precautionary to assume that density and take levels can be reliably estimated for these species and stocks. Rather, NOS should explicitly note which species are data deficient in the Draft PEIS and, based on this, indicate that potential impacts on these species and stocks cannot be evaluated at this time.

NOS should update the impact assessment based on these recommendations to ensure that the PEIS aligns with the requirements set forth under NEPA, and other relevant statutes, including the MMPA and ESA.

**NOS Response:** NOS disagrees that the potential impacts on any species and stocks cannot be evaluated at this time. NOS has used the best available scientific information on marine mammal presence, density, and population status in the acoustic modeling for the PEIS.

NOS conducted a quantitative total exposure estimate to determine the type and number of take in order to meet requirements for applying to NMFS for an incidental take authorization and to petition USFWS for incidental take regulations under the MMPA. NOS also relies on an extensive qualitative analysis of the best available science.

**Marine Mammals-12:** NOS must afford special consideration to potential direct and cumulative impacts on Arctic species and stocks

The Arctic is a unique acoustic environment and maintaining its acoustic integrity should be a primary goal of NOS. Ambient sound levels in the Arctic are some of the lowest on Earth and Arctic marine species have had limited exposure to ocean noise pollution caused by human activities. This naivete means Arctic marine mammals, and their prey, will likely be disproportionately impacted by any increase in ocean noise. Many Arctic marine mammals are in serious jeopardy from additional seemingly intractable climate change impacts, including the

diminishment of sea ice habitat, and impacts from noise will further undermine the possibility of their survival.

**NOS Response:** NOS understands the unique characteristics of the Arctic environment. The increase in ocean noise in the Arctic region from commercial shipping and recreational boating interests (as discussed in Section 4.1.5) has largely been the result of decreased seasonal sea ice coverage. NOS recognizes that increased commercial shipping, recreational boating, and other vessel traffic is contributing to increased noise in Arctic waters. NOS contributions to ocean noise in the Arctic and the Alaska Region are extremely minimal compared to these other sources.

The acoustic modeling estimated marine mammal exposures to sound by considering each species' hearing range, as well as their population densities, location, and movement through the environment. The best available information on region-specific propagation parameters was also used in the technical acoustic analysis, including sound source characteristics, geoacoustic profiles, and regional bathymetry. Sound fields were generated considering the combination of source-specific beam patterns and sound levels, and site-specific transmission loss.

Timing of a given project may be limited by seasonal environmental conditions of its location, making it impracticable for NOS to adopt time or spatial mitigation in this region. For example, projects in the Arctic or Bering Sea typically take place between June and September to avoid dangerous, icy conditions. The effects analysis for Arctic marine mammals is discussed by species in Section 3.5.2.

NOS will adhere to the additional mitigation measures developed in coordination with NMFS and USFWS. Mitigation measures include maintaining safe distances from marine mammals achieved by decreasing vessel speeds, vessel maneuvering, and observing time-area restrictions in specific protected species habitats (e.g., North Atlantic right whale).

**Cumulative Impacts-4:** The strong international interest in developing an increasingly ice-free Arctic means that Arctic marine mammals may face significant and rapid increases in ocean noise pollution. For example, noise from shipping increased substantially in multiple locations across the Arctic between 2013 and 2019, and some areas of the Arctic are now twice as loud as they were in 2013. Climate change is also changing the Arctic acoustic environment in other ways. Loss of sea ice reduces propagation loss and increases ambient sound levels due to increased interaction between the surface and the atmosphere. The Arctic is also becoming stormier during the ice-free season and increased wind speeds may lead to greater ambient sound levels. NOS must take these considerations into account when analyzing impacts of the Proposed Action on endemic Arctic species. In doing so, NOS must revise its take estimates for Arctic species based on the increased sensitivity to noise of those species relative to species in other regions.

**NOS Response:** Increased commercial shipping, recreational boating and other vessel traffic in the Alaska region as a result of decreasing seasonal sea ice coverage are considered in the cumulative scenario in Section 4.1.5 of the Final PEIS. The acoustic modeling used to estimate marine mammal exposures to sound considered each species' hearing range and their location and environment. Acoustic propagation was modeled in

57 representative locations, 13 of which were located in the Alaska Region, to account for differences in sound propagation based on location. See Figure 2 of Appendix E: Technical Acoustic Analysis of Oceanographic Surveys for the acoustic modeling locations.

**Cumulative Impacts-5:** Further, NOS must fully evaluate the disproportionate impacts of climate change on Arctic marine mammal species and stocks and their habitat, as well as the unprecedented foreseeable industrial development, as part of the cumulative impacts analysis.

**NOS Response:** Increases in commercial shipping, recreational boating, and other vessel traffic in the Alaska region as a result of decreasing seasonal sea ice coverage due to climate change and coastal development are considered in the cumulative scenario in Section 4.1.5 and 4.1.12 of the Final PEIS, with general climate change trends discussed in Section 4.1.4. In the Final PEIS, Section 4.2.2.4, Alteration of Marine Mammal Habitat, has been revised to discuss increased relative cumulative impacts from climate change to marine mammals in the Alaska Region.

**Mitigation Measures-16:** For mitigation purposes, and in addition to the recommendations outlined in Section IV, NOS should consider limiting survey activities in the Arctic region overall and set more protective noise limits and stricter procedural mitigation measures for any survey activities that are undertaken.

**NOS Response:** Alaskan and U.S. Arctic waters, more of which are becoming navigable given the changing sea ice conditions, are especially important survey targets. NOS projects in the Arctic collect valuable information on seafloor depths for the development of new and updated nautical charts allowing for safe navigation as well as informing the discovery of historic artifacts and natural resource habitat mapping.

Surveying vessels and equipment are designed to minimize noise, and NOS uses the lowest appropriate power and ping rate for its acoustic sources while gathering data.

NOS will adhere to the additional mitigation measures developed in coordination with NMFS and USFWS. Mitigation measures include maintaining safe distances from marine mammals achieved by decreasing vessel speeds, vessel maneuvering, and observing time-area restrictions in specific protected species habitats (e.g., North Atlantic right whale). Timing of a given project may be limited by seasonal environmental conditions of its location. For example, projects in the Arctic or Bering Sea typically take place between June and September to avoid dangerous, icy conditions.

At the request of NMFS, NOS will contact NMFS Alaska Regional staff prior to using any echosounders under 180 kHz in all areas north of the Forelands in Cook Inlet, Alaska.

**NEPA Process-11:** No mitigation measures for marine mammals are included in the Draft PEIS. Rather, as the “analysis concludes that the Proposed Action is not anticipated to result in significant impacts for any resource [...] NOS has not proposed a discrete set of mitigation measures...”<sup>47</sup> Additional mitigation measures and best management practices (“BMPs”) are expected to be developed through various interagency consultation as well as through public comment and “will be considered as part of the analysis in the Final EIS.” The predetermination by NOS that the Proposed Action is “not anticipated to result in significant impacts for any

resource” prior to consultation and public comment, as well as the lack of inclusion of any mitigation measures in the Draft PEIS for evaluation by the public, fails to satisfy the requirement for sufficient notice and comment set forth under NEPA.

**NOS Response:** The Final PEIS has been updated to include additional mitigation measures developed through interagency coordination and consultations and information received through public comment. Although the Draft PEIS did not include a discrete set of mitigation measures, NOS did include best management practices as part of the Proposed Action as explained in Section 3.2.3. These BMPs were discussed in the effects analysis where relevant, such as avoiding bottom sampling on coral reefs, shipwrecks, obstructions, or hard bottom areas and ensuring that all instruments placed in contact with the sea floor are properly secured to minimize bottom disturbance.

The Draft PEIS explained that regulatory agencies, including those with jurisdiction over marine mammals, may request or require additional mitigation measures that are necessary or prudent under other laws, such as the ESA or MMPA.

Following publication of the Draft PEIS, NOS initiated interagency consultations under the ESA, MSA, and NMSA. NOS also submitted applications for incidental take authorizations under the MMPA. Through this process, additional mitigation measures were identified to further minimize the impacts of project activities on sensitive species. These mitigation measures have been incorporated into the effects analysis in the appropriate resource sections of the Final PEIS. The full list of mitigation measures is included as Appendix D to the Final PEIS.

The incorporation of additional mitigation measures in the Final PEIS as a result of interagency coordination does not represent a significant change to the Proposed Action or new information relevant to environmental concerns and therefore, per 40 CFR 1502.9(d)(4), NOS is not required to publish a supplement to the Draft PEIS. Additional mitigation measures incorporated into the Final PEIS generally result in a reduction of any adverse environmental impacts previously analyzed.

**Mitigation Measures-17:** We also recommend NOS, and NOAA Fisheries, work to advance a robust and effective near real-time monitoring and mitigation system for endangered and protected species and stocks of large whales that will be more responsive to ongoing dynamic distributional shifts resulting from climate change, as well as provide more flexibility in the survey window. There are several technologies in various stages of development that would allow near real-time detection of large whales and convey that information to decision-makers, and near real-time monitoring systems are already being deployed to mitigate risks to some species, including the North Atlantic right whale. We recommend NOS invest in and coordinate with NOAA Fisheries and other relevant agencies, experts, and stakeholders, to develop a near real-time large whale monitoring and mitigation system. The system should be capable of detecting and alerting vessels, stationary platforms, and enforcement agencies of the location of large whales on a near real-time basis, informing sector-specific mitigation protocols that can effectively reduce take of large whales, and continually integrate improved technology. The development of the system could begin with a pilot program that incorporates all the necessary precautions (e.g., vessel speed limit of 10 knots) focused on the critically endangered North Atlantic right whale and then be expanded to other whales and geographies once the approach is tested and proven.

**NOS Response:** NOS agrees that real-time whale detection and notification systems are important tools, particularly for reducing vessel strikes of large whales. NOS checks with various communication media for general information regarding avoiding ship strikes and specific information regarding North Atlantic right whale sighting locations. These include NOAA weather radio, U.S. Coast Guard NAVTEX broadcasts, and Notices to Mariners.

NOS has developed additional mitigation measures through the interagency consultation process. Mitigation measures include maintaining safe distances from marine mammals achieved by decreasing vessel speeds, vessel maneuvering, and observing time-area restrictions in specific protected species habitats (e.g., North Atlantic right whale).

**Mitigation Measures-18:** Underwater noise levels should be minimized to the full extent practicable

The Draft PEIS sets no requirement to minimize the impacts of underwater noise through the use of best available technology and other methods to minimize sound levels from geophysical surveys.

According to NOAA’s “Ocean Noise Strategy Roadmap:”

“[W]here noise is concerned, mitigation should be broadly designed to do one of two things: (1) reduce the temporal or spatial overlap of ensonified areas with marine taxa (or acoustic habitat) in particular times, places or circumstances, and/or (2) reduce the sound level at the source (which may include replacing the source with a different type of source capable of the same function).”

**NOS Response:** The mapping and surveying program is consistent with NOAA’s Ocean Noise Strategy Roadmap because mitigation measures will reduce the temporal or spatial overlap of ensonified areas with marine taxa (or acoustic habitat) in particular times, places, or circumstances, such as pre-survey coordination with the NMFS Alaska Region before conducting projects using HRG sources in all areas north of the Forelands of Cook Inlet, Alaska. NOS considers the project objectives to determine the best-suited equipment and protocols. Additionally, whenever possible, the location and timing of a given project would be purposefully coordinated to ensure that areas are not repeatedly surveyed by NOS. NOS has a responsibility to gather data necessary for nautical charts and other public data products, with consideration for the human environment. Surveying vessels and equipment are designed to minimize noise, and NOS uses the lowest appropriate power and ping rate for its acoustic sources while gathering data. These sources are expected to have minimal impacts on marine mammals and other protected resources. Mitigation measures include the use of PSOs at all times while in transit or on-project.

**Proposed Action-3:** NOS should select HRG survey systems, and operate those systems at power settings, that achieve the lowest practicable source level for the objective. NOS should also minimize sound levels from the proposed survey activities to the fullest extent feasible using best available technologies and methods.

**NOS Response:** Appropriate equipment selection is discussed in Section 2.2 of the PEIS. The responsible NOS program office considers the goals and purpose of a given project and determines the specific equipment and protocols which would be best-suited to accomplish the task. NOS has a responsibility to gather data necessary for nautical charts and other public data products, with consideration for the human environment. Surveying vessels and equipment are designed to minimize noise, and NOS uses the lowest appropriate power and ping rate for its acoustic sources while gathering data.

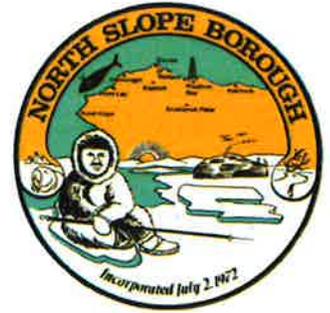
## **2.22 North Slope Borough (Harry K. Brower, Jr.)**

### **2.22.1 *Comment Submission***

# North Slope Borough

## OFFICE OF THE MAYOR

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*Harry K. Brower, Jr. Mayor*

August 4, 2021

Giannina DiMaio  
DOC/NOAA/NOS Environmental Compliance Coordinator  
SSMC4-Station 13612  
1305 East West Highway  
Silver Spring, MD 20910

**Re: Notice of Availability of a Draft Programmatic Environmental Impact Statement for Surveying and Mapping Projects in U.S. Waters for Coastal and Marine Data Acquisition**

Dear Ms. DiMaio:

The North Slope Borough (Borough) requests NOAA to extend the comment period for the Draft Programmatic Environmental Impact Statement for Surveying and Mapping Projects in U.S. Waters for Coastal and Marine Data Acquisition (EIS) from August 24, 2021 to November 24, 2021. The Borough is a regional municipal government spanning the North Slope of Alaska, an area covering 89,000 square miles, stretching from the United States-Canadian border across to the western border of Alaska, with a coastline that extends along the Beaufort and Chukchi Seas. Five of our communities are located directly on the Arctic coast, while residents of a sixth, Nuiqsut, access the waters of the Beaufort Sea via the Colville River.

The surveying activities described in this EIS are of great concern to us as our communities participate in, and are dependent upon, the subsistence harvest of bowhead whales and a host of other marine mammals. Marine activities during specific time periods have a high potential to disrupt bowhead whale migrations, the migrations and movements of other species, and to negatively impact subsistence harvests critical to the welfare of our communities and residents. For this reason, most industrial and governmental operations in the Beaufort and Chukchi Seas coordinate closely with the North Slope Borough Department of Wildlife Management (Wildlife Department), the Alaska Eskimo Whaling Commission, and other marine mammal user groups to prevent and reduce the impacts of such activities.

Our Wildlife Department has experts in oceanography, marine mammals and other resources, and the subsistence patterns and needs of our communities. We have substantial experience working with government agencies, industry, academic institutions, and local communities and groups on effective mitigation measures concerning marine activities, including vessel traffic, acoustic monitoring, disaster response and pollution issues. As a result, the Borough has a significant amount of knowledge and expertise to contribute to the analysis in this EIS.

The next few months, August to October, are a particularly busy time for the Borough Wildlife Department and whaling community because the fall whaling season is starting soon. Our residents and many relevant personnel are already busy preparing for this hunting season. The Wildlife Department is involved with scientific activities during these hunts. Therefore, our personnel who would be commenting on this EIS will likely be preoccupied during this period.

Moreover, at this time, it is unclear what activities are planned for our region. We would like more time to consult with National Ocean Service personnel to learn more about this issue in order to provide more useful comments. We also suggest that NOS staff reach out directly to the AEWG and the other potentially impacted marine mammal user groups concerning this planning effort. Accordingly, we believe that additional time is needed to adequately comment on this EIS.

Thank you for your consideration of this request.

Sincerely,

  
Harry K. Brower, Jr.  
Mayor

### 2.22.2 *NOS Response*

**NEPA Process-8:** The North Slope Borough (Borough) requests NOAA to extend the comment period for the Draft Programmatic Environmental Impact Statement for Surveying and Mapping Projects in U.S. Waters for Coastal and Marine Data Acquisition (EIS) from August 24, 2021 to November 24, 2021.

**NOS Response:** After receiving your comment, NOS extended the original 60-day public comment period deadline by 90 days from August 24, 2021 to November 22, 2021 to accommodate the Alaskan subsistence hunting and fishing community (86 FR 47299).

**Environmental Justice-11:** The surveying activities described in this EIS are of great concern to us as our communities participate in, and are dependent upon, the subsistence harvest of bowhead whales and a host of other marine mammals. Marine activities during specific time periods have a high potential to disrupt bowhead whale migrations, the migrations and movements of other species, and to negatively impact subsistence harvests critical to the welfare of our communities and residents. For this reason, most industrial and governmental operations in the Beaufort and Chukchi Seas coordinate closely with the North Slope Borough Department of Wildlife Management (Wildlife Department), the Alaska Eskimo Whaling Commission, and other marine mammal user groups to prevent and reduce the impacts of such activities.

**NOS Response:** NOS will coordinate with tribes and subsistence hunters and fishers prior to conducting projects in subsistence hunting areas. NOS will also work with the NOAA Alaska Regional Navigation Manager to provide Alaskan communities with information on upcoming surveying projects to avoid or minimize interference with traditional hunting and fishing for subsistence uses. Through this communication strategy, NOS would minimize the potential for adverse impacts on subsistence communities, food security, and the safety of hunters.

NOS intends to notify individual tribes and ANCs pursuant to EO 13175 before conducting any project that may have tribal implications. Federally recognized tribes may request formal government-to-government consultation pursuant to EO 13175 at any time.

**Alaska-2:** Moreover, at this time, it is unclear what activities are planned for our region.

**NOS Response:** NOS determined that a programmatic approach was appropriate because NOS conducts, authorizes, permits, and funds a suite of similar, ongoing data collection activities associated with recurring projects across a wide geographic area to characterize underwater features (e.g., habitat, bathymetry, marine debris). This Final PEIS is a comprehensive document that provides detailed programmatic effects analyses for surveying and mapping data collection activities based on regional conditions, habitat types, species, and other factors. However, the Final PEIS does not identify the specific time or place for individual projects or activities over the next five years. The analysis will be used to inform NOS leadership and the public on the environmental impacts of these activities before a decision is made on how to execute each project. All projects will require a project-specific review by NOS before proceeding.

Specific project locations are determined annually for the upcoming surveying season. NOS will coordinate with tribes and subsistence hunters and fishers prior to conducting projects in subsistence hunting and fishing areas. NOS will also work with the NOAA Alaska Regional Navigation Manager to provide Alaskan communities with information on upcoming surveying projects to avoid or minimize interference with traditional hunting and fishing for subsistence uses. Through this communication strategy, NOS would minimize the potential for adverse impacts on subsistence communities, food security, and the safety of hunters.

NOS intends to notify individual tribes and ANCs pursuant to EO 13175 before conducting any project that may have tribal implications. Federally recognized tribes may request government-to-government consultation at any time for a proposed action that may have tribal implications. NOS will also initiate project-specific consultations under Section 106 of the NHPA before commencing any activity with the potential to affect cultural or historic resources.

**Future Coordination-7:** We also suggest that NOS staff reach out directly to the AEWG and the other potentially impacted marine mammal user groups concerning this planning effort.

**NOS Response:** NOS will also work with the NOAA Alaska Regional Navigation Manager to provide Alaskan communities with information on upcoming surveying projects to avoid or minimize interference with traditional hunting and fishing for subsistence uses. Through this communication strategy, NOS would minimize the potential for adverse impacts on subsistence communities, food security, and the safety of hunters.

## **2.23 North Slope Borough and Alaska Eskimo Whaling Commission (Harry K. Brower, Jr. and John Hopson, Jr)**

### ***2.23.1 Comment Submission***



## ALASKA ESKIMO WHALING COMMISSION

November 22, 2021

Giannina DiMaio  
DOC/NOAA/NOS  
Environmental Compliance Coordinator  
SSMC4-Station 13612  
1305 East West Highway  
Silver Spring, MD 20910

Via email: [nosaa.ec@noaa.gov](mailto:nosaa.ec@noaa.gov)

**Re: Notice of Availability of a Draft Programmatic Environmental Impact Statement for Surveying and Mapping Projects in U.S. Waters for Coastal and Marine Data Acquisition**

Dear Ms. DiMaio:

Please accept these comments on behalf of the Alaska Eskimo Whaling Commission (AEWC) and the North Slope Borough (NSB or Borough) for the Draft Programmatic Environmental Impact Statement for Surveying and Mapping Projects in U.S. Waters for Coastal and Marine Data Acquisition (DPEIS) developed by the National Oceanic and Atmospheric Administration (NOAA) National Ocean Service (NOS).<sup>1</sup> We appreciate that NOAA extended the comment period to allow adequate time for review.

As the regional government for the Alaskan Arctic and as hunters on the water, we understand the importance of having good maps for our region, for the safety of all vessels. However, the surveying activities described in this DPEIS are of great concern to us as our communities participate in, and are dependent, on subsistence hunting of a wide range of marine life, including the bowhead whale. Marine activities that include vessel traffic and noise during specific time periods have a high potential to disrupt bowhead whale migrations. This may put our hunters' safety at risk and negatively impact our food security.

It is particularly challenging to understand the potential impacts when this DPEIS has broad goals,<sup>2</sup> and lack of specifics for our region.<sup>3</sup> It makes it nearly impossible to provide a more

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<sup>1</sup> 86 FR 33663.

<sup>2</sup> "Draft PEIS has been prepared to: 1) inform NOS and the public on the physical, biological, economic, and social impacts of NOS mapping and surveying projects; and 2) assist NOS in deciding how to execute its mapping and surveying program over the next six years." National Ocean Service. DPEIS, Executive Summary at 1.

<sup>3</sup> This "would include surveys performed from crewed, remotely operated, or autonomous vessels operated by NOS field crews, other NOAA personnel on behalf of NOS, contractors, grantees, or permit/authorization holders. These

detailed analysis of the impacts to the bowhead whales, to other important marine mammals and to our food security. For these reasons, NSB and AEWK expect continued consultation with NOAA and NOS as this Program is implemented and before any of the surveys or mapping projects move forward in the Arctic.

### **About The North Slope Borough**

The Borough is the recognized unit of local government spanning the North Slope of Alaska, an area covering 89,000 square miles, with a coastline that extends along the Beaufort and Chukchi Seas. Within this area, the Borough is responsible for a variety of municipal activities, including planning, zoning, environmental protection, wildlife management, and the construction, operation, and maintenance of facilities and other infrastructure necessary to provide services to residents in its eight communities.

The Borough's population is comprised primarily (~80%) of Alaska Natives (the Iñupiat), who, for thousands of years, have relied on subsistence resources for their physical and cultural health. Traditional foods are far more nutritious than many types of imported "store-bought" food, and their continued consumption has repeatedly been shown to be critical to the health of our people. Furthermore, the social fabric of the Iñupiat revolves around subsistence and food sharing traditions. All of our communities, whether through direct harvest or extensive sharing networks, utilize the full range of traditional subsistence resources that abound in the Arctic.

The Borough has adopted a Code of Ordinances that explicitly provides for cooperative management of North Slope wildlife resources. The Borough's Department of Wildlife Management (NSB-DWM) facilitates sustainable subsistence harvests and monitors the population and health of fish and wildlife species. This is accomplished through regular research, cooperation and collaboration with Federal land and wildlife management agencies, the State of Alaska, academic institutions, Indigenous co-management organizations, and other stakeholders. As a result, the Borough has a significant amount of knowledge and expertise on conducting Arctic research and providing scientific expertise to land and natural resource managers.

### **About the AEWK**

The AEWK is a non-profit organization representing Alaska Native Subsistence Whaling Captains in Northern coastal Alaska. AEWK represents the 11 bowhead whale subsistence hunting villages of Utqiagvik (Barrow), Nuiqsut, Kaktovik, Pt. Hope, Kivalina, Wales, Savoonga, Gambell, Little Diomedea, Wainwright and Pt. Lay. Our Whaling Captains and communities rely on the subsistence harvest of bowhead whales and other marine mammals in or adjacent to the Beaufort and Chukchi Seas. Importantly, our hunters also share the fruits of our

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crews and vehicles may use echo sounders and other active acoustic equipment and employ other equipment, including bottom samplers and conductivity, temperature, and depth instruments to collect the needed data." *Id.*

harvest beyond our 11 communities, with Alaskan Native families and communities through the state.<sup>4</sup>

On behalf of our Whaling Captains, the AEWG is responsible for protecting the bowhead whale and the bowhead whale subsistence harvest, based on our thousands of years of traditional knowledge about our Arctic ecosystems. The AEWG has many decades of experience partnering directly with Federal agencies, NSB, and offshore and nearshore operators. Through these partnerships, the AEWG works to ensure that oil and gas activities in the Arctic avoid conflicts with our subsistence activities and mitigate potential adverse impacts to the bowhead whale. The AEWG has managed and protected our critical bowhead whale, its habitat, and our subsistence harvest for 40 years, pursuant to the NOAA-AEWG Cooperative Agreement,<sup>5</sup> and under delegated Tribal authority of the Inupiat Community of the Arctic Slope and our 11 federally-recognized Alaska Native Villages.

### **Work with Federal Agencies, including NOAA**

As you know, most industrial and governmental operations in the Beaufort and Chukchi Seas coordinate closely with the AEWG and NSB-DWN to prevent and reduce the impacts of such activities. At times, the AEWG has had great coordination with NOAA and the National Marine Fisheries Service (NMFS) under our Co-Management Agreement for the bowhead whale. The AEWG has also worked well with the Office of Coast Survey at times, such as the recent autonomous sailing vessels, called “Saildrones” project. In 2020, adjustments were made to the surveys based on changed ice conditions to honor buffers around our communities during the fall harvest in Kaktovik, Nuiqsut and Utqiagvik (Barrow). (more below)

However, at times, we have also been extremely disappointed by our federal agency partners. The DPEIS highlights NOAA’s communication and consultation efforts as a means for mitigation of the surveys impacts.<sup>6</sup> And the Biden Administration has announced additional plans for meaningful consultation with Tribes and Native communities. Yet as recently as September 2021, NOAA failed to contact the AEWG to participate in the Alaska Spatial Priorities Survey.

These communication and consultation efforts are necessary and must be mandatory for all phases of these Projects. These surveys and other vessel traffic can impact our lives and

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<sup>4</sup> See, e.g., S. B. BurnSilver, *et al.*, “Are Mixed Economies Persistent or Transitional? Evidence using social networks from Arctic Alaska”, *American Anthropologist* 118(1):121-129 (2016) available at <https://anthrosource.onlinelibrary.wiley.com/doi/abs/10.1111/aman.12447>.

<sup>5</sup> The Agreement was first signed in 1981 and updated every year since. This agreement was won by our Elders through litigation against the Department of Commerce after the U.S.’s initial acquiescence in the IWC’s 1977 efforts to deny us our rights to harvest food, in the face of intense pressure from the regulatory regime of the International Whaling Commission (IWC). This organization was founded in 1946 to manage the commercial exploitation of whale stocks. However, since 1977, the IWC has subjected our subsistence harvest to first a moratorium, and currently a politically motivated quota and unfunded mandates that intentionally suppress and complicate our ability to provide food to our communities.

<sup>6</sup> At 469-470

livelihoods. The specific surveys conducted under this Program must be implemented in a way that ensures our continued food security and the safety of our hunters.<sup>7</sup>

### **Conflict Avoidance Agreement**

The AEWK recognizes that NOAA is familiar with our Conflict Avoidance Agreement (CAA), as it is recognized by NMFS and other federal agencies in various regulatory processes.<sup>8</sup> The CAA and the collaborative Process by which it is signed each year are critical to the AEWK's ability to protect the whale, our hunters, and our communities' food security, while facilitating environmentally sound resource development. This CAA Process has worked well, especially for companies that are new to the Arctic. It provides a collaborative process for consultation for the different surveys, enabling us to educate the vessel operators on the need for mitigation measures not needed in other regions, and in many instances, our participation has helped the operator improve the surveys.

These annual consultations and adaptive management approach are particularly important in the Arctic marine environment, where tremendous and unprecedented environmental changes are occurring. With changes in spring ice conditions, fall whaling is becoming more important in some of our villages along the Chukchi and Bering Seas. And vessel traffic is increasing in the Bering Strait and the Arctic. These changing circumstances underscore the need for ongoing reliance on adaptive management. Incorporating an adaptive process provides both the stakeholders and the agency an effective means of addressing new information and changed circumstances in the context of specific industrial operations planned for a given year.

### **Consultation Must Continue**

As NOAA develops this survey program, it must require the same level of in-depth consultation with our communities. Our hunters are the experts in ice condition and location of marine mammals. Our hunters are also on the water, and extra noise from survey vessels can greatly impact our food security.

We encourage NOAA as it develops the Survey programs, and obtains its necessary permits, to include other provisions as mitigation including: the use of communication centers to communicate with our villages; time-area closures to protect subsistence hunting activities in the Beaufort Sea; limitations on discharges in subsistence hunting grounds; vessel transit guidelines, including speed restrictions; and monitoring and reporting requirements. These measures are relatively non-controversial and have relevance to activities throughout the bowhead whale migratory and subsistence hunting areas.

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<sup>7</sup> Executive Order 13175; Presidential Memorandum of Jan. 26, 2021 on "Tribal Consultation and Strengthening Nation-to-Nation Relationships", 86 FR 7491.

<sup>8</sup> It has also been adopted by the Federal Energy Regulatory Commission (FERC) in its permitting. *See, e.g.*, "Order Granting Authorization Under Section 3 of the Natural Gas Act", Alaska Gasline Development Corporation, Docket No. CP17-178-000, 171 FERC ¶ 61,134, ¶ 199, (May 21, 2020), "prior to construction, AGDC would file with the Commission . . . a signed Conflict Avoidance Agreement prepared in coordination with NMFS and the Alaskan Eskimo Whaling Commission."

We would like to highlight one positive incident. In the summer of 2020, the Office of Coast Survey launched Autonomous Sailing Vessels (“Saildrones”). These were monitored by AEW and NSB-DWM with daily emails on positions. In August, the AEW formally requested that the instruments be turned off, which was done immediately. The saildrones traversed east past Kaktovik with the sounders turned off, before returning west to complete the survey after the whales had migrated and hunting was completed. The number of vessels was also reduced, in certain areas from four saildrones down to two. These actions showed us that the agency listens and is willing carry out a shutdown upon request and work collaboratively with the hunters. We would like to know whether this type of action will be honored in the future, especially in relation to larger, manned ships? From recent conversations between NSB-DWM and NOS and AEW and NOS, we believe the answer is “yes”; however, we want to be clear and upfront: are there limits to when, where, and duration of shutdowns that NOS would not comply? We know that is a very general question; however, the DPEIS is general in nature, so we require an answer.

### **Impacts to Subsistence Harvests from Surveys are Unacceptable**

In reviewing the document, the analysis of the Alternatives is very generalized and broad. For each Alternative, NOAA provides some generalized numerical statistics on the impacts to bowhead whales for the analysis.<sup>9</sup> There is additional information in the Appendices. However, without more information on the timing and specific equipment, it is impossible to determine the direct impact to the bowhead whales and other marine mammals of concern, the indirect impacts through deflection from the migration path, and the potential impacts to our subsistence.

The DPEIS specifically notes this difficulty and the potential for impacts to the harvest. In several places, it says the magnitude of impact would depend on vessel speed, size, location, frequency, and pattern of travel, as well as the timing of the activities and the degree of overlap with our hunt. It also specifically states:

Subsistence harvests in the marine environment could be disrupted, prolonged; or subsistence resources could be unavailable for use. Communities which are primarily dependent on marine mammals for subsistence, such as the bowhead harvesters of northern and western Alaskan villages, would be especially impacted. Subsistence users may be required to travel farther to harvest subsistence foods at a greater cost in terms of time, fuel, wear and tear on equipment and people, and lost wages. A decline in the harvest efficiency of marine resources would likely lead to an increase in hunting pressure on terrestrial wildlife, and to an increase in competition and territorial conflicts among subsistence harvesters (BOEM, 2015b).<sup>10</sup>

This is unacceptable. Our food security cannot be put at risk for these surveys.

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<sup>9</sup> See, DPEIS at Table 3.5-10; Table 3.5-17; Table 3.5-24.

<sup>10</sup> Sec. 4.2.10.1, page 572.

From our experience and as discussed above with the CAA, we know there are ways to mitigate the harms. These conversations need to take place **before** any surveys are developed to get input from the communities that will be directly impacted.

Ultimately, without more details on the timing, location and extent of the surveys, it is difficult to see how NOAA has reached the conclusion that impacts on subsistence could be minimal or insignificant.

### **Hunting Restrictions?**

In Section 3.13.2.2.1, the DPEIS refers to our subsistence harvest and talks about “restricted hunting seasons” or “restrictions on hunting seasons.” We wish to clarify NOAA’s intent. Specifically, it says:

The magnitude of the impacts would depend on the degree of overlap between the hunting season and the activities, with greater adverse impacts on EJ communities that rely on species with *restricted hunting seasons*. Survey and whaling seasons are bound to overlap due to safety and weather considerations, therefore it would not be practicable for NOS to avoid surveying activities during all subsistence hunting seasons. Increased hunting time coupled with *restrictions on hunting seasons* could potentially decrease harvest numbers.<sup>11</sup>

This language is disturbing, and hopefully inaccurate. The bowhead harvest is highly regulated with a quota allocated from the IWC, and through our work with NOAA as a Co-Management Partner. It is also based on the timing of the migration of the bowhead whale. However, NOAA has not outlined any restrictions on the timing of our harvest. We have fought for decades to maintain our hunting rights and seek adequate numbers to feed our communities across Alaska. We would expect NOAA to adjust its surveys – and not have NOAA place any additional restrictions on the hunters.

### **Specific comments on the DPEIS**

In reviewing the document, we wish to point out a few inaccurate statements regarding our subsistence hunting.

The description on page 443 about Figure 3.13-2 is a bit inaccurate. The first sentence says, “Figure 3.13-2 shows the AEW C spring and fall hunting areas in red.” But the red color is defined on the map as “AEWC Hunting and Search Areas”, which would be across all seasons. This should be corrected.

We also wish to correct this sentence from the DPEIS which says: “Over the years, bowhead hunters have incorporated modern technologies such as darting and shoulder guns for improved efficiency and humane hunting.” Through mandates from the International Whaling Commission, the AEW C has been required to adapt its techniques. However, the darting gun and

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<sup>11</sup> DPEIS 3.13.2.2.1 at 467 (emphasis added).

shoulder gun are 19<sup>th</sup> century technology with only slight modifications since then making this sentence inaccurate.<sup>12</sup>

In the cumulative impacts assessment, NOS should include the impacts from other research traffic in the Arctic. In addition, Table 4.1-7 on current Offshore Oil & Gas Projects in the Arctic may need some revisions to reflect that Hilcorp is operating Northstar, and the Liberty Project may be on hold.<sup>13</sup> Section 4.1.8 on Liquefied Natural Gas projects is missing any reference to the Alaska LNG Project which has secured permits.

### **NOAA's Preferred Alternative**

In the DPEIS, there are three alternatives: 1) No Action Alternative, Alternative A, which is status quo of similar research effort to 2019; 2) Alternative B involves Equipment Upgrades, Improved Hydroacoustic Devices, and New Tide Stations; and 3) Alternative C includes the same Upgrades and Improvements with Greater Funding Support. We appreciate that Alternative B is NOAA's preferred Alternative.

The NSB and AEWG generally want to support the use of newer technologies, that may be more efficient and may achieve greater accuracy. However, NOAA must ensure the choice of equipment is well-suited to the task, and each survey is done in the least disruptive manner to the bowhead whale and our hunts, and is adequately analyzed to ensure proper mitigation measures are in place, including necessary time and area closures around our communities.

We also would appreciate Alternative C, to include additional funding. This funding could help NOAA in its outreach to our communities. We also hope to see a mechanism where this funding would be made available to the impacted communities to support the co-production of knowledge and the amount of time and resources that are required for our organizations to engage in consultation. This could enable our communities and our hunters to participate early in the process, including in developing the studies and answering questions related to the impacts of the technology in our waters.

### **Freshwater**

It has been brought to the attention of AEWG and NSB-DWM that freshwater surveys and mapping will not be conducted in Alaska. We would like confirmation of this.

### **Density Estimation**

Table 3.5-10<sup>14</sup> provides the barest of information on how "Total Exposures" were calculated. In fact, the definition of Total Exposures, noted with an asterisk, is difficult to understand: "Measured as the predicted probability of exposure and interpreted as the percentage of the

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<sup>12</sup> To learn more, please visit, AEWG, Weapons Improvement Program, <http://www.aewg-alaska.org/wip.html>.

<sup>13</sup> <https://www.alaskapublic.org/2020/12/07/federal-court-rejects-approval-for-hilcorps-liberty-project/>

<sup>14</sup> DPEIS at 162.

population expected to exceed threshold”.<sup>15</sup> We would like clearer definition, and in the text, please provide sufficient information on the assumptions used in the model to determine these values. While the overall document refers to Appendices, these are not in the DPEIS.

Upon receiving the appendix entitled Technical Acoustic Analysis of Oceanographic Surveys for the National Ocean Service: Underwater Acoustic Modeling Oceanographic Survey Sounds and Animal Exposure Modeling from Giannina DiMaio, which we appreciate, we note that Table 4 includes many species of concern, including bowhead and beluga whales. Based on the listed publication from which densities are estimated (NOAA and USFWS Stock Assessments Reports, 2014, 2017-2019), we suspect that the authors are assuming that marine mammal densities are equal across their range; however, studies of marine mammal densities indicate that there are core use areas that are occupied seasonally. If the authors of the DPEIS are assuming that marine mammal densities are constant across their range, marine mammal density will be over-estimated across large areas while under-estimated within critical use areas. Hence, it is likely that the density of marine mammals is biased low within their core use areas, leading to an estimate of Total Exposures that is also biased low. We are requesting clarification of how total exposure was estimated and would like to see the density maps used to calculate total exposure. Knowing and recalculating Total Exposures will not only assist in your successful completion of this laudable project but also provide further evidence to us of your willingness to listen and use local and traditional knowledge. Data based on tagged species should be evaluated by NOS. A recent resource to consult is George, John C., and J.G.M. 'Hans' Thewissen, ed. *The bowhead whale: Balaena mysticetus: Biology and human interactions*. Academic Press, 2020. See also Citta et al. (2018) A multi-species synthesis of satellite telemetry data in the Pacific Arctic (1987–2015): Overlap of marine mammal distributions and core use areas. *Deep-Sea Research Part II* 152:132–153. <https://doi.org/10.1016/j.dsr2.2018.02.006>.

### Conclusion

Thank you for the opportunity to provide these comments. NOAA must engage in further consultation and communication with the NSB and AEWK as it develops the Final Programmatic EIS, through the development of Incidental Take Regulations and Letters of Authorization, and as the Program is implemented with surveys in Alaska. The Alternative selected and the Program as implement must enable NOAA to achieve its goals, with minimal disruption to our subsistence hunt, and maximum participation by our communities in the process.

Sincerely,



Harry K. Brower, Jr. Mayor  
North Slope Borough



John Hopson, Jr., Chairman  
Alaska Eskimo Whaling Commission

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<sup>15</sup> *Id.* at 165.

**cc:** AEWG Commissioners  
Taulik Hepa, NSB Department of Wildlife Management  
Gordon Brower, NSB Department of Planning & Community Services  
Voice of the Arctic Inupiat  
Inupiat Community of the Arctic Slope



### 2.23.2 *NOS Response*

**NEPA Process-1:** We appreciate that NOAA extended the comment period to allow adequate time for review.

**NOS Response:** Thank you for your support of the extended comment period.

**Environmental Justice-1:** As the regional government for the Alaskan Arctic and as hunters on the water, we understand the importance of having good maps for our region, for the safety of all vessels. However, the surveying activities described in this DPEIS are of great concern to us as our communities participate in, and are dependent, on subsistence hunting of a wide range of marine life, including the bowhead whale. Marine activities that include vessel traffic and noise during specific time periods have a high potential to disrupt bowhead whale migrations. This may put our hunters' safety at risk and negatively impact our food security.

**NOS Response:** Thank you for your comment. NOS understands the NSB and AEWC concerns for possible effects on subsistence, food security, and safety. NOS activities are conducted with the highest regard to health and safety, including the safety of subsistence hunters. NOS understands that protecting Alaska Native subsistence resources is vital and is committed to ongoing communication with NSB and AEWC about projects that are proposed in bowhead whale habitat and subsistence hunting areas.

Specific project locations are determined annually for the upcoming surveying season. NOS will coordinate with tribes and subsistence hunters and fishers prior to conducting projects in subsistence hunting areas. NOS will also work with the NOAA Alaska Regional Navigation Manager to provide Alaskan communities with information on upcoming surveying projects to avoid or minimize interference with traditional hunting and fishing for subsistence uses. Through this communication strategy, NOS would minimize the potential for adverse impacts on subsistence communities, food security, and the safety of hunters.

NOS intends to notify individual tribes and ANCs pursuant to EO 13175 before conducting any project that may have tribal implications. Federally recognized tribes may request formal government-to-government consultation pursuant to EO 13175 at any time.

**Proposed Action-1:** It is particularly challenging to understand the potential impacts when this DPEIS has broad goals, and lack of specifics for our region. It makes it nearly impossible to provide a more detailed analysis of the impacts to the bowhead whales, to other important marine mammals and to our food security.

**NOS Response:** NOS recognizes the importance of subsistence hunting of marine mammal species such as the bowhead whale. NOS will work with the NOAA Alaska Regional Navigation Manager to provide Alaskan communities with information on upcoming surveying projects to avoid or minimize interference with traditional hunting and fishing for subsistence uses.

Federally recognized tribes and ANCs may request formal government-to-government consultation pursuant to EO 13175 at any time.

NOS determined that a programmatic approach under NEPA was appropriate because NOS conducts, authorizes, permits, and funds a suite of similar, ongoing data collection activities associated with recurring projects across a wide geographic area, including Alaskan and U.S. Arctic waters, to characterize underwater features (e.g., habitat, bathymetry, marine debris).

**Future Coordination-1:** For these reasons, NSB and AEWG expect continued consultation with NOAA and NOS as this Program is implemented and before any of the surveys or mapping projects move forward in the Arctic.

**NOS Response:** NOS is committed to continued engagement with the AEWG and NSB. Specific project locations are determined annually for the upcoming surveying season. NOS will coordinate with tribes and subsistence hunters and fishers prior to conducting projects in subsistence hunting and fishing areas. NOS will also work with the NOAA Alaska Regional Navigation Manager to provide Alaskan communities with information on upcoming surveying projects to avoid or minimize interference with traditional hunting and fishing for subsistence uses. Through this communication strategy, NOS would minimize the potential for adverse impacts on subsistence communities, food security, and the safety of hunters.

NOS intends to notify individual tribes and ANCs pursuant to EO 13175 before conducting any project that may have tribal implications. Federally recognized tribes may request formal government-to-government consultation pursuant to EO 13175 at any time.

**Environmental Justice-2:** At times, the AEWG has had great coordination with NOAA and the National Marine Fisheries Service (NMFS) under our Co-Management Agreement for the bowhead whale. The AEWG has also worked well with the Office of Coast Survey at times, such as the recent autonomous sailing vessels, called “Saildrones” project. In 2020, adjustments were made to the surveys based on changed ice conditions to honor buffers around our communities during the fall harvest in Kaktovik, Nuiqsut and Utqiagvik (Barrow). (more below)

However, at times, we have also been extremely disappointed by our federal agency partners. The DPEIS highlights NOAA’s communication and consultation efforts as a means for mitigation of the surveys impacts. <sup>6</sup> And the Biden Administration has announced additional plans for meaningful consultation with Tribes and Native communities. Yet as recently as September 2021, NOAA failed to contact the AEWG to participate in the Alaska Spatial Priorities Survey.

These communication and consultation efforts are necessary and must be mandatory for all phases of these Projects.

**NOS Response:** NOS is committed to continued engagement with the AEWG and NSB. Specific project locations are determined annually for the upcoming surveying season. NOS will coordinate with tribes and subsistence hunters and fishers prior to conducting projects in subsistence hunting and fishing areas. NOS will also work with the NOAA Alaska Regional Navigation Manager to provide Alaskan communities with information on upcoming surveying projects to avoid or minimize interference with traditional hunting and fishing for subsistence uses. Through this communication strategy, NOS would minimize

the potential for adverse impacts on subsistence communities, food security, and the safety of hunters.

NOS intends to notify individual tribes and ANCs pursuant to EO 13175 before conducting any project that may have tribal implications. Federally recognized tribes may request formal government-to-government consultation pursuant to EO 13175 at any time.

**Environmental Justice-3:** These surveys and other vessel traffic can impact our lives and livelihoods. The specific surveys conducted under this Program must be implemented in a way that ensures our continued food security and the safety of our hunters...Our hunters are also on the water, and extra noise from survey vessels can greatly impact our food security.

**NOS Response:** NOS is committed to continued engagement with the AEWG and NSB. Specific project locations are determined annually for the upcoming surveying season. NOS will coordinate with tribes and subsistence hunters and fishers prior to conducting projects in subsistence hunting and fishing areas. NOS will also work with the NOAA Alaska Regional Navigation Manager to provide Alaskan communities with information on upcoming surveying projects to avoid or minimize interference with traditional hunting and fishing for subsistence uses. Through this communication strategy, NOS would minimize the potential for adverse impacts on subsistence communities, food security, and the safety of hunters.

NOS intends to notify individual tribes and ANCs pursuant to EO 13175 before conducting any project that may have tribal implications. Federally recognized tribes may request formal government-to-government consultation pursuant to EO 13175 at any time.

**Future Coordination-2:** The AEWG recognizes that NOAA is familiar with our Conflict Avoidance Agreement (CAA), as it is recognized by NMFS and other federal agencies in various regulatory processes. The CAA and the collaborative Process by which it is signed each year are critical to the AEWG's ability to protect the whale, our hunters, and our communities' food security, while facilitating environmentally sound resource development. This CAA Process has worked well, especially for companies that are new to the Arctic. It provides a collaborative process for consultation for the different surveys, enabling us to educate the vessel operators on the need for mitigation measures not needed in other regions, and in many instances, our participation has helped the operator improve the surveys.

These annual consultations and adaptive management approach are particularly important in the Arctic marine environment, where tremendous and unprecedented environmental changes are occurring. With changes in spring ice conditions, fall whaling is becoming more important in some of our villages along the Chukchi and Bering Seas. And vessel traffic is increasing in the Bering Strait and the Arctic. These changing circumstances underscore the need for ongoing reliance on adaptive management. Incorporating an adaptive process provides both the stakeholders and the agency an effective means of addressing new information and changed circumstances in the context of specific industrial operations planned for a given year.

As NOAA develops this survey program, it must require the same level of in-depth consultation with our communities. Our hunters are the experts in ice condition and location of marine mammals.

**NOS Response:** NOS will coordinate with tribes and subsistence hunters and fishers prior to conducting projects in subsistence hunting and fishing areas. NOS will also work with the NOAA Alaska Regional Navigation Manager to provide Alaskan communities with information on upcoming surveying projects to avoid or minimize interference with traditional hunting and fishing for subsistence uses. Through this communication strategy, NOS would minimize the potential for adverse impacts on subsistence communities, food security, and the safety of hunters. If after engaging in this communication process it appears that a formal protocol is needed, NOS will consider the AEWG Conflict Avoidance Agreement (CAA).

NOS intends to notify individual tribes and ANCs pursuant to EO 13175 before conducting any project that may have tribal implications. Federally recognized tribes may request formal government-to-government consultation pursuant to EO 13175 at any time.

NOS recognizes the changing circumstances of the Arctic. NOS supports the AEWG CAA and agrees that the process and adaptive management is constructive and helpful. The Proposed Action is to continue NOS's ongoing surveying and mapping program which could occur anywhere in U.S. waters, including state waters, MPAs, and other special status areas. NOS will continue to facilitate involvement with subsistence communities related to planned projects throughout the action area.

**Mitigation Measures-1:** We encourage NOAA as it develops the Survey programs, and obtains its necessary permits, to include other provisions as mitigation including: the use of communication centers to communicate with our villages; time-area closures to protect subsistence hunting activities in the Beaufort Sea; limitations on discharges in subsistence hunting grounds; vessel transit guidelines, including speed restrictions; and monitoring and reporting requirements. These measures are relatively non-controversial and have relevance to activities throughout the bowhead whale migratory and subsistence hunting areas.

**NOS Response:** The Final PEIS has been updated to include additional mitigation measures that NOS has developed to be implemented on each project as appropriate to minimize the impacts of project activities, including reducing impacts on sensitive species and subsistence hunting and fishing. The additional mitigation measures in the Final PEIS were developed with subject matter experts and in coordination with field crews and with NMFS and USFWS. The full list of mitigation measures is included as an appendix to the Final PEIS. Mitigation measures include maintaining safe distances from protected and subsistence species and following vessel speed restrictions in specific protected species habitats.

Regarding your request to consider measures specifically for surveys in subsistence hunting areas, NOS will work with the NOAA Alaska Regional Navigation Manager to provide Alaskan communities with information on upcoming surveying projects to avoid or minimize interference with traditional hunting and fishing for subsistence uses.

NOS intends to notify individual tribes and ANCs pursuant to EO 13175 before conducting any project that may have tribal implications. Federally recognized tribes and ANCs may request formal government-to-government consultation pursuant to EO 13175 at any time.

Regarding your request to consider additional discharge restrictions in subsistence hunting areas, NOS assessed the potential impacts to water quality from vessel operations and equipment used during NOS projects. NOS vessels would discharge treated sanitary domestic wastes from United States Coast Guard-approved MSDs. The assessment of these impacts can be found in Section 3.14.1 of the Final PEIS. The potential impacts to air and water quality from air emissions, vessel discharges, and accidental spills would be minimized through compliance with MARPOL Annexes I, IV, V, and VI. NOS adheres to NOAA's environmental procedures which comply with the MARPOL annexes and relevant implementing legislation, regulations, and guidance.

**Mitigation Measures-2:** We would like to highlight one positive incident. In the summer of 2020, the Office of Coast Survey launched Autonomous Sailing Vessels ("Saildrones"). These were monitored by AEWG and NSB-DWM with daily emails on positions. In August, the AEWG formally requested that the instruments be turned off, which was done immediately. The saildrones traversed east past Kaktovik with the sounders turned off, before returning west to complete the survey after the whales had migrated and hunting was completed. The number of vessels was also reduced, in certain areas from four saildrones down to two. These actions showed us that the agency listens and is willing carry out a shutdown upon request and work collaboratively with the hunters. We would like to know whether this type of action will be honored in the future, especially in relation to larger, manned ships? From recent conversations between NSB-DWM and NOS and AEWG and NOS, we believe the answer is "yes"; however, we want to be clear and upfront: are there limits to when, where, and duration of shutdowns that NOS would not comply? We know that is a very general question; however, the DPEIS is general in nature, so we require an answer.

**NOS Response:** Thank you for your comment, NOS appreciates the assistance of subsistence hunters in project planning. NOS is committed to continued coordination with Alaskan communities on upcoming surveying projects to avoid or minimize interference with traditional hunting and fishing for subsistence uses.

In coordination with NMFS and USFWS, NOS has developed additional mitigation measures. Mitigation measures include maintaining safe distances from marine mammals achieved by decreasing vessel speeds, vessel maneuvering, and observing time-area restrictions in specific protected species habitats (e.g., North Atlantic right whale). In order to maintain safety of navigation and avoid interactions with marine mammals and other sensitive species during transit, the vessel crew are instructed to remain vigilant to the presence of marine mammals. The full list of mitigation measures is included as Appendix D to the Final PEIS.

This PEIS contains a programmatic effects analysis, meaning it provides an effects analysis for activities as they are typically conducted, with impacts assessed based on regional conditions, habitat types, species, and other factors. However, the PEIS does not identify the specific time or place for individual projects or activities over the next five years. As such, NOS cannot provide details on the specific situations where Alaskan communities

may request a shutdown of vessel operations. NOS is willing to discuss these requests and work closely with the subsistence community to ensure concerns are addressed.

NOS intends to notify individual tribes and ANCs pursuant to EO 13175 before conducting any project that may have tribal implications. Federally recognized tribes and ANCs may request formal government-to-government consultation pursuant to EO 13175 at any time.

**Marine Mammals-1:** In reviewing the document, the analysis of the Alternatives is very generalized and broad. For each Alternative, NOAA provides some generalized numerical statistics on the impacts to bowhead whales for the analysis. There is additional information in the Appendices. However, without more information on the timing and specific equipment, it is impossible to determine the direct impact to the bowhead whales and other marine mammals of concern, the indirect impacts through deflection from the migration path, and the potential impacts to our subsistence.

**NOS Response:** NOS recognizes the importance of subsistence hunting of marine mammal species such as the bowhead whale. NOS will work with the NOAA Alaska Regional Navigation Manager to provide Alaskan communities with information on upcoming surveying projects to avoid or minimize interference with traditional hunting and fishing for subsistence uses.

Federally recognized tribes and ANCs may request formal government-to-government consultation pursuant to EO 13175 at any time.

NOS determined that a programmatic approach was appropriate because NOS conducts, authorizes, permits, and funds a suite of similar, ongoing data collection activities associated with recurring projects across a wide geographic area to characterize underwater features (e.g., habitat, bathymetry, marine debris). This Final PEIS is a comprehensive document that provides detailed programmatic effects analyses for surveying and mapping data collection activities based on regional conditions, habitat types, species, and other factors. However, the Final PEIS does not identify the specific time or place for individual projects or activities over the next five years. The analysis will be used to inform NOS leadership and the public on the environmental impacts of these activities before a decision is made on how to execute each project. All projects will require a project-specific review by NOS before proceeding. Before conducting any survey, NOS will work with the NOAA Alaska Regional Navigation Manager to provide Alaskan communities with information on upcoming surveying projects to avoid or minimize interference with traditional hunting and fishing for subsistence uses.

Please note that the impacts from underwater acoustic equipment used detailed modeling data, as discussed in Section 3.5.2 of the PEIS, and NOS does not consider this data to be “generalized numerical statistics.” The acoustic modeling predicts 58.89 total potential exposures of sound at levels associated with behavioral disruption in bowhead whales in the Alaska Region over five years. Similar data is provided for other marine mammals of concern in the region. As discussed in Section 3.5.2, behavioral disturbances are expected to be transient and surveys, once completed in a given area, would not generally be repeated for years, thus limiting an individual’s behavioral disruption to a few minutes.

**Environmental Justice-4:** The DPEIS specifically notes this difficulty and the potential for impacts to the harvest. In several places, it says the magnitude of impact would depend on vessel speed, size, location, frequency, and pattern of travel, as well as the timing of the activities and the degree of overlap with our hunt. It also specifically states:

Subsistence harvests in the marine environment could be disrupted, prolonged; or subsistence resources could be unavailable for use. Communities which are primarily dependent on marine mammals for subsistence, such as the bowhead harvesters of northern and western Alaskan villages, would be especially impacted. Subsistence users may be required to travel farther to harvest subsistence foods at a greater cost in terms of time, fuel, wear and tear on equipment and people, and lost wages. A decline in the harvest efficiency of marine resources would likely lead to an increase in hunting pressure on terrestrial wildlife, and to an increase in competition and territorial conflicts among subsistence harvesters (BOEM, 2015b).

This is unacceptable. Our food security cannot be put at risk for these surveys.

**NOS Response:** NOS understands the importance of Alaska Native subsistence resources; therefore, NOS ensured that the full range of potential direct and indirect impacts to subsistence harvests are considered in the PEIS. The effects analysis in the PEIS provided NOS with important information to support the development of mitigation measures in coordination with NMFS and USFWS for the Alaska Region. NOS is committed to ongoing communication with subsistence communities to avoid impacts that could directly or indirectly affect subsistence resources.

NOS would minimize the potential for adverse impacts on subsistence communities, food security, and the safety of hunters through communication with Alaskan communities on upcoming surveying projects to avoid or minimize interference with traditional hunting and fishing for subsistence uses.

NOS would like to note that the impacts described in the comment are the potential adverse effects of the cumulative impact of all actions occurring in the action area such as other surveying and mapping efforts undertaken by the U.S. Geological Survey, the Bureau of Ocean Energy Management (BOEM), and the National Science Foundation (Section 4.1). The NOS contribution to these adverse, cumulative impacts would be minor, and every effort will be made to coordinate with subsistence communities to minimize these impacts.

**Mitigation Measures-3:** From our experience and as discussed above with the CAA, we know there are ways to mitigate the harms. These conversations need to take place before any surveys are developed to get input from the communities that will be directly impacted.

**NOS Response:** NOS will work with the NOAA Alaska Regional Navigation Manager to provide Alaskan communities with information on upcoming surveying projects to avoid or minimize interference with traditional hunting and fishing for subsistence uses.

NOS intends to notify individual tribes and ANCs pursuant to EO 13175 before conducting any project that may have tribal implications. Federally recognized tribes and ANCs may request formal government-to-government consultation pursuant to EO 13175 at any time.

**Environmental Justice-5:** Ultimately, without more details on the timing, location and extent of the surveys, it is difficult to see how NOAA has reached the conclusion that impacts on subsistence could be minimal or insignificant.

**NOS Response:** NOS is committed to continued engagement with the AEW and NSB. NOS determined that a programmatic approach was appropriate because NOS conducts, authorizes, permits, and funds a suite of similar, ongoing data collection activities associated with recurring projects across a wide geographic area to characterize underwater features (e.g., habitat, bathymetry, marine debris). This Final PEIS is a comprehensive document that provides detailed programmatic effects analyses for surveying and mapping data collection activities based on regional conditions, habitat types, species, and other factors. However, the Final PEIS does not identify the specific time or place for individual projects or activities over the next five years. The analysis will be used to inform NOS leadership and the public on the environmental impacts of these activities before a decision is made on how to execute each project. All projects will require a project-specific review by NOS before proceeding.

In areas where subsistence hunting and fishing activities could occur, NOS analyzed the potential impacts of all surveying and mapping data collection activities that could occur and determined impacts would be insignificant using the significance criteria presented in Table 3.13-4.

NOS will coordinate with tribes and subsistence hunters and fishers prior to conducting projects in subsistence hunting and fishing areas. NOS will also work with the NOAA Alaska Regional Navigation Manager to provide Alaskan communities with information on upcoming surveying projects to avoid or minimize interference with traditional hunting and fishing for subsistence uses. Through this communication strategy, NOS would minimize the potential for adverse impacts on subsistence communities, food security, and the safety of hunters.

NOS intends to notify individual tribes and ANCs pursuant to EO 13175 before conducting any project that may have tribal implications. Federally recognized tribes may request formal government-to-government consultation pursuant to EO 13175 at any time.

**Environmental Justice-6:** In Section 3.13.2.2.1, the DPEIS refers to our subsistence harvest and talks about “restricted hunting seasons” or “restrictions on hunting seasons.” We wish to clarify NOAA’s intent. Specifically, it says:

The magnitude of the impacts would depend on the degree of overlap between the hunting season and the activities, with greater adverse impacts on EJ communities that rely on species with restricted hunting seasons. Survey and whaling seasons are bound to overlap due to safety and weather considerations, therefore it would not be practicable for NOS to avoid surveying activities during all subsistence hunting seasons. Increased hunting time coupled with restrictions on hunting seasons could potentially decrease harvest numbers.

This language is disturbing, and hopefully inaccurate. The bowhead harvest is highly regulated with a quota allocated from the IWC, and through our work with NOAA as a Co-Management

Partner. It is also based on the timing of the migration of the bowhead whale. However, NOAA has not outlined any restrictions on the timing of our harvest. We have fought for decades to maintain our hunting rights and seek adequate numbers to feed our communities across Alaska. We would expect NOAA to adjust its surveys – and not have NOAA place any additional restrictions on the hunters.

**NOS Response:** The Final PEIS has been revised for clarity. NOS intended the phrase “Restricted hunting seasons” to refer to hunts that are limited to specific seasons due to animal migration patterns and seasonal changes in weather and ice, not restrictions imposed by NOS. The Proposed Action would not place any additional restrictions on the bowhead whale quota allocated by the International Whaling Commission (IWC) or on hunting seasons. NOS understands the importance of Alaska Native subsistence resources. NOS understands that even small disruptions could cause adverse impacts; as such, NOS is committed to ongoing communication with subsistence communities to avoid impacts that could directly or indirectly affect subsistence resources.

**Environmental Justice-7:** The description on page 443 about Figure 3.13-2 is a bit inaccurate. The first sentence says, “Figure 3.13-2 shows the AEWG spring and fall hunting areas in red.” But the red color is defined on the map as “AEWG Hunting and Search Areas”, which would be across all seasons. This should be corrected.

**NOS Response:** Thank you for your suggested revision, NOS has revised the description of Figure 3.13-2 in the Final PEIS.

**Environmental Justice-8:** We also wish to correct this sentence from the DPEIS which says: “Over the years, bowhead hunters have incorporated modern technologies such as darting and shoulder guns for improved efficiency and humane hunting.” Through mandates from the International Whaling Commission, the AEWG has been required to adapt its techniques. However, the darting gun and shoulder gun are 19th century technology with only slight modifications since then making this sentence inaccurate.

**NOS Response:** Thank you for your suggested revision, NOS has revised the sentence “over the years, bowhead hunters have incorporated modern technologies such as darting and shoulder guns for improved efficiency and humane hunting” to indicate that the technology has only slightly changed since the 19th century.

**Cumulative Impacts-1:** In the cumulative impacts assessment, NOS should include the impacts from other research traffic in the Arctic. In addition, Table 4.1-7 on current Offshore Oil & Gas Projects in the Arctic may need some revisions to reflect that Hilcorp is operating Northstar, and the Liberty Project may be on hold. Section 4.1.8 on Liquefied Natural Gas projects is missing any reference to the Alaska LNG Project which has secured permits.

**NOS Response:** The cumulative impacts section has been revised for the Final PEIS to include the information the commenter has provided on offshore oil and gas projects in Alaskan waters.

**Alternatives-1:** The NSB and AEWG generally want to support the use of newer technologies that may be more efficient and may achieve greater accuracy. However, NOAA must ensure the

choice of equipment is well-suited to the task, and each survey is done in the least disruptive manner to the bowhead whale and our hunts, and is adequately analyzed to ensure proper mitigation measures are in place, including necessary time and area closures around our communities.

**NOS Response:** Thank you for your comment, appropriate equipment selection is discussed in Section 2.2 of the Draft PEIS. The responsible NOS program office considers the goals and purpose of a given project and determines the specific equipment and protocols which would be best suited to accomplish the task. NOS has a responsibility to gather data necessary for nautical charts and other public data products, with consideration for the human environment. Surveying vessels and equipment are designed to minimize noise, and NOS uses the lowest appropriate power and ping rate for its acoustic sources while gathering data.

The Final PEIS has been updated to include additional mitigation measures that NOS has developed to be implemented on each project as appropriate to minimize the impacts of project activities, including reducing impacts on sensitive species and subsistence hunting and fishing. The additional mitigation measures in the Final PEIS were developed with subject matter experts and in coordination with field crews and with NMFS, USFWS, and ONMS. The complete list of mitigation measures is included as Appendix D to the Final PEIS.

NOS will work with the NOAA Alaska Regional Navigation Manager to provide Alaskan communities with information on upcoming surveying projects to avoid or minimize interference with traditional hunting and fishing for subsistence uses.

Federally recognized tribes and ANCs may request formal government-to-government consultation pursuant to EO 13175 at any time.

**Alternatives-2:** We also would appreciate Alternative C, to include additional funding. This funding could help NOAA in its outreach to our communities. We also hope to see a mechanism where this funding would be made available to the impacted communities to support the co-production of knowledge and the amount of time and resources that are required for our organizations to engage in consultation. This could enable our communities and our hunters to participate early in the process, including in developing the studies and answering questions related to the impacts of the technology in our waters.

**NOS Response:** Thank you for your support of Alternative C.

Alternative C includes the adoption of new techniques and technologies for activities related to data collection for NOS surveying and mapping projects. It does not include additional funding for communities to cover time and resources spent by federally recognized tribes to engage in the consultation process. NOS is not aware of any current federal funding opportunities to support tribal or subsistence communities' time spent consulting with Federal agencies.

All data collected by NOS is made publicly available to the extent allowed by federal law. NOS will work with the NOAA Alaska Regional Navigation Manager to provide Alaskan

communities with information on upcoming surveying projects to avoid or minimize interference with traditional hunting and fishing for subsistence uses.

Federally recognized tribes and ANCs may request formal government-to-government consultation pursuant to EO 13175 at any time.

**Scope-1:** It has been brought to the attention of AEWG and NSB-DWM that freshwater surveys and mapping will not be conducted in Alaska. We would like confirmation of this.

**NOS Response:** Freshwater projects may occur in the Alaska Region; however, the majority of projects would be in the marine environment.

**Marine Mammals-2:** Table 3.5-10 provides the barest of information on how “Total Exposures” were calculated. In fact, the definition of Total Exposures, noted with an asterisk, is difficult to understand: “Measured as the predicted probability of exposure and interpreted as the percentage of the population expected to exceed threshold”. We would like clearer definition, and in the text, please provide sufficient information on the assumptions used in the model to determine these values. While the overall document refers to Appendices, these are not in the DPEIS.

**NOS Response:** Calculations were made available with the Draft PEIS in Appendix C and are also available in Appendix E of the Final PEIS which contains an updated version of the same report, Technical Acoustic Analysis of Oceanographic Surveys.

**Acoustic Modeling-1:** Upon receiving the appendix entitled Technical Acoustic Analysis of Oceanographic Surveys for the National Ocean Service: Underwater Acoustic Modeling Oceanographic Survey Sounds and Exposure Modeling from Giannina DiMaio, which we appreciate, we note that Table 4 includes many species of concern, including bowhead and beluga whales. Based on the listed publication from which densities are estimated (NOAA and USFWS Stock Assessments Reports, 2014, 2017-2019), we suspect that the authors are assuming that marine mammal densities are equal across their range; however, studies of marine mammal densities indicate that there are core use areas that are occupied seasonally. If the authors of the DPEIS are assuming that marine mammal densities are constant across their range, marine mammal density will be overestimated across large areas while under-estimated within critical use areas. Hence, it is likely that the density of marine mammals is biased low within their core use areas, leading to an estimate of Total Exposures that is also biased low. We are requesting clarification of how total exposure was estimated and would like to see the density maps used to calculate total exposure. Knowing and recalculating Total Exposures will not only assist in your successful completion of this laudable project but also provide further evidence to us of your willingness to listen and use local and traditional knowledge. Data based on tagged species should be evaluated by NOS. A recent resource to consult is George, John C., and J.G.M. 'Hans' Thewissen, ed. *The bowhead whale: Balaena mysticetus: Biology and human interactions*. Academic Press, 2020. See also Citta et al. (2018) A multi-species synthesis of satellite telemetry data in the Pacific Arctic (1987-2015): Overlap of marine mammal distributions and core use areas. *Deep-Sea Research Part II* 152:132-153. <https://doi.org/10.1016/j.dsr2.2018.02.006>.

**NOS Response:** Thank you for the comment. NOS, in consultation with NMFS, has incorporated additional data sources into the calculations of marine mammal density and

exposures. The revised exposure numbers are being used for consultation under the MMPA and ESA, and have been incorporated in the Final PEIS. For Alaska, species abundance and distribution were obtained from the 2021 SARs for cetaceans and pinnipeds which represent the best available science.

NOS has reviewed the referenced studies provided in the comment. These additional data sources are based on tagged species. NOS understands that there are local differences in densities and distribution in the Alaskan Region. For the purposes of modeling total exposure estimates, the SARs data is appropriate for estimating population level effects under the MMPA and ESA. However, NOS agrees that this higher resolution information is helpful for understanding localized impacts to subsistence hunting. As such, NOS has considered this higher resolution data for beluga and bowhead whales in the qualitative assessment in the Final PEIS.

NOS considered several data sets when determining what density data set was most appropriate for use in estimating total exposures including the Navy Marine Species Database. As stated in the acoustic modeling report (Appendix E in the Final PEIS): “The Navy Marine Species Database was considered for use in the Pacific Ocean and Gulf of Alaska (DoN 2017, 2018, 2019). The coverage of this database, however, is less than the extent of the NOS operational areas, meaning SAR data would still have been needed to fill in large data gaps. While density estimates from SAR abundance may have lower spatial resolution than the Navy Marine Species Database, use of the SAR data is appropriate because they are broadly accurate over the operational area and surveys may occur anywhere within those operational areas.” As described in the referenced appendix, NOS used average population densities because the proposed activities may occur anywhere within the action area. Although some projects may result in more exposures than others, the exposure estimates represent expected exposures averaged across all projects in the program. Natural variability due to seasonal changes is expected.

Although there are no associated density maps for the SAR data used by NOS to estimate total exposures, NMFS annually prepares marine mammal stock assessment reports by region and species. This information can be found on the NMFS Marine Mammal Stock Assessments website at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>.

**NEPA Process-2:** NOAA must engage in further consultation and communication with the NSB and AEWC as it develops the Final Programmatic EIS, through the development of Incidental Take Regulations and Letters of Authorization, and as the Program is implemented with surveys in Alaska. The Alternative selected and the Program as implemented must enable NOAA to achieve its goals, with minimal disruption to our subsistence hunt, and maximum participation by our communities in the process.

**NOS Response:** Comments and recommendations received on the Draft PEIS from the public during the 90-day public comment period were considered by NOS in the development of the Final PEIS. Federally recognized tribes and ANCs may request formal government-to-government consultation pursuant to EO 13175 at any time.

NOS will work with the NOAA Alaska Regional Navigation Manager to provide Alaskan communities with information on upcoming NOS surveying and mapping projects to avoid or minimize interference with traditional hunting and fishing for subsistence uses.

NOS has submitted an application for a Letter of Authorization to NMFS and a petition for Incidental Take Regulations to USFWS for marine mammal species. The development of regulations pertaining to these consultations will provide the public with additional opportunities to comment.

## **2.24 Pokagon Band of Potawatomi Indians Tribal Historic Preservation Officer (Matthew J.N. Bussler)**

### ***2.24.1 Comment Submission***



## Pokégnek Bodéwadmik

POKAGON BAND OF POTAWATOMI  
LANGUAGE & CULTURE

August 2<sup>nd</sup>, 2021

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[nosaa.ec@noaa.gov](mailto:nosaa.ec@noaa.gov)

### **Comments on NOAA Draft PEIS for Surveying and Mapping Projects**

Dear Responsible Party:

Migweth for your inquiry for comments regarding the National Oceanic and Atmospheric Administration's (NOAA) draft Programmatic Environmental Impact Statement (PEIS) for Surveying and Mapping Projects. I am writing to inform you that I have reviewed the Cultural and Historic Resources section (3.11) of the PEIS referenced above and would like to provide the following comments for your consideration. Should you have any questions, please don't hesitate to contact me at your earliest convenience.

#### **Comments on Section 3.11.2.1 Methodology**

1. It is of utmost importance that the NOAA undergoes in-depth discussion with Tribes who exercise Traditional fishing and hunting practices to ensure that surveying and mapping work is not performed during peak fishing seasons and timeframes. The Significance Conclusion, within *Table 3.11-1. Significance Criteria for the Analysis of Impacts to Cultural Resources*, "Insignificant" claims, under Impact Descriptor "Moderate" that "The action would temporarily interfere with traditional subsistence hunting and fishing practices during peak seasons or times." To satisfy Tribes' concerns of the disruption of their Traditional fishing and hunting practices, detailed discussion and consultation must be conducted to guarantee that an annual season's hunting and fishing harvest is not compromised due to actions taken by NOAA.
2. If an action were to be performed by NOAA that is constituted as "Major", detailed discussion and ongoing, meaningful consultation must be conducted to allow for tribes to review possible adverse effects to historic and cultural resources and guarantee that a Tribe's annual season's hunting and fishing harvest is not compromised. Actions that obtain a

“Major” Impact Descriptor status will require NOAA to halt all work and contact Tribes immediately.

I appreciate the NOAA for reaching out to the Pokagon Band of Potawatomi Indians for our input and comments on your Draft Programmatic Environmental Impact Statement. If questions, comments or concerns may arise in the future, the Pokagon Band will make contact with the NOAA to address them.

Sincerely,

A handwritten signature in black ink that reads "Matthew Bussler". The signature is written in a cursive style with a large, prominent 'M' and 'B'.

Matthew J.N. Bussler  
Tribal Historic Preservation Officer  
Pokagon Band of Potawatomi Indians  
Office: (269) 462-4316  
Cell: (269) 519-0838  
[Matthew.Bussler@Pokagonband-nsn.gov](mailto:Matthew.Bussler@Pokagonband-nsn.gov)

### 2.24.2 *NOS Response*

**Socioeconomic Resources-2:** 1. It is of utmost importance that the NOAA undergoes in-depth discussion with Tribes who exercise Traditional fishing and hunting practices to ensure that surveying and mapping work is not performed during peak fishing seasons and timeframes. The Significance Conclusion, within Table 3.11-1. Significance Criteria for the Analysis of Impacts to Cultural Resources, “Insignificant” claims, under Impact Descriptor “Moderate” that “The action would temporarily interfere with traditional subsistence hunting and fishing practices during peak seasons or times.” To satisfy Tribes’ concerns of the disruption of their Traditional fishing and hunting practices, detailed discussion and consultation must be conducted to guarantee that an annual season’s hunting and fishing harvest is not compromised due to actions taken by NOAA.

**NOS Response:** Executive Order 13175 of November 6, 2000 (Consultation and Coordination With Indian Tribal Governments), charges all executive departments and agencies with engaging in regular, meaningful, and robust consultation with tribes on Federal policies or activities that have tribal implications. On June 28, 2021, NOS sent letters to tribes notifying them of the availability of the PEIS and inviting them to seek government-to-government consultation under EO 13175.

NOS intends to notify individual tribes and ANCs pursuant to EO 13175 before conducting any project that may have tribal implications. Federally recognized tribes may request government-to-government consultation at any time for a proposed action that may have tribal implications.

NOS will initiate project-specific consultations under Section 106 of the NHPA before commencing any activity with the potential to affect cultural or historic resources.

**Cultural and Historic Resources-11:** 2. If an action were to be performed by NOAA that is constituted as “Major”, detailed discussion and ongoing, meaningful consultation must be conducted to allow for tribes to review possible adverse effects to historic and cultural resources and guarantee that a Tribe’s annual season’s hunting and fishing harvest is not compromised. Actions that obtain a “Major” Impact Descriptor status will require NOAA to halt all work and contact Tribes immediately.

**NOS Response:** Overall, impacts on cultural resources under all alternatives were found to range from negligible to moderate and insignificant under the impact criteria NOS established pursuant to NEPA. While the Final PEIS will be used to inform NOS responsibilities under NHPA, NOS will initiate project-specific consultations under Section 106 of the NHPA before commencing any activity with the potential to affect cultural or historic resources.

NOS intends to notify individual tribes pursuant to EO 13175 before conducting any project that may have tribal implications. Federally recognized tribes may request government-to-government consultation at any time for a proposed action that may have tribal implications.

## **2.25 Public (Anonymous)**

### *2.25.1 Comment Submission*

**Comment on, “Draft Programmatic Environmental Impact Statement for Surveying and Mapping Projects in U.S. Waters for Coastal and Marine Data Acquisition, Extension of Public Comment Period.”**

The agencies involved in this plan (National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), and Department of Commerce (DOC)) have provided ample information relating to their proposed action, and they show that they have a clear understanding of the environmental impacts it may have. The site provided by NOAA for the “Surveying and Mapping Draft PEIS” provides the need/purpose for action, scope, methods for surveying and mapping, draft PEIS, FAQ’s, fact sheets, and an area for public comments. The proposed action is said to, “provide the public and private sectors with nautical charts, benthic habitat condition maps, current and tide charts, and other products necessary to ensure safe navigation, economic security, and environmental sustainability.” The agencies proved clear, organized information regarding their methods of surveying and mapping with user-friendly video explanations, supporting images, and simple, yet effective, wording for the proposed plan. The information provided was easily accessible to the public and covered every area of concern with regards to the plan. For instance, there is notable consideration of environmental sustainability and environmental justice. Furthermore, the agencies have closely followed the necessary processes required by NEPA, providing alternative plans, all environmental regulations and other compliances, and executive orders among more information. After reviewing this plan, it can be concluded that the proposed action is necessary and beneficial to society as a whole and should go forth in being implemented. The plan is closely aligned with the mission statement of NOAA's that is focused on, “...Protecting America's ocean, coastal, and living marine resources while promoting sustainable economic development.” It is a complex process to be able to ensure that all of these variables synchronize.

With this being said, it is noted how NOS plans to engage federally recognized tribes in areas of the Hawaiian region and Alaskan Region. It is stated in the plan that, “Although NOS does not anticipate any effects on historical or cultural resources, if there is a potential for adverse impacts NOS will engage with federally recognized tribes to develop agreements to avoid or minimize those effects.” While it is clear that NOS is committed to considering any tribes concerns, it is still unclear how exactly they plan to mitigate any discrepancies. Will the agencies be willing to put a halt to their actions if there are high concerns with local tribes? Or will the concerned tribe be provided compensation for their compliance? We feel it is important to note their consideration but there is still a lack of more in depth research concerning the social and cultural impacts this plan may have. Since this is an integral part of the sustained mission of The National Oceanic and Atmospheric Administration (NOAA) and the National Ocean Service (NOS) collectively, we believe more detail should be provided for the general concern.

### 2.25.2 *NOS Response*

**NEPA Process-6:** The agencies involved in this plan (National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), and Department of Commerce (DOC)) have provided ample information relating to their proposed action, and they show that they have a clear understanding of the environmental impacts it may have. The site provided by NOAA for the “Surveying and Mapping Draft PEIS” provides the need/purpose for action, scope, methods for surveying and mapping, draft PEIS, FAQ’s, fact sheets, and an area for public comments. The proposed action is said to, “provide the public and private sectors with nautical charts, benthic habitat condition maps, current and tide charts, and other products necessary to ensure safe navigation, economic security, and environmental sustainability.” The agencies proved clear, organized information regarding their methods of surveying and mapping with user-friendly video explanations, supporting images, and simple, yet effective, wording for the proposed plan. The information provided was easily accessible to the public and covered every area of concern with regards to the plan. For instance, there is notable consideration of environmental sustainability and environmental justice. Furthermore, the agencies have closely followed the necessary processes required by NEPA, providing alternative plans, all environmental regulations and other compliances, and executive orders among more information.

**NOS Response:** Thank you for your support of the analysis in the PEIS and the outreach material provided to the public.

**Cultural and Historic Resources-9:** With this being said, it is noted how NOS plans to engage federally recognized tribes in areas of the Hawaiian region and Alaskan Region. It is stated in the plan that, “Although NOS does not anticipate any effects on historical or cultural resources, if there is a potential for adverse impacts NOS will engage with federally recognized tribes to develop agreements to avoid or minimize those effects.” While it is clear that NOS is committed to considering any tribes concerns, it is still unclear how exactly they plan to mitigate any discrepancies.

Will the agencies be willing to put a halt to their actions if there are high concerns with local tribes? Or will the concerned tribe be provided compensation for their compliance? We feel it is important to note their consideration but there is still a lack of more in depth research concerning the social and cultural impacts this plan may have. Since this is an integral part of the sustained mission of The National Oceanic and Atmospheric Administration (NOAA) and the National Ocean Service (NOS) collectively, we believe more detail should be provided for the general concern.

**NOS Response:** Executive Order 13175 of November 6, 2000 (Consultation and Coordination With Indian Tribal Governments), charges all executive departments and agencies with engaging in regular, meaningful, and robust consultation with tribes on Federal policies or activities that have tribal implications. On June 28, 2021, NOS sent letters to tribes notifying them of the availability of the PEIS and inviting them to seek government-to-government consultation under EO 13175.

NOS intends to notify individual tribes and ANCs pursuant to EO 13175 before conducting any project that may have tribal implications. Federally recognized tribes may request government-to-government consultation at any time for a proposed action that may have tribal implications.

NOS will initiate project-specific consultations under Section 106 of the NHPA before commencing any activity with the potential to affect cultural or historic resources.

## **2.26 Public (Jean Public)**

### *2.26.1 Comment Submission*

**From:** [NOSAA Environmental Compliance - NOAA Service Account](#)  
**To:** [Michelle.Smyk@solvllc.com](mailto:Michelle.Smyk@solvllc.com)  
**Subject:** Fwd: unnecessary spending  
**Date:** Thursday, October 14, 2021 6:36:05 PM

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NOS PEIS Comment

v/r  
Giannina DiMaio  
*NOS Environmental Compliance Coordinator*  
Pronouns: she/her/hers

NOAA, National Ocean Service  
Office of the Assistant Administrator  
1305 East-West Hwy, SSMC4 13th Floor  
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----- Forwarded message -----

**From:** **jean public** <[jeanpublic1@gmail.com](mailto:jeanpublic1@gmail.com)>  
**Date:** Tue, Aug 24, 2021 at 1:50 PM  
**Subject:** Fwd: unnecessary spending  
**To:** <[nosaa.ec@noaa.gov](mailto:nosaa.ec@noaa.gov)>, INFO <[INFO@taxpayer.net](mailto:INFO@taxpayer.net)>, media <[media@cagw.org](mailto:media@cagw.org)>, <[INFO@njtaxes.org](mailto:INFO@njtaxes.org)>, <[info@afphq.org](mailto:info@afphq.org)>

public comment on federal register unnecessary spending  
shut down this completely unnecessary spending. there is no need also to "accommodate"  
hunters or fishers. do not fund this completely wasteful and unnecessary program. this  
comment is for the public record. please receipt. jean public [jeanpublic1@gmail.com](mailto:jeanpublic1@gmail.com)

[Federal Register Volume 86, Number 161 (Tuesday, August 24, 2021)]  
[Notices]  
[Pages 47299-47300]  
From the Federal Register Online via the Government Publishing Office  
[www.gpo.gov](http://www.gpo.gov)  
[FR Doc No: 2021-18207]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Draft Programmatic Environmental Impact Statement for Surveying  
and Mapping Projects in U.S. Waters for Coastal and Marine Data  
Acquisition, Extension of Public Comment Period

AGENCY: National Ocean Service (NOS), National Oceanic and Atmospheric  
Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice; extension of comment period.

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SUMMARY: The National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS) is extending the public comment period by 90 days for the Draft Programmatic Environmental Impact Statement (PEIS) for Surveying and Mapping Projects in U.S. Waters for Coastal and Marine Data Acquisition. The end of the public comment period is extended from August 24, 2021 to November 22, 2021.

DATES: The public comment period is extended by 90 days to November 22, 2021. Comments must be received by November 22, 2021, as specified under ADDRESSES. Comments received after this date may not be accepted.

ADDRESSES: The Draft PEIS can be viewed or downloaded from the NOS website at <https://oceanservice.noaa.gov/about/environmental-compliance/surveying-mapping.html>. Written comments on NOS's Draft PEIS may be submitted by one of the following methods:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA-NOS-2021-0055 in the Search box. Click on the 'Comment' icon, complete the required fields, and enter or attach your comments.

Mail: Please direct written comments to DOC/NOAA/NOS Environmental Compliance Coordinator, SSMC4-Station 13612, 1305 East West Highway, Silver Spring, MD 20910.

Email: [nosaa.ec@noaa.gov](mailto:nosaa.ec@noaa.gov).

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NOAA. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NOAA will accept anonymous comments (enter 'N/A' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Giannina DiMaio, DOC/NOAA/NOS, Environmental Compliance Coordinator, SSMC4-Station 13612, 1305 East West Highway, Silver Spring, MD 20910; Phone: 240-533-0918; or Email [nosaa.ec@noaa.gov](mailto:nosaa.ec@noaa.gov).

SUPPLEMENTARY INFORMATION: On June 25, 2021, NOS published a Notice of Availability of a Draft PEIS for Surveying and Mapping Projects in U.S. Waters for Coastal and Marine Data Acquisition. 86 FR 33663 (June 25, 2021). The Draft PEIS was prepared in accordance with the National Environmental Policy Act of 1969, as amended (NEPA), to analyze the potential environmental impacts associated with NOS's recurring data collection projects to characterize submerged features (e.g., habitat, bathymetry, marine debris). The 'action area' for these projects encompasses United States (U.S.) rivers, states' offshore waters, the U.S. territorial sea, the contiguous zone, the U.S. Exclusive Economic Zone (U.S. EEZ), and coastal and riparian lands. As a part of the Proposed Action, NOS may use active acoustic equipment such as sub-bottom profilers, single beam and multibeam echo sounders, side-scan sonars, and Acoustic Doppler Current Profilers. The Draft PEIS analyzes NOS data collection projects for a time period of six years. Please refer to the original Notice of Availability for additional summary information.

[[Page 47300]]

The original public comment period for the Draft PEIS was scheduled to close on August 24, 2021. In response to written and verbal requests from members of the public including representatives of the Alaska whaling community, NOS is extending the public comment period by 90 days to November 22, 2021. The comment period extension will ensure adequate time for review of the Draft PEIS by all interested parties and will accommodate the Alaskan subsistence hunting and fishing community which is particularly busy during the start of the fall whaling season from August to October. NOS recognizes that Alaskan communities have valuable regional expertise in oceanography, marine mammals and other resources, and the subsistence patterns and needs of their community.

NOS invites affected government agencies, non-governmental

organizations, tribes and tribal organizations, and interested members of the public to participate in the Draft PEIS process and provide comments on the structure, contents, and analysis in the Draft PEIS. Please visit the project web page for additional information regarding the program: <https://oceanservice.noaa.gov/about/environmental-compliance/surveying-mapping.html>.

Authority: The preparation of the Draft PEIS was conducted in accordance with the requirements of NEPA, the Council on Environmental Quality's Regulations (40 CFR 1500 et seq. (1978)), other applicable regulations, and NOAA's policies and procedures for compliance with those regulations. While the CEQ regulations implementing NEPA were revised as of November 14, 2020 (85 FR 43304, Jul. 16, 2020), NOS prepared this Draft PEIS using the 1978 CEQ regulations because this environmental review began on December 19, 2016, when NOS published a Notice of Intent to conduct scoping and prepare a Draft Programmatic Environmental Assessment. Written comments must be received on or before November 22, 2021.

Nicole R. LeBoeuf,  
Assistant Administrator, National Ocean Service, National Oceanic and  
Atmospheric Administration.  
[FR Doc. 2021-18207 Filed 8-23-21; 8:45 am]  
BILLING CODE 3510-JE-P

### 2.26.2 *NOS Response*

**Environmental Justice-10:** there is no need also to ""accommodate"" hunters or fishers.

**NOS Response:** Executive Order 13175 of November 6, 2000 (Consultation and Coordination With Indian Tribal Governments), charges all executive departments and agencies with engaging in regular, meaningful, and robust consultation with Tribal officials on Federal policies or activities that have tribal implications. Additionally, EO 12898 “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations” requires that federal agencies consider as a part of their action any disproportionately high and adverse human health or environmental effects to minority and low-income populations. Agencies are required to ensure that these potential effects are identified and addressed. Several tribes and Alaska subsistence communities sought additional time to review the EIS due to the timing of its release that coincided with the subsistence hunting and fishing season in Alaska. NOS found this request reasonable and as such, NOS extended the original 60-day public comment period deadline by 90 days from August 24, 2021 to November 22, 2021.

**Purpose and Need-3:** public comment on federal register unnecessary spending shut down this completely unnecessary spending... do not fund this completely wasteful and unnecessary program.

**NOS Response:** Thank you for your comment. Projects under the Proposed Action provide the public and private sectors with nautical charts, benthic habitat condition maps, current and tide charts, and other products necessary for safe navigation, economic security, and environmental sustainability. The public and decision-makers need these products to ensure safety at sea, economic well-being, and the efficient stewardship of public trust resources.

## **2.27 South Carolina State Historic Preservation Officer (Elizabeth Johnson)**

### ***2.27.1 Comment Submission***



July 20, 2021

Giannina DiMaio  
NOS Environmental Compliance Coordinator  
NOAA, National Ocean Service  
Silver Spring, MD 20910  
[Nosaa.ec@noaa.gov](mailto:Nosaa.ec@noaa.gov)

Re: Surveying and Mapping Projects in U.S. Coastal Waters for Coastal and Marine Data  
Acquisition  
South Carolina  
SHPO Project No. 21-EJ0219

Dear Giannina DiMaio:

Our office has received the letter dated June 25, 2021 and link to the *Draft Programmatic Environmental Impact Statement (PEIS)* that you submitted as part of your agency's National Environmental Policy Act (NEPA) process for the project referenced above. This letter is for preliminary, informational purposes only and does not constitute consultation or agency coordination with our office as defined in 36 CFR 800: "Protection of Historic Properties" or by any state regulatory process. If NOAA chooses to substitute the NEPA process for the process outlined in Section 106 of the National Historic Preservation Act, your agency must notify our office of the proposed substitution.

Our office maintains several resources for identifying historic properties (for links please see our online research resources at <https://scdah.sc.gov/historic-preservation/historic-properties-research>. These resources in particular should assist your agency in identifying historic properties for NEPA scoping.

- ArchSite is an online Geographic Information System (GIS) mapping program that includes all known historic and archaeological sites in South Carolina. Information on both the Public View Map and Subscriber View Map of ArchSite can be found here: <http://www.scarchsite.org>.
- SC Historic Properties Record (SCHPR) includes information on all National Register of Historic Places listings, and historic property surveys (in process) at <http://schpr.sc.gov/>.
- Additional historic contexts, survey reports, and related historic property documents can be found here <https://scdah.sc.gov/historic-preservation/historic-properties-research/historic-contexts-survey-reports>.

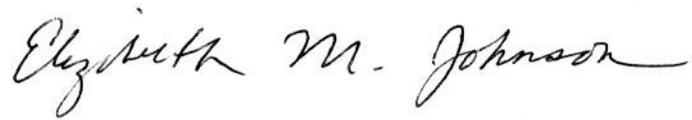
Please note that in South Carolina, records of submerged cultural resources are maintained by the SC Institute of Archaeology and Anthropology, Maritime Research Division (MRD), <http://artsandsciences.sc.edu/sciaa/mrd/welcome>. Our office defers to the expertise of the Maritime Research Division (MRD), under the direction of the State Underwater Archaeologist, for undertakings that may include submerged resources. Please contact Athena Van Overschelde at 803-576-6565 or

[athenav@mailbox.sc.edu](mailto:athenav@mailbox.sc.edu) or Jim Spirek at 803-576-6566 or [spirek@sc.edu](mailto:spirek@sc.edu) if you have any questions or require additional information about submerged cultural resources.

The State Historic Preservation Office will provide comments regarding historic properties and effects to them once the federal or state agency initiates consultation. Project Review Forms and additional guidance regarding our office's role in the compliance process and historic preservation can be found on our website at: <https://scdah.sc.gov/historic-preservation/programs/review-compliance>.

Thank you for providing information about the PEIS. Please refer to SHPO Project Number 21-EJ0219 in any future correspondence regarding this project. If you have any questions, please contact me at (803) 896-6168 or at [ejohnson@scdah.sc.gov](mailto:ejohnson@scdah.sc.gov).

Sincerely,

A handwritten signature in cursive script that reads "Elizabeth M. Johnson". The signature is written in black ink and is positioned above the typed name and title.

Elizabeth M. Johnson  
Director, Historical Services, D-SHPO  
State Historic Preservation Office

### 2.27.2 *NOS Response*

**Cultural and Historic Resources-31:** If NOAA chooses to substitute the NEPA process for the process outlined in Section 106 of the National Historic Preservation Act, your agency must notify our office of the proposed substitution.

**NOS Response:** While the Final PEIS will be used to inform NOS responsibilities under NHPA, NOS will comply with Section 106 of the NHPA for any activity that has the potential to affect cultural or historic resources as described in the regulations at 36 CFR 800.8, regardless of the NEPA impact category. NOS will conduct project-specific NHPA consultations before commencing any project with the potential to affect cultural or historic resources.

**Scope-8:** These resources in particular should assist your agency in identifying historic properties for NEPA scoping.

- ArchSite is an online Geographic Information System (GIS) mapping program that includes all known historic and archaeological sites in South Carolina. Information on both the Public View Map and Subscriber View Map of ArchSite can be found here: <http://www.scarchsite.org>.
- SC Historic Properties Record (SCHPR) includes information on all National Register of Historic Places listings, and historic property surveys (in process) at <http://schpr.sc.gov/>.
- Additional historic contexts, survey reports, and related historic property documents can be found here <https://scdah.sc.gov/historic-preservation/historic-properties-research/historic-contexts-survey-reports>.

**NOS Response:** Thank you for providing these resources, NOS looks forward to working with the South Carolina State Historic Preservation Officer (SHPO) for the protection of cultural resources. NOS will use this information when initiating consultation with the SC SHPO under Section 106 of the NHPA.

**Cultural and Historic Resources-12:** Please note that in South Carolina, records of submerged cultural resources are maintained by the SC Institute of Archaeology and Anthropology, Maritime Research Division (MRD), <http://artsandsciences.sc.edu/sciaa/mrd/welcome>. Our office defers to the expertise of the Maritime Research Division (MRD), under the direction of the State Underwater Archaeologist, for undertakings that may include submerged resources. Please contact Athena Van Overschelde at 803-576-6565 or [athenav@mailbox.sc.edu](mailto:athenav@mailbox.sc.edu) or Jim Spirek at 803-576-6566 or [spirek@sc.edu](mailto:spirek@sc.edu) if you have any questions or require additional information about submerged cultural resources.

**NOS Response:** Thank you for this additional information.

**Cultural and Historic Resources-13:** The State Historic Preservation Office will provide comments regarding historic properties and effects to them once the federal or state agency initiates consultation.

**NOS Response:** Thank you. NOS will initiate project-specific consultations under Section 106 of the NHPA before commencing any activity with the potential to affect cultural or historic resources.

NOS looks forward to hearing your future comments.

**Cultural and Historic Resources-14:** Please refer to SHPO Project Number 21-EJ0219 in any future correspondence regarding this project.

**NOS Response:** Thank you. Any future correspondence with the South Carolina SHPO will refer to SHPO Project Number 21-EJ0219.

## **2.28 Seneca Nation (Anna Carr)**

### *2.28.1 Comment Submission*

**From:** [Anna Carr](#)  
**To:** [Jay Nunenkamp - NOAA Federal](#); [Rosalind Ground](#)  
**Cc:** [Giannina DiMaio - NOAA Federal](#); [msmyk](#); [Greatlakes Navmanager - NOAA Service Account](#); [Cliff Redeye III](#)  
**Subject:** RE: External: Follow-up from the National Ocean Service regarding this morning's presentation  
**Date:** Monday, November 15, 2021 1:46:18 PM

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Good afternoon All,

Thank you for taking the time to meet with Rosalind and I today to discuss the Draft PEIS and the potential implications of this proposed work (if they shall arise).

Rosalind and I will work on preparing a formal response to the NOS PEIS with the below recommended/requested information; however, we may not be able to get a response to you by November 22, per our current workload.

Thank you once again for your time.

Respectfully submitted,

*Anna Carr*

[Water Program Manager](#)

**Seneca Nation  
Environmental Protection Department**

84 Iroquois Drive

Irving, NY 14081

Phone: (716) 532-2546 Ext. 5474

Email: [anna.carr@sni.org](mailto:anna.carr@sni.org)

---

**From:** Jay Nunenkamp - NOAA Federal <jay.nunenkamp@noaa.gov>  
**Sent:** Monday, November 15, 2021 11:44 AM  
**To:** Anna Carr <Anna.Carr@sni.org>; Rosalind Ground <Rosalind.Ground@sni.org>  
**Cc:** Giannina DiMaio - NOAA Federal <giannina.dimaio@noaa.gov>; msmyk <Michelle.Smyk@solvllc.com>; Greatlakes Navmanager - NOAA Service Account <greatlakes.navmanager@noaa.gov>  
**Subject:** External: Follow-up from the National Ocean Service regarding this morning's presentation

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Ms. Carr, Ms. Ground:

Thank you again for your time today. As we discussed, I wanted to summarize the information that we've requested, in order to better coordinate with your tribe regarding upcoming projects.

1. We most urgently need an indication of the geographic areas (both on land and in the

water) where we should coordinate with you for individual projects. This would not only be your reservations and other owned land, but also any areas where your tribe has concerns about impacts to your tribal resources. If possible, we would request GIS shapefiles for these areas, but if that's not available we can certainly accept images. As discussed, NOS would email the two of you and Mr. Stahlman (in addition to the relevant State Historic Preservation Officer) for relevant future projects located in these areas, per the normal NHPA Section 106 process.

2. We would appreciate information regarding your review and approval process for projects that might require entrance onto Seneca lands. so that we can incorporate this information into our planning procedures.

3. If you have any other questions or concerns regarding hydrographic survey projects, (i.e., the use of vessels and echo sounders in the waters of the Great Lakes) please contact Mr. Tom Loeper, our Great Lakes Navigation Manager. He can be reached at [greatlakes.navmanager@noaa.gov](mailto:greatlakes.navmanager@noaa.gov), and is cc'd here.

It was a pleasure meeting you both, and NOS looks forward to working with the Seneca Nation in the future.

Sincerely,

Jay Nunenkamp (he/his)  
Environmental Compliance Coordinator  
[Office of Coast Survey](#)  
National Oceanic and Atmospheric Administration

*If this email was received outside of your work hours, there is no expectation that you will reply until you are on duty.*

This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error please delete this message. Please note that any views or opinions presented in this email are solely those of the author and do not necessarily represent those of the company. Finally, the recipient should check this email and any attachments for the presence of viruses. The company accepts no liability for any damage caused by any virus transmitted by this email.  
<https://www.sni.org>

**From:** [NOSAA Environmental Compliance - NOAA Service Account](#)  
**To:** [Michelle.Smyk@solvlc.com](mailto:Michelle.Smyk@solvlc.com); [Wendy.Grome](mailto:Wendy.Grome)  
**Subject:** Fwd: NOS Surveying and Mapping Projects in US  
**Date:** Monday, November 8, 2021 9:05:38 AM

---

See comment below from the Seneca Nation.

v/r  
Giannina DiMaio  
*NOS Environmental Compliance Coordinator*  
Pronouns: she/her/hers

NOAA, National Ocean Service  
Office of the Assistant Administrator  
1305 East-West Hwy, SSMC4 13th Floor  
Silver Spring, MD 20910  
V: 240-533-0918  
[nosaa.ec@noaa.gov](mailto:nosaa.ec@noaa.gov)

----- Forwarded message -----

From: **Anna Carr** <[Anna.Carr@sni.org](mailto:Anna.Carr@sni.org)>  
Date: Fri, Nov 5, 2021 at 12:37 PM  
Subject: NOS Surveying and Mapping Projects in US  
To: [nosaa.ec@noaa.gov](mailto:nosaa.ec@noaa.gov) <[nosaa.ec@noaa.gov](mailto:nosaa.ec@noaa.gov)>  
Cc: Cliff Redeye III <[clifford.redeye@sni.org](mailto:clifford.redeye@sni.org)>, Rosalind Ground <[Rosalind.Ground@sni.org](mailto:Rosalind.Ground@sni.org)>

To Whom It May Concern,

I'm writing this email in regard to a notification that the Seneca Nation received on October 28<sup>th</sup> with regard to the National Ocean Service (NOS) *Draft Programmatic Environmental Impact Statement (PEIS) for Surveying and Mapping Projects in U.S. Waters for Coastal and Marine Data Acquisition*. I've called and left two messages for Ms. DiMaio over the last week and have yet to receive a response.

In an effort to determine if the Seneca Nation should prepare comments in response to this NOS PEIS/request a government-to-government consultation, I have the following question:

My understanding is that this proposed work will be to survey coastal areas in an effort to address possible threats to coastal areas due to climate change, population growth, contaminants in the environment, and etc. The maps associated with the NOS PEIS show the coastlines along Lake Erie as being an "action area". Since a portion of the Cattaraugus Territory of the Seneca Nation (Nation) bounds Lake Erie, I would like to know if the NOS PEIS Mapping Projects will be performed in proximity to the Nation's shoreline, as shown as the map point (green tag) with the associated latitude/longitude on the below Figure?

Please let us know at your earliest convenience, so that we may prepare an appropriate response, if necessary.

Thank you,

*Anna Carr*

[Water Program Manager](#)

**Seneca Nation**

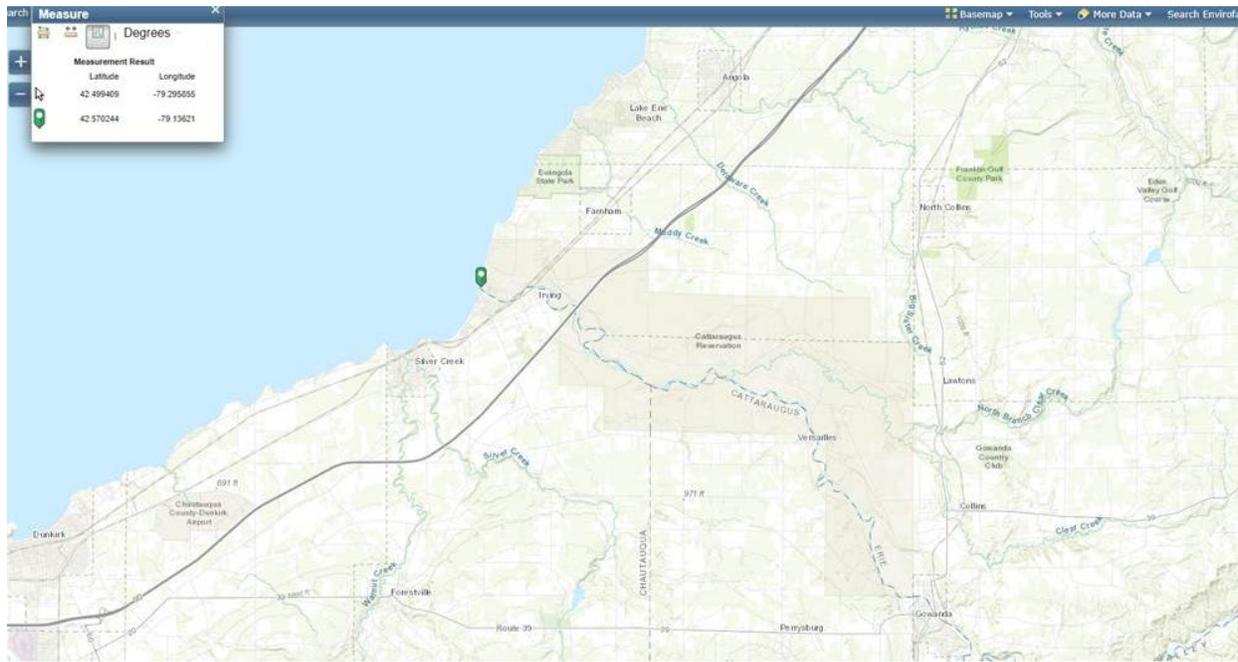
**Environmental Protection Department**

84 Iroquois Drive

Irving, NY 14081

Phone: (716) 532-2546 Ext. 5474

Email: [anna.carr@sni.org](mailto:anna.carr@sni.org)



**From:** NOSAA Environmental Compliance - NOAA Service Account <[nosaa.ec@noaa.gov](mailto:nosaa.ec@noaa.gov)>  
**Sent:** Thursday, October 28, 2021 6:41 PM  
**Subject:** External: Government-to-Government: NOS Surveying and Mapping Projects in US

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi!

I am reaching out to you again regarding the National Ocean Service (NOS) *Draft Programmatic Environmental Impact Statement (PEIS) for Surveying and Mapping Projects in U.S. Waters for Coastal and Marine Data Acquisition*. Following the publication of the Draft PEIS on June 25, 2021, we invited Federally Recognized Tribes to participate in the Draft PEIS process and provide comments on the Draft PEIS. In response to written and verbal requests from members of the public including representatives of the Alaska whaling community, NOS extended the public comment period by 90 days from August 24, 2021 to November 22, 2021. The comment period was extended to ensure adequate time for review of the Draft PEIS by all interested parties including the Alaskan subsistence hunting and fishing community which is particularly busy during the start of the fall whaling season from August to October.

NOS wants to reassure you that the Draft PEIS public comment deadline does not apply to any government-to-government consultations that would be conducted for this action. It is important to ensure any tribal views or concerns expressed during a government-to-government consultation are fully considered, and we kindly ask that you make a request for consultation before November 22, 2021.

Attached is a follow-up letter inviting government-to-government consultation for future NOS surveying and mapping projects. For your information, I have again attached the Draft PEIS Executive Summary and an overview fact sheet.

NOS recognizes tribal communities have valuable regional expertise in oceanography, marine mammals and other resources, and the subsistence patterns and needs of their community. If you have any questions, please feel free to contact me by phone at 240-533-0918 or email at [nosaa.ec@noaa.gov](mailto:nosaa.ec@noaa.gov)

v/r

Giannina DiMaio

*NOS Environmental Compliance Coordinator*

Pronouns: she/her/hers

NOAA, National Ocean Service

Office of the Assistant Administrator

1305 East-West Hwy, SSMC4 13th Floor

Silver Spring, MD 20910

V: 240-533-0918

[nosaa.ec@noaa.gov](mailto:nosaa.ec@noaa.gov)

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### **2.28.2**    *NOS Response*

**Future Coordination-8:** Rosalind and I will work on preparing a formal response to the NOS PEIS with the below recommended/requested information; however, we may not be able to get a response to you by November 22, per our current workload.

**NOS Response:** Additional comments from the Seneca Nation have been received and considered by NOS.

**Scope-9:** My understanding is that this proposed work will be to survey coastal areas in an effort to address possible threats to coastal areas due to climate change, population growth, contaminants in the environment, and etc. The maps associated with the NOS PEIS show the coastlines along Lake Erie as being an “action area”. Since a portion of the Cattaraugus Territory of the Seneca Nation (Nation) bounds Lake Erie, I would like to know if the NOS PEIS Mapping Projects will be performed in proximity to the Nation’s shoreline, as shown as the map point (green tag) with the associated latitude/longitude on the below Figure?

**NOS Response:** The Proposed Action could occur anywhere in U.S. waters, including Cattaraugus Territory of the Seneca Nation that bounds Lake Erie. NOS intends to notify individual tribes pursuant to EO 13175 before conducting any project that may have tribal implications.

Federally recognized tribes may request government-to-government consultation at any time for a proposed action that may have tribal implications.

## **2.29 Seneca Nation (Matthew B. Pagels)**

### *2.29.1 Comment Submission*

# Seneca Nation of Indians

President - Matthew B. Pagels  
Clerk - Marta L. Kettle

12837 ROUTE 438  
CATTARAUGUS TERRITORY  
SENECA NATION  
IRVING, NY 14081

Tel. (716) 532-4900  
FAX (716) 532-6272



Treasurer - Rickey L. Armstrong Sr.

90 OHI:YO' WAY  
ALLEGANY TERRITORY  
SENECA NATION  
SALAMANCA, NY 14779

Tel. (716) 945-1790  
FAX (716) 945-1565

## PRESIDENT'S OFFICE

January 25, 2022

Ms. Giannina DiMaio  
NOAA, National Ocean Service  
Environmental Compliance Coordinator  
Office of the Assistant Administrator  
1305 East-West Hwy, SSMC4 13th Floor  
Silver Spring, MD 20910  
Email: [nosaa.ec@noaa.gov](mailto:nosaa.ec@noaa.gov)

**RE: National Oceanic and Atmospheric Administration, National Ocean Service, Notice of a Draft Programmatic Environmental Impact Statement of Surveying and Mapping Projects in U.S. Waters for Coastal and Marine Data Acquisition, on or near the Seneca Nation**

Dear Ms. Giannina DiMaio,

The Seneca Nation (Nation) has had the opportunity to review and offer comments, in response to the *Notice of Availability of a Draft Programmatic Environmental Impact Statement (PEIS) for Surveying and Mapping Projects in U.S. Waters for Coastal and Marine Data Acquisition*, published by the National Ocean Service (NOS), an office within the National Oceanic and Atmospheric Administration (NOAA). The Seneca Nation appreciates the opportunity to meet with you on November 15, 2021, to discuss this draft PEIS. In response to the draft PEIS, the Nation is providing you with the following background information and comments as they pertain to the PEIS.

### **Background:**

The Seneca Nation (SN) is a federally recognized tribe that consists of five Territories: Allegany, Cattaraugus, Oil Springs, Buffalo Creek and Niagara Falls in Western New York, as shown on the attached "Locational Map of the Territories" Figure. Three of the five Territories are connected to extensive and measureless water resources, contain water features that are of tremendous value

and significance to the Seneca Nation, but vary in form and feature. The Allegany Territory consists of 31,180.9 acres which surrounds the Ohi:yo' (Allegany River/Reservoir) (110 miles of shoreline) and other streams/creeks (116 miles) which has a total of 226 miles of water bodies. In 1960, the United States Army Corps of Engineers was authorized by the United States Government to build the Kinzua Dam (Dam) for flood control for the City of Pittsburgh, Pennsylvania. As a result, approximately 10,000 acres of land was taken by the U.S. for that work on a permanent easement for the construction of the Kinzua Dam and Reservoir. The resulting impact of the Kinzua Dam and Reservoir lead to the inundation of that land after the construction of the Dam. The Cattaraugus Territory consists of 22,060.8 acres and surrounds 16.64 miles of the Ga:dages:geo (Cattaraugus Creek) along with other streams/creeks for a total of 56.6 miles. The western most limits of the Cattaraugus Territory, including the Nation's water boundary, extends into Lake Erie, where the Nation holds reserved rights, with specific regard to the particular resources of this portion of the lake. Oil Spring Territory consists of 641.9 acres of land, which includes at least 2.3 miles of water resources, including a percentage of Cuba Lake a portion of shoreline along that lake.

**Information:**

Per NOAAs November 15, 2021 written request, the Nation is sending the attached “Locational Map of the Territories” Figure for your information, so that you may have a greater understanding of the territorial boundaries of the Seneca Nation. With that being said, the Seneca Nation requests NOAA to contact the Nation prior to surveying and/or mapping projects that are to be performed within the following areas (as identified using the NOAA Electronic Navigational Charts (ENC) [<https://nauticalcharts.noaa.gov/charts/noaa-enc.html>]):

- US4NY32M (North to Buffalo)
- US4NY33M (Sturgeon Point to Twenty Mile Creek)
- US4NY38M (Buffalo to Erie, Dunkirk, Barcelona Harbor)
- US5NY34M (Niagara Falls to Buffalo)
- US5NY34M (Grand Island)
- US5NY35M (Buffalo Harbor)

While federal law regarding water has significant aspects, that at times incorporate and also preempt state law, Congress has often deferred to state law when Indian rights are not at issue. However, Indian water rights generally have superior legal standing in relation to state rights based on original tribal ownership of what is now the United States. This legal standing is further supported with treaties, statutes and Executive Orders that preempt state law. The United States has a trust responsibility to recognize and protect tribal lands, assets and resources, which include the water that flows over and through tribal lands and the natural resources that depend on that water. Outside entities shall follow the Seneca Nation Council Resolution, “*To Establish a Policy Governing Access to Nation Territories and Facilities by Officials of Foreign Governments*”<sup>1</sup>,

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<sup>1</sup> CN: R-04-11-15-17, *Policy Governing Access to Nation Territories and Facilities by Officials of Foreign Governments*.

where it has always been custom and tradition of the Seneca Nation that all non-Seneca, desiring to maintain a presence within Nation Territory to first receive permission from the Nation, prior to the visitation and inquiry at least twenty-four (24) hours advance notice of such intent. Additionally, if NOS/NOAA seeks to enter any of the Seneca Nation Territories to conduct surveying and/or mapping activities, then a request should be made in writing, by electronic means, or through the mail to the President of the Seneca Nation at the following addresses:

12837 Route 438  
Cattaraugus Territory  
Seneca Nation  
Irving, NY 14081

90 Ohi:yo' Way  
Allegany Territory  
Seneca Nation  
Salamanca, NY 14779

Note that a failure to comply with the provisions of the said Council Resolution may result in denial of entry of such officials or agents into Nation Territory. The Nation also requests notification of future projects that are referenced in the above ENC's, prior to the initiation of the project through the National Historic Preservation Act, Section 106. Additionally, the Nation shall be immediately notified of the discovery of archaeological resources during the installation of tide gauges, buoys, GPS reference stations or any other activities.

Additionally, the protection of our water will sustain our culture and our way of viewing life. For the people of the Seneca Nation, it starts with the creation story that defines who we are as Ogwe'o:weh (the Original Beings). It speaks generally and symbolically about the events that led to our creation on "Etinö'ëh Yöëdzade" (Mother Earth). From the time we first hear this story as children through the voices of our own Mothers and Grandmothers, we are given direction and understanding of our place in the world and our relationship to the other elements of Creation. We give thanks to the "Oneganos" the Waters of the World, for fulfilling their responsibilities given by the creator. These responsibilities are many. Central to them is to quench the thirst of all life. Our Creator made those rivers and lakes and he said, "Whenever you're dry and thirsty, go there, any river, any stream and it will quench your thirst for that is the way I make the world." The Oneganos are the bloodlines of our "Etinö'ëh Yöëdzade", Mother Earth. As such, they have important responsibilities to carry sustenance to the rest of Creation. The Waters also have a responsibility to cleanse and purify Mother Earth, to keep the people clean and healthy. Finally, "Ganö:nyök", known as the Thanksgiving Address reminds us that it is our responsibility to take care of all life, including the Waters of the World. We recognize that all life is interrelated. If the Waters are to fulfil their responsibilities, then we must ensure that they have the opportunity to do so. To fulfil a component of this responsibility, the Nation requests that any data collected of the territorial lands must also be shared freely with the Seneca Nation, whether it is mapping, archeological, environmental, or as otherwise related.

With regard to concerns of the effects of hydrographic surveying projects, including the use of vessels and echo sounders in the waters of the Great Lakes, the Seneca Nation requests that NOAA follow appropriate protocol for work in areas of sensitive habitat and in locations where Endangered, Threatened, Special Concern or High Priority Species of Greatest Conservation within New York State and Federally are listed. Note that the Seneca Nation also has species listings and areas of special protection with regard to cultural and traditional uses, as well as natural resources that are of great value to the Seneca Nation. The protection of those irreplaceable resources is and will always be of the utmost priority for the Seneca Nation.

**Conclusion:**

In closing, outside government staff should be aware that many Native Americans already feel a strong commitment to respect “Etinö’eh Yöëdzade”, our mother earth, and that many Native Nations are cautious when considering actions that may harm her. Outside governmental staff should be cognizant of the Seneca Nation’s respect of “Etinö’eh Yöëdzade” and reciprocate it.

Sincerely,

  
\_\_\_\_\_  
Matthew B. Pagels  
Seneca Nation President

# Seneca Nation of Indians

12837 ROUTE 438  
CATTARAUGUS TERRITORY  
SENECA NATION  
IRVING 14081

Tel. (716) 532-4900  
FAX (716) 532-9132



90 OHI:YO' WAY  
ALLEGANY TERRITORY  
SENECA NATION  
SALAMANCA 14779

Tel. (716) 945-1790  
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AT THE REGULAR SESSION OF COUNCIL  
OF THE SENECA NATION OF INDIANS  
HELD ON APRIL 11, 2015 AT THE WILLIAM  
SENECA ADMINISTRATION BUILDING ON  
THE CATTARAUGUS TERRITORY, IRVING,  
NEW YORK, 14081.

CN: R-04-11-15-17

EXECUTIVES PRESENT:

PRO TEMPORE - RICKEY ARMSTRONG SR.  
DEPUTY CLERK - LENITH WATERMAN  
TREASURER - TODD GATES

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## LEGAL DEPARTMENT

TO ESTABLISH A POLICY GOVERNING ACCESS TO NATION TERRITORIES AND  
FACILITIES BY OFFICIALS OF FOREIGN GOVERNMENTS

**MOTION:** by Richard Jemison, seconded by remaining Council that the Nation's Council approves  
the following resolution, as amended;

**WHEREAS,** the Seneca Nation of Indians is a sovereign nation possessing inherent powers of self-  
government within and over its Territories which are original, absolute, and exclusive;  
and

**WHEREAS,** from time to time the Nation has been subject to visitation and inquiry by officials and  
agents of Foreign Governments and their local governments and agencies; and

**WHEREAS,** it is the custom and tradition of the Nation that all non-Seneca desiring to maintain a  
presence within Nation territory must first receive permission from the Nation.

## NOW THEREFORE BE IT

**RESOLVED,** that the Council hereby orders that all officials and agents of Foreign Governments and  
their local governments and agencies that seek to enter Nation territory, to visit or  
inquire about the activities or facilities of the Nation or any of its subdivisions shall  
adhere to the following:

TO ESTABLISH A POLICY GOVERNING ACCESS TO NATION TERRITORIES AND FACILITIES BY OFFICIALS OF FOREIGN GOVERNMENTS  
REGULAR SESSION OF COUNCIL  
APRIL 11, 2015  
PAGE 2

1. Provide at least seventy-two (72) hours advanced notice of such intent to enter the Territory of the Seneca Nation to the President of the Nation, whereas such notice shall be in writing and may be delivered by a third party, electronic means or in person.
2. Provide clear and authorized identification that specifically identifies the Foreign Government agency that they are representing.
3. Provide a reasonable purpose to enter Nation territory that serves the best interest of the Seneca people.
4. Upon written request from the President of the Nation, or a Nation designated representative, provide a written report on all activities undertaken by the official or agent within thirty (30) days to the President of the Nation.

**RESOLVED**, that the President of the Nation is hereby authorized to develop and implement Seneca Nation protocols specifically for agents of Foreign Governments to comply with this this resolution, and be it further

**RESOLVED**, that failure to comply with the provisions of this resolution may result in denial of entry of such officials or agents onto Nation territory by the President of the Nation.

**RESOLVED**, that the Seneca Nation is requesting Foreign Governments that desire to enter Nation territory, to visit or inquire about the activities or facilities of the Nation or any of its subdivisions shall designate a liaison from their government and this liaison shall register with the Seneca Nation

**RESOLVED**, all documents developed pursuant to this resolution shall be brought back to Council for final approval.

ALL IN FAVOR

MOTION CARRIED

---

CERTIFICATION

I hereby certify the foregoing extract is a true and correct copy from the minutes of the Regular Session of Council of the Seneca Nation of Indians held on April 11, 2015 on the Cattaraugus Territory, original of which is on file in the Clerk's Office of the Seneca Nation of Indians

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the seal to be affixed at the William Seneca Administration Building, on the Cattaraugus Territory, on the 15<sup>th</sup> day of April, 2015.

TO ESTABLISH A POLICY GOVERNING ACCESS TO NATION TERRITORIES AND  
FACILITIES BY OFFICIALS OF FOREIGN GOVERNMENTS  
REGULAR SESSION OF COUNCIL  
APRIL 11, 2015  
PAGE 3

ATTEST:

  
\_\_\_\_\_  
LENITH WATERMAN, DEPUTY CLERK  
SENECA NATION OF INDIANS

{SEAL}



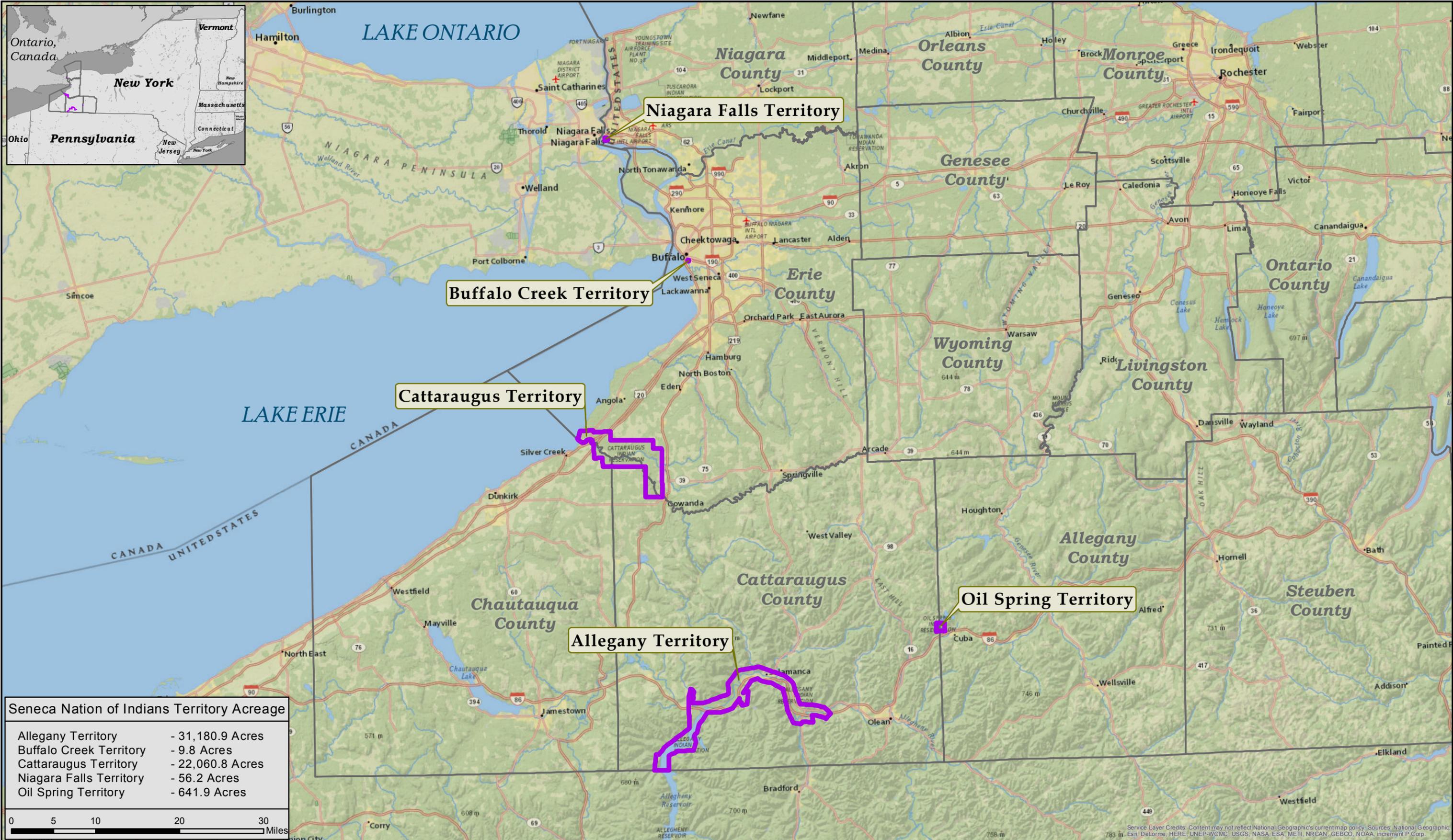


# Seneca Nation of Indians

## Locational Map of the Territories



Print / Export Date: 3/2/2020



Allegany Territory	- 31,180.9 Acres
Buffalo Creek Territory	- 9.8 Acres
Cattaraugus Territory	- 22,060.8 Acres
Niagara Falls Territory	- 56.2 Acres
Oil Spring Territory	- 641.9 Acres



Service Layer Credits: Content may not reflect National Geographic's current map policy. Sources: National Geographic, Esri, DeLorme, HERE, UNEP-WCMC, USGS, NASA, ESA, METI, NRCAN, GEBCO, NOAA, increment P Corp.

### 2.29.2 *NOS Response*

**Future Coordination-15:** Per NOAAs November 15, 2021 written request, the Nation is sending the attached ""Locational Map of the Territories"" Figure for your information, so that you may have a greater understanding of the territorial boundaries of the Seneca Nation. With that being said, the Seneca Nation requests NOAA to contact the Nation prior to surveying and/or mapping projects that are to be performed within the following areas (as identified using the NOAA Electronic Navigational Charts (ENC) [<https://nauticalcharts.noaa.gov/charts/noaa-enc.html>]):

US4NY32M (North to Buffalo)

US4NY33M (Sturgeon Point to Twenty Mile Creek) US4NY38M (Buffalo to Erie, Dunkirk, Barcelona Harbor) US5NY34M (Niagara Falls to Buffalo)

US5NY34M (Grand Island) US5NY35M (Buffalo Harbor)

**NOS Response:** Thank you for providing NOS with the geographic boundaries within which the Seneca Nation would like to be contacted about proposed projects.

NOS will initiate project-specific consultations under Section 106 of the NHPA before commencing any activity with the potential to affect cultural or historic resources. NOS will also contact the Seneca Nation in the event that NOS activities result in the recovery of a potentially historic resource or artifact.

NOS intends to notify individual tribes pursuant to EO 13175 before conducting any project that may have tribal implications. Federally recognized tribes may request government-to-government consultation at any time for a proposed action that may have tribal implications.

**Future Coordination-16:** Outside entities shall follow the Seneca Nation Council Resolution, "To Establish a Policy Governing Access to Nation Territories and Facilities by Officials of Foreign Government" where it has always been custom and tradition of the Seneca Nation that all non-Seneca, desiring to maintain a presence within Nation Territory to first receive permission from the Nation, prior to the visitation and inquiry at least twenty-four (24) hours advance notice of such intent. Additionally, if NOS/NOAA seeks to enter any of the Seneca Nation Territories to conduct surveying and/or mapping activities, then a request should be made in writing, by electronic means, or through the mail to the President of the Seneca Nation at the following addresses:

12837 Route 438 Cattaraugus Territory Seneca Nation Irving, NY 14081

90 Ohi:yo' Way Allegany Territory Seneca Nation Salamanca, NY 14779...

The Nation also requests notification of future projects that are referenced in the above ENCs, prior to the initiation of the project through the National Historic Preservation Act, Section 106. Additionally, the Nation shall be immediately notified of the discovery of archaeological resources during the installation of tide gauges, buoys, GPS reference stations or any other activities.

**NOS Response:** NOS will ensure that if a project is proposed within the boundaries provided by the Seneca Nation, the appropriate contact will be notified and NOS will follow the approval procedures in the Seneca Nation Council Resolution, “To Establish a Policy Governing Access to Nation Territories and Facilities by Officials of Foreign Government.”

NOS will initiate project-specific consultations under Section 106 of the NHPA before commencing any activity with the potential to affect cultural or historic resources. NOS will also contact the Seneca Nation in the event that NOS activities result in the recovery of a potentially historic resource or artifact.

NOS intends to notify individual tribes pursuant to EO 13175 before conducting any project that may have tribal implications. Federally recognized tribes may request government-to-government consultation at any time for a proposed action that may have tribal implications.

**Future Coordination-17:** The Nation requests that any data collected of the territorial lands must also be shared freely with the Seneca Nation, whether it is mapping, archeological, environmental, or as otherwise related.

**NOS Response:** NOS will ensure that if a project is proposed within the boundaries provided by the Seneca Nation, the appropriate contact will be notified and NOS will follow the approval procedures in the Seneca Nation Council Resolution, “To Establish a Policy Governing Access to Nation Territories and Facilities by Officials of Foreign Government.”

NOS will initiate project-specific consultations under Section 106 of the NHPA before commencing any activity with the potential to affect cultural or historic resources. NOS will also contact the Seneca Nation in the event that NOS activities result in the recovery of a potentially historic resource or artifact.

NOS intends to notify individual tribes pursuant to EO 13175 before conducting any project that may have tribal implications. Federally recognized tribes may request government-to-government consultation at any time for a proposed action that may have tribal implications.

All data collected by NOS is made publicly available to the extent allowed by federal law. The Seneca Nation can reach out to NOAA Navigation Managers to engage in the planning process for future surveying and mapping projects. Information regarding contacting NOAA Navigation Managers can be found at the following website: <https://nauticalcharts.noaa.gov/customer-service/regional-managers/index.html>.

**Endangered Species Act-3:** With regard to concerns of the effects of hydrographic surveying projects, including the use of vessels and echo sounders in the waters of the Great Lakes, the Seneca Nation requests that NOAA follow appropriate protocol for work in areas of sensitive habitat and in locations where Endangered, Threatened, Special Concern or High Priority Species of Greatest Conservation within New York State and Federally are listed. Note that the Seneca Nation also has species listings and areas of special protection with regard to cultural and traditional uses, as well as natural resources that are of great value to the Seneca Nation. The

protection of those irreplaceable resources is and will always be of the utmost priority for the Seneca Nation.

**NOS Response:** Executive Order 13175 of November 6, 2000 (Consultation and Coordination With Indian Tribal Governments), charges all executive departments and agencies with engaging in regular, meaningful, and robust consultation with tribal officials on Federal policies or activities that have tribal implications.

NOS intends to notify individual tribes and ANCs pursuant to EO 13175 before conducting any project that may have tribal implications in order to provide additional information on the project and discuss any potential additional mitigations. Federally recognized tribes may request government-to-government consultation at any time.

NOS will initiate project-specific consultations with the Seneca under Section 106 of the NHPA before commencing any activity with the potential to affect cultural or historic resources.

## **2.30 Virginia Department of Environmental Quality (Bettina Rayfield)**

### *2.30.1 Comment Submission*



*Commonwealth of Virginia*

***VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY***

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Matthew J. Strickler  
Secretary of Natural and Historic Resources

David K. Paylor  
Director  
(804) 698-4000

August 23, 2021

Ms. Giannina DiMaio, DOC/NOAA/NOS  
Environmental Compliance Coordinator  
SSMC4-Station 13612  
1305 East West Highway  
Silver Spring, Maryland 20910  
Via email: [nosaa.ec@noaa.gov](mailto:nosaa.ec@noaa.gov)

RE: Draft Programmatic Environmental Impact Statement, Surveying and Mapping Projects in U.S. Waters for Coastal and Marine Data Acquisition, National Oceanic and Atmospheric Administration, National Ocean Service (DEQ 21-086F)

Dear Ms. DiMaio:

The Commonwealth of Virginia has completed its review of the above-referenced document. The Department of Environmental Quality is responsible for coordinating Virginia's review of federal environmental documents submitted under the National Environmental Policy Act (NEPA) and responding to appropriate federal officials on behalf of the Commonwealth. DEQ is also responsible for coordinating Virginia's review of federal consistency documents submitted pursuant to the Coastal Zone Management Act (CZMA) and providing the state's response. This letter is in response to the June 2021 Draft Programmatic Environment Impact Statement (DPEIS) (notification of document availability received June 25, 2021) for the above-referenced activities. The following agencies participated in the review of the DPEIS:

Department of Environmental Quality  
Department of Wildlife Resources  
Department of Conservation and Recreation  
Marine Resources Commission  
Department of Health

In addition, the Department of Historic Resources and the Virginia Institute of Marine Science were invited to comment on the document.

## PROJECT DESCRIPTION

The National Oceanic and Atmospheric Administration (NOAA) National Ocean Service (NOS) has prepared a Draft Programmatic Environmental Impact Statement (PEIS) to analyze the potential environmental impacts associated with NOS's recurring data collection projects (surveying and mapping) to characterize underwater features (e.g., habitat, bathymetry, marine debris) throughout United States (U.S.) waters. Data obtained from these projects are used to produce many products, including charts and maps that are relied upon by mariners, scientists, the shipping and fishing industries, and countless other users in the U.S. and beyond.

The Proposed Action is to continue NOS surveying and mapping projects over the next six years. These projects would include surveys performed from crewed, remotely operated, or autonomous vessels operated by NOS field crews, other NOAA personnel on behalf of NOS, contractors, grantees, or permit/authorization holders. These crews and vehicles may use echo sounders and other active acoustic equipment and employ other equipment, including bottom samplers and conductivity, temperature, and depth instruments to collect the needed data. The "action area" for these projects includes rivers; states' offshore waters; the U.S. territorial sea; the contiguous zone; and the U.S. Exclusive Economic Zone (U.S. EEZ). The action area also includes coastal and riparian lands for activities such as the installation, maintenance, and removal of tide gauges.

The Draft PEIS evaluates three alternatives: 1) the No Action Alternative (Alternative A), under which NOS would continue to gather accurate and timely data on the nature and condition of the marine and coastal environment, reflecting the technology, equipment, scope, and methods currently in use by NOS at the current level of effort (i.e., the status quo); 2) Alternative B, under which NOS would increase the adoption of new technologies to more efficiently perform surveying, mapping, charting and related data gathering; and 3) Alternative C, which also includes the adoption of new techniques and technologies and includes an overall funding increase of 20 percent. The Draft PEIS has been prepared to: 1) inform NOS and the public on the physical, biological, economic, and social impacts of NOS mapping and surveying projects; and 2) assist NOS in deciding how to execute its mapping and surveying program over the next six years.

## ENVIRONMENTAL IMPACTS AND MITIGATION

**1. Surface Waters, Wetlands, and Subaqueous Lands.** According to the DPEIS (page 74), NOS activities could impact aquatic habitat characteristics in the action area through: physical impacts to bottom substrate (e.g., from anchoring, collection of bottom grab samples, tide gauge or GPS reference station installation, and SCUBA operations); increase in sedimentation, turbidity, and/or chemical contaminants (e.g., from crewed vessel operations, remotely operated vehicles (ROV) and autonomous vehicle operations, anchoring, collection of bottom grab samples, installation of tide gauges and GPS reference stations, and SCUBA operations); and impacts to water

column (e.g., from crewed vessel operations, ROVs, and autonomous vehicles, anchoring, use of sound speed data collection equipment and bottom grab samplers, operation of drop/towed cameras and video systems, and SCUBA operations).

## **1(a) Agency Jurisdiction.**

### ***(i) Department of Environmental Quality***

The State Water Control Board promulgates Virginia's water regulations covering a variety of permits to include the [Virginia Pollutant Discharge Elimination System Permit](#) regulating point source discharges to surface waters, Virginia Pollution Abatement Permit regulating sewage sludge, storage and land application of biosolids, industrial wastes (sludge and wastewater), municipal wastewater, and animal wastes, the [Surface and Groundwater Withdrawal Permit](#), and the [Virginia Water Protection \(VWP\) Permit](#) regulating impacts to streams, wetlands, and other surface waters. The VWP permit is a state permit which governs wetlands, surface water, and surface water withdrawals and impoundments. It also serves as §401 certification of the federal Clean Water Act §404 permits for dredge and fill activities in waters of the U.S. The VWP Permit Program is under the Office of Wetlands and Stream Protection, within the DEQ Division of Water Permitting. In addition to central office staff that review and issue VWP permits for transportation and water withdrawal projects, the six DEQ regional offices perform permit application reviews and issue permits for the covered activities:

- Clean Water Act, §401;
- Section 404(b)(i) Guidelines Mitigation Memorandum of Agreement (2/90);
- State Water Control Law, [Virginia Code](#) section 62.1-44.15:20 *et seq.*; and
- State Water Control *Regulations*, 9 VAC 25-210-10.

### ***(ii) Virginia Marine Resources Commission***

The [Virginia Marine Resources Commission \(VMRC\)](#) regulates encroachments in, on or over state-owned subaqueous beds as well as tidal wetlands pursuant to Virginia Code §28.2-1200 through 1400. For nontidal waterways, VMRC states that it has been the policy of the Habitat Management Division to exert jurisdiction only over the beds of perennial streams where the upstream drainage area is 5 square miles or greater. The beds of such waterways are considered public below the ordinary high water line.

## **1(b) Agency Findings.**

### ***(i) Virginia Department of Environmental Quality***

The VWP Permit program at the DEQ Central Office (CO) has no comments on the Proposed Action.

## **(ii) Virginia Marine Resources Commission**

VMRC finds that if any activities involve encroachments below mean low water in tidal waters, or channelward of ordinary high water along non-tidal, natural rivers and streams with a drainage area greater than 5-square miles, a VMRC permit may be required. Any jurisdictional impacts will be reviewed by the VMRC during the Joint Permit Application (JPA) process.

For additional information on DEQ-CO comments, contact Michelle Henicheck at (804) 698-4007 or [michelle.henicheck@deq.virginia.gov](mailto:michelle.henicheck@deq.virginia.gov) and/or VMRC comments, Randy Owen at (757) 247-2251 or [randy.owen@mrc.virginia.gov](mailto:randy.owen@mrc.virginia.gov).

**2. Marine Fisheries.** According to the DPEIS (page 552), although the impacts of commercial fishing are a concern for fisheries worldwide, fisheries in the action area are generally managed conservatively and in keeping with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act. Many fish stocks within the action area that were historically overfished have recovered or are recovering from their overfished status and contributing to the overall trend of increasing abundance of U.S. marine fish stocks. The Proposed Action would contribute to and have the potential to increase cumulative impacts to marine fish species, but their relative contribution would be negligible because impacts would be temporary or short-term, would be confined to the immediate vicinity of project areas, and would be small as compared to impacts from all other cumulative actions.

**2(a) Agency Jurisdiction.** It is the policy of the Commonwealth to conserve and promote the seafood and marine resources of the Commonwealth, including fish, shellfish and marine organisms, and manage the fisheries to maximize food production and recreational opportunities within the Commonwealth's territorial waters. The policy is administered by VMRC (*Virginia Code §§ 28.2-101, -201, -203, -203.1, -225, -551, -600, -601, -603 -618, and -1103, -1203 and the Constitution of Virginia, Article XI, Section 3*).

**2(b) Agency Findings.** VMRC finds that a VMRC permit may be required for activities related to the Proposed Action. Any jurisdictional impacts will be reviewed by the VMRC during the JPA process.

For additional information, contact VMRC, Randy Owen at (757) 247-2251 or [randy.owen@mrc.virginia.gov](mailto:randy.owen@mrc.virginia.gov).

**3. Nonpoint Source Pollution Control.** The DPEIS (page 74) states that NOS activities could impact habitat characteristics in the action area as a result of terrestrial impacts from ground disturbance during the installation or removal of tide gauges.

**3(a) Agency Jurisdiction.** The DEQ [Office of Stormwater Management \(OSWM\)](#) administers the following laws and regulations governing construction activities:

- Virginia Erosion and Sediment Control Law (§ 62.1-44.15:51 *et seq.*) and

*Regulations* (9 VAC 25-840) (VESCL&R);

- Virginia Stormwater Management Act (VSMA, § 62.1-44.15:24 *et seq.*);
- Virginia Stormwater Management Program (VSMP) Regulation (9 VAC 25-870); and
- 2014 General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges of Stormwater from Construction Activities (9 VAC 25-880).

In addition, DEQ is responsible for the VSMP General Permit for Stormwater Discharges from Construction Activities related to Municipal Separate Storm Sewer Systems (MS4s) and construction activities for the control of stormwater discharges from MS4s and land disturbing activities under the Virginia Stormwater Management Program (9 VAC 25-890-40).

### **3(b) Requirements.**

#### ***(i) Erosion and Sediment Control and Stormwater Management Plans***

NOS and its authorized agents conducting regulated land-disturbing activities on private and public lands in the state must comply with *VESCL&R* and *VSWML&R*, including coverage under the general permit for stormwater discharge from construction activities, and other applicable federal nonpoint source pollution mandates (e.g. Clean Water Act-Section 313, federal consistency under the Coastal Zone Management Act). Clearing and grading activities, installation of staging areas, parking lots, roads, buildings, utilities, borrow areas, soil stockpiles, and related land-disturbing activities that result in the total land disturbance of equal to or greater than 10,00 square feet (2,500 square feet in a Chesapeake Bay Preservation Area) would be regulated by *VESCL&R*. Accordingly, NOS must prepare and implement an Erosion and Sediment Control (ESC) Plan for applicable land-disturbing activities to ensure compliance with state law and regulations.

Land-disturbing activities that result in the total land disturbance of equal to or greater than one acre (2,500 square feet in Chesapeake Bay Preservation Area) would be regulated by *VSWML&R*. Accordingly, NOS must prepare and implement a Stormwater Management (SWM) Plan for applicable land-disturbing activities to ensure compliance with state law and regulations. The SWM Plan is submitted to the appropriate DEQ regional office which serves the area where the project is located, for review for compliance. NOS is ultimately responsible for achieving project compliance through oversight of on-site contractors, regular field inspection, prompt action against non-compliant sites, and other mechanisms consistent with agency policy. [Reference: *VESCL* 62.1-44.15 *et seq.*]

#### ***(ii) General Permit for Discharges of Stormwater from Construction Activities (VAR10)***

The owner or operator of projects involving land-disturbing activities of equal to or greater than one acre is required to apply for registration coverage under the General

Permit for Discharges of Stormwater from Construction Activities and develop a project-specific stormwater pollution prevention plan (SWPPP). Construction activities requiring registration also include land disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan of development will collectively disturb equal to or greater than one acre

- The SWPPP must be prepared prior to submission of the registration statement for coverage under the General Permit.
- The SWPPP must address water quality and quantity in accordance with the VSMP Permit Regulations.

General information and registration forms for the [Construction General Permit](#) are available from DEQ. [Reference: Virginia Stormwater Management Act 62.1-44.15 *et seq.*; VSMP Permit Regulations 9 VAC 25-880 *et seq.*].

For additional information, contact DEQ-OSWM, Larry Gavan at (804) 698-4040 or [larry.gavan@deq.virginia.gov](mailto:larry.gavan@deq.virginia.gov).

**4. Chesapeake Bay Preservation Areas.** As noted above, NOS activities could impact habitat characteristics in the action area as a result of terrestrial impacts from ground disturbance during the installation or removal of tide gauges (DPEIS, page 74).

**4(a) Agency Jurisdiction.** The DEQ [Office of Watersheds and Local Government Assistance Programs \(OWLGAP\)](#) administers the Chesapeake Bay Preservation Act (Virginia Code §62.1-44.15:67 *et seq.*) and *Chesapeake Bay Preservation Area Designation and Management Regulations* (9 VAC 25-830-10 *et seq.*). Each Tidewater locality must adopt a program based on the Bay Act and *Regulations*. The Act and *Regulations* recognize local government responsibility for land use decisions and are designed to establish a framework for compliance without dictating precisely what local programs must look like. Local governments have flexibility to develop water quality preservation programs that reflect unique local characteristics and embody other community goals. Such flexibility also facilitates innovative and creative approaches in achieving program objectives. The regulations address nonpoint source pollution by identifying and protecting certain lands called Chesapeake Bay Preservation Areas. The regulations use a resource-based approach that recognizes differences between various land forms and treats them differently.

**4(b) Chesapeake Bay Preservation Areas.** In general, the areas protected by the Chesapeake Bay Preservation Act (Bay Act), as locally implemented, require conformance with performance criteria. Chesapeake Bay Preservation Areas (CBPAs) include Resource Protection Areas (RPAs) and Resource Management Areas (RMAs) as designated by the local government. RPAs include:

- tidal wetlands;
- certain non-tidal wetlands;
- tidal shores; and

- a 100-foot vegetated buffer area located adjacent to and landward of these features and along both sides of any water body with perennial flow.

RMAAs require less stringent performance criteria than RPAAs and are designated using a variety of criteria as approved by DEQ-OWLGAP.

#### **4(c) Requirements.**

##### ***(i) Water-Dependent Facilities***

According to 9 VAC 25-830-140 of the *Regulations*, new or expanded water-dependent facilities may be allowed in CBPAs provided they:

- do not conflict with the local comprehensive plan;
- comply with the performance criteria set forth in 9 VAC2 5-830-130;
- any non-water dependent component is located outside of the RPA; and
- access to the water-dependent facility will be provided with the minimum disturbance necessary.

The *Regulations* (9 VAC 25-830-40) define a “water dependent activity,” as a development of land that cannot exist outside of the RPA and must be located on the shoreline by reason of the intrinsic nature of its operation. This includes facilities such as beaches and other public water-oriented recreation areas. In addition, according to 9 VAC 25-830-140(5), shoreline erosion control projects are permitted within lands analogous to locally designated CBPAs, provided necessary control techniques are employed, and appropriate vegetation is established to protect or stabilize that shoreline in accordance with the best available technical advice and applicable permit conditions or requirements.

##### ***(ii) General Performance Criteria***

Projects that include land disturbing activity in CBPAs must adhere to the general performance criteria of the *Regulations* (9 VAC 25-830-130), especially with respect to:

- minimizing land disturbance (including access and staging areas),
- retaining indigenous vegetation, and
- minimizing impervious cover.

All land-disturbing activity exceeding 2,500 square feet must comply with the requirements of the *Virginia Erosion and Sediment Control Handbook, Third Edition, 1992*, and satisfy stormwater management criteria consistent with the water quality protection provisions of the *Virginia Stormwater Management Regulations* (9 VAC 25-870-51 and 9 VAC 25-870-103).

***(iii) Water Quality Impact Assessment***

A water quality impact assessment (WQIA) is required for any proposed land disturbance, development or redevelopment within the RPA to identify the impacts of proposed development on water quality and lands within RPAs consistent with the goals and objectives of the *Regulations* and the local ordinance. The WQIA also provides specific measures for mitigation of those impacts.

For additional information, contact DEQ-OWLGAP, Daniel Moore at (804) 698-4520 or [daniel.moore@deg.virginia.gov](mailto:daniel.moore@deg.virginia.gov).

**5. Natural Heritage Resources.** The DPEIS does not specifically address natural heritage resources affected by the Proposed Action.

**5(a) Agency Jurisdiction.**

***(i) [The Virginia Department of Conservation and Recreation's \(DCR\) Division of Natural Heritage \(DNH\).](#)***

DNH's mission is conserving Virginia's biodiversity through inventory, protection and stewardship. The Virginia Natural Area Preserves Act (Virginia Code §10.1-209 through 217), authorizes DCR to maintain a statewide database for conservation planning and project review, protect land for the conservation of biodiversity, and protect and ecologically manage the natural heritage resources of Virginia (the habitats of rare, threatened and endangered species, significant natural communities, geologic sites, and other natural features).

***(ii) [The Virginia Department of Agriculture and Consumer Services \(VDACS\).](#)***

The Endangered Plant and Insect Species Act of 1979 (Virginia Code Chapter 39 §3.1-1020 through 1030) authorizes VDACS to conserve, protect and manage endangered and threatened species of plants and insects. Under a Memorandum of Agreement established between VDACS and the DCR, DCR represents VDACS in comments regarding potential impacts on state-listed threatened and endangered plant and insect species.

**5(b) Agency Findings.**

***(i) Natural Heritage Resources***

DCR-DNH searched its Biotics Data System (Biotics) for occurrences of natural heritage resources in Virginia. Several state and federally-listed species including marine mammals, sea turtles, and marine/coastal birds have been documented in the planning area.

***(ii) State Natural Area Preserves***

DCR files do not indicate the presence of any State Natural Area Preserves under the agency's jurisdiction in the vicinity of the Proposed Action in Virginia.

***(iii) State-Listed Plant and Insect Species***

DCR finds that the activities will not affect any documented state-listed plants or insects.

**5(c) Recommendations.**

***(i) Federal and State-Listed Species Coordination***

Due to the legal status of state and federally-listed species, DCR recommends NOS coordinate with the National Marine Fisheries Service (NMFS), the Virginia Department of Wildlife Resources (DWR), and the United States Fish and Wildlife Service (USFWS) to ensure compliance with protected species legislation.

***(ii) Natural Heritage Resources Updates***

Contact DCR-DNH to secure updated information on natural heritage resources if the scope of the Proposed Action changes or six months pass before it is utilized, since new and updated information is continually added to Biotics.

For additional information on DCR comments, contact DCR, Rene Hypes at (804) 371-2708 or [rene.hypes@dcr.virginia.gov](mailto:rene.hypes@dcr.virginia.gov).

**6. Wildlife Resources and Protected Species.** The bulk of the information and analysis presented in the DPEIS addresses the effect of the Proposed Action on wildlife resources and protected species, including marine mammals, sea turtles, fish, aquatic macroinvertebrates, essential fish habitat, seabirds, shorebirds, coastal birds and waterfowl. In general, the DPEIS finds that the Proposed Action would contribute to and have the potential to increase cumulative impacts, but their relative contribution would be negligible as compared to aggregate contributions from other cumulative actions because the NOS impacts would be temporary or short-term, would be confined to the immediate vicinity of project areas, and would be small as compared to impacts from all other cumulative actions.

**6(a) Agency Jurisdiction.** The [Virginia Department of Wildlife Resources \(DWR\)](#) (formerly the Department of Game and Inland Fisheries), as the Commonwealth's wildlife and freshwater fish management agency, exercises enforcement and regulatory jurisdiction over wildlife and freshwater fish, including state- or federally-listed endangered or threatened species, but excluding listed insects (Virginia Code, Title 29.1). DWR is a consulting agency under the U.S. Fish and Wildlife Coordination Act (16 U.S. Code §661 *et seq.*) and provides environmental analysis of projects or permit applications coordinated through DEQ and several other state and federal agencies.

DWR determines likely impacts upon fish and wildlife resources and habitat, and recommends appropriate measures to avoid, reduce or compensate for those impacts. For more information, see the DWR website at [www.dwr.virginia.gov](http://www.dwr.virginia.gov).

**6(b) Recommendations.** DWR recommends that NOS consider ways to avoid and/or minimize any state-listed species or designated resources impacted by the Proposed Action, including those species that may be documented from near-shore habitats proposed for certain activities. This is in addition to the federally-listed species assessed in the DPEIS for the Proposed Action.

DWR recommends the following steps be performed to assist in the assessment of potential impacts upon state-listed species, for the development of a Coastal Zone Management Act Federal Consistency Determination for proposed activities in Virginia.

- A. Access the Virginia Fish and Wildlife Information Service (VAFWIS) at <https://vafwis.dwr.virginia.gov/fwis/>. A request to subscribe to VAFWIS may be submitted to [vafwis\\_support@dwr.virginia.gov](mailto:vafwis_support@dwr.virginia.gov). VAFWIS subscriptions are free of charge. As a subscriber, NOS will be able to generate an IPA for the project area (project site plus a minimum 2-mile buffer) which generates a list of imperiled wildlife and designated wildlife resources known from the project area. NOS may also access VAFWIS as a visitor, but access to data and mapping at this level is restricted.

Alternatively, NOS may contact DWR's Geographic Information Systems (GIS) Coordinator, Jay Kapalczynski, at [jay.kapalczynski@dwr.virginia.gov](mailto:jay.kapalczynski@dwr.virginia.gov), to request access to the Wildlife Mapping and Environmental Review Map Service (WERMS), which allows the user to download GIS data.

- B. Access information about the location of bat hibernacula and roosts from the following locations:
- Northern Long-Eared Bats: <https://www.dwr.virginia.gov/wildlife/bats/northern-long-eared-bat-application/>.
  - Little Brown Bats and Tricolored Bats: <https://www.dwr.virginia.gov/wildlife/bats/little-brown-bat-tri-colored-bat-winter-habitat-roosts-application/>.
- C. Access up to date information about the location and status of bald eagle nests in Virginia by accessing the Center for Conservation Biology's Eagle Nest Locator at <https://ccbbirds.org/what-we-do/research/species-of-concern/virginia-eagles/nest-locator/>.
- D. Review the DWR information, guidance, and protocols available at [www.virginiawildlife.gov](http://www.virginiawildlife.gov) in the "Additional Resources" section and implement, as appropriate.

- E. Include the results of the desktop analysis in the final PEIS, Coastal Zone Consistency Determination and other project documents.

For additional information regarding DWR comments, contact DWR, Amy Martin at (804) 367-2211 or [amy.ewing@dwr.virginia.gov](mailto:amy.ewing@dwr.virginia.gov).

**7. Water Resources.** The DPEIS does not indicate that the Proposed Action will adversely impact drinking water sources.

**7(a) Agency Jurisdiction.** The [Virginia Department of Health \(VDH\) Office of Drinking Water \(ODW\)](#) reviews projects for the potential to impact public drinking water sources (groundwater wells, springs and surface water intakes). VDH administers both federal and state laws governing waterworks operation.

**7(b) Agency Findings.** VDH-ODW has no comments on the Proposed Action.

For additional information, contact VDH-ODW, Arlene Fields Warren at (804) 864-7781 or [arlene.warren@vdh.virginia.gov](mailto:arlene.warren@vdh.virginia.gov).

**8. Federal Consistency under the CZMA.** According to the DPEIS (page 61), in order to facilitate Coastal Zone Management Act (CZMA) review for surveying and mapping projects, NOS will coordinate requirements for federal consistency with coastal states and territories pursuant to Section 307 of the CZMA. NOS will provide the DPEIS to coastal states or territories with approved coastal zone management programs.

**8(a) Requirements.** Pursuant to the Coastal Zone Management Act (CZMA) of 1972, as amended, NOS is required to determine the consistency of its activities affecting Virginia's coastal resources or coastal uses with the Virginia Coastal Zone Management (CZM) Program (see section 307(c)(1) of the Act and 15 CFR Part 930, Subpart C, section 930.34). This involves an analysis of the activities in light of the Enforceable Policies of the Virginia CZM Program, and the submission of a consistency determination reflecting that analysis and committing NOS to comply with the enforceable policies. In addition, the NOS is encouraged to consider the Advisory Policies of the Virginia CZM Program in accordance with 15 CFR §930.39(c). Section 930.39 gives content requirements for the consistency determination, or you may also find guidance in DEQ's [Federal Consistency Information Package](#) on the agency's website.

For additional information, contact the DEQ Office of Environmental Impact Review (OEIR), Bettina Rayfield at (804) 698-4202 or [bettina.rayfield@deq.virginia.gov](mailto:bettina.rayfield@deq.virginia.gov) or John Fisher at (804) 698-4339 or [john.fisher@deq.virginia.gov](mailto:john.fisher@deq.virginia.gov).

Thank you for the opportunity to review the Draft Programmatic Environmental Impact Statement for Surveying and Mapping Projects in U.S. Waters for Coastal and Marine Data Acquisition. Detailed comments of reviewing agencies are attached for your

Surveying and Mapping Projects in U.S. Waters for Coastal and Marine Data Acquisition  
NOAA-NOS DPEIS, DEQ 21-086F

review. Please contact me at (804) 698-4204 or John Fisher at (804) 698-4339 for clarification of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Bettina Rayfield". The signature is fluid and cursive, with a long horizontal stroke at the end.

Bettina Rayfield, Program Manager  
Environmental Impact Review and Long-Range  
Priorities

#### Enclosures

Ec: Amy Martin, DWR  
Robbie Rhur, DCR  
Arleen Warren, VDH  
Tiffany Birge, VMRC  
Roger Kirchen, DHR  
Emily Hein, VIMS

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**ESSLog# 41395\_21-086F\_NOAA Surveying and Mapping\_DWR\_AEM\_20210721**

1 message

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**Martin, Amy** <amy.ewing@dwr.virginia.gov>  
To: John Fisher <john.fisher@deq.virginia.gov>

Wed, Jul 21, 2021 at 4:51 PM

John,

We have reviewed the subject project that proposes to continue, with upgrades in technology, survey and mapping activities in "rivers; states' offshore waters; the U.S. territorial sea; the contiguous zone; and the U.S. Exclusive Economic Zone (U.S. EEZ). The action area also includes coastal and riparian lands for activities such as the installation, maintenance, and removal of tide gauges." Activities may include use of "echo sounders and other active acoustic equipment and employ other equipment, including bottom samplers and conductivity, temperature, and depth instruments to collect the needed data."

In addition to the federally-listed species assessed in the Programmatic EIS for the project, we also recommend NOAA consider ways to avoid and/or minimize any state listed species or designated resources impacted by this project, including those species that may be documented from near-shore habitats proposed for certain activities. We recommend the following steps be performed to assist in the assessment of potential impacts upon state-listed species, necessary during development of a Coastal Zone Consistency Determination for the project sites in VA:

A. Access VAFWIS at this link: <https://vafwis.DWR.virginia.gov/fwis/>

If you are not already a VAFWIS subscriber, you should request to become one by emailing a request to [VAFWIS\\_support@DWR.virginia.gov](mailto:VAFWIS_support@DWR.virginia.gov). VAFWIS Subscriptions are free of charge. As a subscriber, one is able to generate an IPA for the project area (project site plus a minimum 2-mile buffer) which generates a list of imperiled wildlife and designated wildlife resources known from the project area. You may also access VAFWIS as a visitor, but access to data and mapping at this user level is restricted.

Alternatively, you may contact our Geographic Information Systems (GIS) Coordinator, Jay Kapalczynski, at [Jay.Kapalczynski@DWR.virginia.gov](mailto:Jay.Kapalczynski@DWR.virginia.gov) to request access to the Wildlife Mapping and Environmental Review Map Service (WERMS) which allows you to download GIS data into your own system.

B. Access information about the location of bat hibernacula and roosts from the following locations:

Northern Long-Eared Bats: <https://www.dwr.virginia.gov/wildlife/bats/northern-long-eared-bat-application/>

Little Brown Bats and Tricolored Bats: <https://www.dwr.virginia.gov/wildlife/bats/little-brown-bat-tri-colored-bat-winter-habitat-roosts-application/>

C. Access up to date information about the location and status of bald eagle nests in Virginia by accessing the Center for Conservation Biology's Eagle Nest Locator at <https://ccbbirds.org/what-we-do/research/species-of-concern/virginia-eagles/nest-locator/>

D. Review the DWR information, guidance, and protocols available on our website at the bottom of [this page](#) in the "Additional Resources" section and implement, as appropriate.

E. Include the results of your desktop analysis in the EIS, Coastal Zone Consistency Determination and other project documents.

Thank you,  
Amy

**\*\*please note name change below; email address not yet changed\*\***



**Amy E. Martin** (*she/her/hers*)

*Environmental Services Biologist  
Manager, Wildlife Information*

**P** 804.367.2211

**Department of Wildlife Resources**

*CONSERVE. CONNECT. PROTECT.*

**A** 7870 Villa Park Drive, P.O. Box 90778, Henrico, VA 23228

[www.VirginiaWildlife.gov](http://www.VirginiaWildlife.gov)

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**Fwd: NEW PROJECT NOAA Surveying and Mapping Projects, DEQ #21-086F**

1 message

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**Fulcher, Valerie** <[valerie.fulcher@deq.virginia.gov](mailto:valerie.fulcher@deq.virginia.gov)>  
To: John Fisher <[john.fisher@deq.virginia.gov](mailto:john.fisher@deq.virginia.gov)>

Mon, Jul 26, 2021 at 8:53 AM

VDH Comments for 21-086F.

----- Forwarded message -----

From: **Warren, Arlene** <[arlene.warren@vdh.virginia.gov](mailto:arlene.warren@vdh.virginia.gov)>

Date: Mon, Jul 26, 2021 at 8:51 AM

Subject: Re: NEW PROJECT NOAA Surveying and Mapping Projects, DEQ #21-086F

To: Fulcher, Valerie <[valerie.fulcher@deq.virginia.gov](mailto:valerie.fulcher@deq.virginia.gov)>

The Department of Health, Office of Drinking Water has no comments on this subject at this time.

Best Regards,

Arlene Fields Warren

**GIS Program Support Technician****Office of Drinking Water****Virginia Department of Health**

109 Governor Street

Richmond, VA 23219

(804) 864-7781



# COMMONWEALTH of VIRGINIA

*Marine Resources Commission*  
380 Fenwick Road  
Bldg 96  
Fort Monroe, VA 23651-1064

Matthew J. Strickler  
Secretary of Natural Resources

Steven G. Bowman  
Commissioner

July 21, 2021

Department of Environmental Quality  
Office of Environmental Impact Review  
Attn: John Fisher  
1111 East Main Street  
Richmond, Virginia 23219

Re: NOAA Surveying and Mapping Projects, DEQ #21-086F

Dear Mr. Fisher,

This will respond to the request for comments regarding the Draft Environmental Impact Statement for the NOAA Surveying and Mapping Projects, (DEQ #21-086F), prepared by NOAA National Ocean Service (NOS). Specifically, the NOS has proposed to conduct surveys and mapping for coastal and marine data collection using upgraded equipment, improved hydroacoustic devices, and new tide stations over a six-year time period. A portion of the project area encompasses those rivers and coastal coastal waters throughout the Commonwealth of Virginia.

We reviewed the provided project documents and found the proposed project is within the jurisdictional areas of the Virginia Marine Resources Commission (VMRC) and may require a permit from this agency.

Please be advised that the VMRC, pursuant to Chapters 12, 13 and 14 of Title 28.2 of the Code of Virginia, administers permits required for submerged lands, tidal wetlands, and beaches and dunes. Additionally, the VMRC has jurisdiction over encroachments in, on, or over the beds of rivers, streams, or creeks, which are the property of the Commonwealth. Accordingly, if any portion of any project involves encroachments below mean low water in tidal waters, or channelward of ordinary high water along non-tidal, natural rivers and streams with a drainage area greater than 5-square miles, a permit may be required from our agency. Any jurisdictional impacts will be reviewed by the VMRC during the Joint Permit Application (JPA) process.

*An Agency of the Natural Resources Secretariat*  
[www.mrc.virginia.gov](http://www.mrc.virginia.gov)

Telephone (757) 247-2200 (757) 247-2292 V/TDD Information and Emergency Hotline 1-800-541-4646 V/TDD

Department of Environmental Quality  
July 21, 2021  
Page Two

Please contact me at 757-247-2251 or by email at [randy.owen@mrc.virginia.gov](mailto:randy.owen@mrc.virginia.gov) if you have questions.  
Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to be the name 'Randy Owen'. The signature is stylized, with a large, looped 'R' and a horizontal line extending to the right.

Randy Owen  
Chief, Habitat Management Division

RDO/tlb  
HM

Matthew J. Strickler  
Secretary of Natural Resources

Clyde E. Cristman  
Director



Rochelle Altholz  
Deputy Director of  
Administration and Finance

Russell W. Baxter  
Deputy Director of  
Dam Safety & Floodplain  
Management and Soil & Water  
Conservation

Nathan Burrell  
Deputy Director of  
Government and Community Relations

Thomas L. Smith  
Deputy Director of  
Operations

**COMMONWEALTH of VIRGINIA**  
DEPARTMENT OF CONSERVATION AND RECREATION

**MEMORANDUM**

DATE: July 26, 2021  
TO: John Fisher, DEQ  
FROM: Roberta Rhur, Environmental Impact Review Coordinator  
SUBJECT: DEQ 21-086F, Surveying and Mapping Projects in U.S. Waters for Coastal and Marine Data Acquisition

**Division of Natural Heritage**

The Department of Conservation and Recreation's Division of Natural Heritage (DCR) has searched its Biotics Data System for occurrences of natural heritage resources from the area outlined on the submitted map. Natural heritage resources are defined as the habitat of rare, threatened, or endangered plant and animal species, unique or exemplary natural communities, and significant geologic formations.

Several state and federally-listed species including marine mammals, sea turtles, and marine/coastal birds have been documented in the planning area. Due to the legal status of these species, DCR recommends coordination with the National Marine Fisheries Service (NMFS), the Virginia Department of Wildlife Resources (VDWR), and the United States Fish and Wildlife Service (USFWS) to ensure compliance with protected species legislation.

There are no State Natural Area Preserves under DCR's jurisdiction in the project vicinity.

Under a Memorandum of Agreement established between the Virginia Department of Agriculture and Consumer Services (VDACS) and the DCR, DCR represents VDACS in comments regarding potential impacts on state-listed threatened and endangered plant and insect species. The current activity will not affect any documented state-listed plants or insects.

New and updated information is continually added to Biotics. Please re-submit project information and map for an update on this natural heritage information if the scope of the project changes and/or six months has passed before it is utilized.

The Virginia Department of Wildlife Resources (VDWR) maintains a database of wildlife locations, including threatened and endangered species, trout streams, and anadromous fish waters that may contain information not documented in this letter. Their database may be accessed from <https://vafwis.dgif.virginia.gov/fwis/> or contact Ernie Aschenbach at 804-367-2733 or [Ernie.Aschenbach@dwr.virginia.gov](mailto:Ernie.Aschenbach@dwr.virginia.gov).

600 East Main Street, 24<sup>th</sup> Floor | Richmond, Virginia 23219 | 804-786-6124

**State Parks • Soil and Water Conservation • Outdoor Recreation Planning  
Natural Heritage • Dam Safety and Floodplain Management • Land Conservation**

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**Fwd: NEW PROJECT NOAA Surveying and Mapping Projects, DEQ #21-086F**

1 message

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**Henicheck, Michelle** <michelle.henicheck@deq.virginia.gov>

Wed, Jul 28, 2021 at 5:43 PM

To: John Fisher &lt;john.fisher@deq.virginia.gov&gt;

I don't have any comments for this project.

[Michelle Henicheck, PWS](#)  
[Senior Wetland Ecologist](#)  
[Virginia Department of Environmental Quality](#)

[Phone: 804.698.4007](#)

[Email: michelle.henicheck@deq.virginia.gov](#)

[New Location:](#)

1111 East Main Street, Suite 1400  
Richmond, Virginia 23219

### **2.30.2**    *NOS Response*

**CZMA-12:** VMRC finds that if any activities involve encroachments below mean low water in tidal waters, or channelward of ordinary high water along non-tidal, natural rivers and streams with a drainage area greater than 5-square miles, a VMRC permit may be required. Any jurisdictional impacts will be reviewed by the VMRC during the Joint Permit Application (JPA) process.

**NOS Response:** NOS activities do not include encroachments below mean low water in tidal waters, or channelward of ordinary high water along non-tidal, natural rivers and streams with a drainage area greater than 5-square miles.

Under the CZMA, federal agency activities with coastal effects are required to be consistent to the maximum extent practicable with federally approved enforceable policies of a State's Coastal Management Program. NOAA regulations at 15 CFR 930.39(e) clarify that unless required by a Federal law, neither the CZMA nor OCM's approval of state enforceable policies authorize the application of state permit requirements to federal agencies. The federal agency activities must be consistent to the maximum extent practicable with the standards that underlie a state's permit, but do not have to apply for or obtain a state permit (2020 OCM Federal Consistency Overview and 65 FR 77123, 77140 (2000)).

NOS provided CD letters to all coastal states and territories with approved CMPs, including Virginia. The CDs evaluate the coastal effects of proposed activities according to the relevant enforceable policies to make a consistency determination under the CZMA.

**CZMA-13:** VMRC finds that a VMRC permit may be required for activities related to the Proposed Action. Any jurisdictional impacts will be reviewed by the VMRC during the JPA process.

**NOS Response:** Under the CZMA, federal agency activities with coastal effects are required to be consistent to the maximum extent practicable with federally approved enforceable policies of a State's Coastal Management Program. NOAA regulations at 15 CFR 930.39(e) clarify that unless required by a Federal law, neither the CZMA nor OCM's approval of state enforceable policies authorize the application of state permit requirements to federal agencies. The federal agency activities must be consistent to the maximum extent practicable with the standards that underlie a state's permit, but do not have to apply for or obtain a state permit (2020 OCM Federal Consistency Overview and 65 FR 77123, 77140 (2000)).

NOS provided CD letters to all coastal states and territories with approved CMPs, including Virginia. The CDs evaluate the coastal effects of proposed activities according to the relevant enforceable policies to make a consistency determination under the CZMA.

**CZMA-14:** NOS and its authorized agents conducting regulated land-disturbing activities on private and public lands in the state must comply with VESCL&R and VSWML&R, including coverage under the general permit for stormwater discharge from construction activities, and other applicable federal nonpoint source pollution mandates (e.g. Clean Water Act- Section 313, federal consistency under the Coastal Zone Management Act). Clearing and grading activities, installation of staging areas, parking lots, roads, buildings, utilities, borrow areas, soil stockpiles,

and related land-disturbing activities that result in the total land disturbance of equal to or greater than 10,00 square feet (2,500 square feet in a Chesapeake Bay Preservation Area) would be regulated by VESCL&R. Accordingly, NOS must prepare and implement an Erosion and Sediment Control (ESC) Plan for applicable land-disturbing activities to ensure compliance with state law and regulations.

**NOS Response:** Some NOS projects under the Proposed Action would include the installation, maintenance, and removal of tide gauges and GPS reference stations, most of which are affixed to existing docks and piers or secured to rocks in more remote locations. Only very small areas would be disturbed, and any affected habitat components would be expected to recover post-installation. Due to the small scale of any terrestrial installation activities, no terrestrial point or non-point releases would occur.

NOS provided CD letters to all coastal states and territories with approved CMPs, including Virginia. The CDs evaluate the coastal effects of proposed activities according to the relevant enforceable policies to make a consistency determination under the CZMA.

**CZMA-15:** Land-disturbing activities that result in the total land disturbance of equal to or greater than one acre (2,500 square feet in Chesapeake Bay Preservation Area) would be regulated by VSWML&R. Accordingly, NOS must prepare and implement a Stormwater Management (SWM) Plan for applicable land-disturbing activities to ensure compliance with state law and regulations. The SWM Plan is submitted to the appropriate DEQ regional office which serves the area where the project is located, for review for compliance. NOS is ultimately responsible for achieving project compliance through oversight of on-site contractors, regular field inspection, prompt action against non-compliant sites, and other mechanisms consistent with agency policy. [Reference: VESCL 62.1-44.15 et seq.]

**NOS Response:** NOS activities do not include land-disturbing activities that result in total land disturbance equal to or greater than one acre (2,500 square feet in Chesapeake Bay Preservation Area).

NOS provided CD letters to all coastal states and territories with approved CMPs, including Virginia. The CDs evaluate the coastal effects of proposed activities according to the relevant enforceable policies to make a consistency determination under the CZMA.

**CZMA-16:** The owner or operator of projects involving land-disturbing activities of equal to or greater than one acre is required to apply for registration coverage under the General Permit for Discharges of Stormwater from Construction Activities and develop a project-specific stormwater pollution prevention plan (SWPPP). Construction activities requiring registration also include land disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan of development will collectively disturb equal to or greater than one acre

- The SWPPP must be prepared prior to submission of the registration statement for coverage under the General Permit.
- The SWPPP must address water quality and quantity in accordance with the VSMP Permit Regulations.

**NOS Response:** Thank you for identifying federally enforceable policies that may be applicable to the proposed project. NOS provided CD letters to each coastal state and territory with an approved CMP for compliance under the CZMA, including Virginia. NOS will comply with all requirements under the Clean Water Act (CWA).

**CZMA-17:** According to 9 VAC 25-830-140 of the Regulations, new or expanded water-dependent facilities may be allowed in CBPAs provided they:

- do not conflict with the local comprehensive plan;
- comply with the performance criteria set forth in 9 VAC2 5-830-130;
- any non-water dependent component is located outside of the RPA; and
- access to the water-dependent facility will be provided with the minimum disturbance necessary.

**NOS Response:** Thank you for identifying federally enforceable policies that may be applicable to the proposed project. NOS provided CD letters to all coastal states and territories with approved CMPs, including Virginia. The CDs evaluate the coastal effects of proposed activities according to the relevant enforceable policies to make a consistency determination under the CZMA.

**CZMA-18:** according to 9 VAC 25-830-140(5), shoreline erosion control projects are permitted within lands analogous to locally designated CBPAs, provided necessary control techniques are employed, and appropriate vegetation is established to protect or stabilize that shoreline in accordance with the best available technical advice and applicable permit conditions or requirements.

**NOS Response:** Thank you for identifying federally enforceable policies that may be applicable to the proposed project. NOS provided CD letters to all coastal states and territories with approved CMPs, including Virginia. The CDs evaluate the coastal effects of proposed activities according to the relevant enforceable policies to make a consistency determination under the CZMA.

**CZMA-19:** Projects that include land disturbing activity in CBPAs must adhere to the general performance criteria of the Regulations (9 VAC 25-830-130), especially with respect to:

- minimizing land disturbance (including access and staging areas),
- retaining indigenous vegetation, and
- minimizing impervious cover.

**NOS Response:** Thank you for identifying federally enforceable policies that may be applicable to the proposed project. NOS provided CD letters to all coastal states and territories with approved CMPs, including Virginia. The CDs evaluate the coastal effects of proposed activities according to the relevant enforceable policies to make a consistency determination under the CZMA.

**CZMA-20:** All land-disturbing activity exceeding 2,500 square feet must comply with the requirements of the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992, and

satisfy stormwater management criteria consistent with the water quality protection provisions of the Virginia Stormwater Management Regulations (9 VAC 25- 870-51 and 9 VAC 25-870-103).

**NOS Response:** Thank you for identifying federally enforceable policies that may be applicable to the proposed project. NOS provided CD letters to all coastal states and territories with approved CMPs, including Virginia. The CDs evaluate the coastal effects of proposed activities according to the relevant enforceable policies to make a consistency determination under the CZMA. NOS will comply with all requirements under the Clean Water Act.

**CZMA-21:** A water quality impact assessment (WQIA) is required for any proposed land disturbance, development or redevelopment within the RPA to identify the impacts of proposed development on water quality and lands within RPAs consistent with the goals and objectives of the Regulations and the local ordinance. The WQIA also provides specific measures for mitigation of those impacts.

**NOS Response:** Thank you for identifying federally enforceable policies that may be applicable to the proposed project. NOS provided CD letters to all coastal states and territories with approved CMPs, including Virginia. The CDs evaluate the coastal effects of proposed activities according to the relevant enforceable policies to make a consistency determination under the CZMA.

**Scope-10:** The DPEIS does not specifically address natural heritage resources affected by the Proposed Action.

**NOS Response:** The PEIS addresses all relevant aspects of the human environment, including natural heritage resources. NOS projects are predominantly aquatic actions that infrequently come into contact with terrestrial areas; therefore, natural heritage resources are appropriately addressed where relevant in Chapter 3 of the PEIS. NOS has provided a Federal Consistency Determination letter to VA Department of Environmental Quality (DEQ) under CZMA and will initiate project-specific consultations under Section 106 of the NHPA before commencing any activity with the potential to affect cultural or historic resources.

**Endangered Species Act-2:** Due to the legal status of state and federally-listed species, DCR recommends NOS coordinate with the National Marine Fisheries Service (NMFS), the Virginia Department of Wildlife Resources (DWR), and the United States Fish and Wildlife Service (USFWS) to ensure compliance with protected species legislation.

**NOS Response:** NOS has completed consultation with NMFS for compliance with the ESA and MSA. NOS has initiated consultation with USFWS under Section 7 of the ESA on the potential effects to endangered birds. As part of the consultation process, NOS developed mitigation measures to avoid and minimize any potential effects to wildlife. NOS has submitted an application for a Letter of Authorization to NMFS and a petition for Incidental Take Regulations to USFWS for marine mammal species under the MMPA. NOS intends to coordinate with states through the CZMA Federal Consistency process. Until NOS has completed programmatic compliance with USFWS, NMFS, and the Commonwealth

through the CZMA process, NOS will continue to comply with these regulations on a project-by-project basis.

**Scope-11:** Contact DCR-DNH to secure updated information on natural heritage resources if the scope of the Proposed Action changes or six months pass before it is utilized, since new and updated information is continually added to Biotics.

**NOS Response:** Thank you for the additional information about Biotics.

**Mitigation Measures-7:** DWR recommends that NOS consider ways to avoid and/or minimize any state-listed species or designated resources impacted by the Proposed Action, including those species that may be documented from near-shore habitats proposed for certain activities. This is in addition to the federally-listed species assessed in the DPEIS for the Proposed Action.

**NOS Response:** NOS is committed to public transparency and working with local, state, tribal, and federal partners to reduce environmental impacts from NOS projects. NOS is undergoing consultation with the NMFS and USFWS for compliance under the MMPA, ESA, and MSA. It is not practicable for NOS to evaluate potential impacts to all state-listed species or designated resources.

NOS provided CD letters to all coastal states and territories with approved CMPs, including Virginia. The CDs evaluate the coastal effects of proposed activities according to the relevant enforceable policies to make a consistency determination under CZMA. Potential requirements for future coordination will be developed through the CZMA process.

Federal agency activities must be consistent to the maximum extent practicable with the standards that underlie a state's permit requirements. However, federal agencies do not have to apply for or obtain a state permit unless required by another Federal law (2020 OCM Federal Consistency Overview; 65 FR 77123,77140 (2000); and 15 CFR 930.39(e)).

**CZMA-22:** DWR recommends the following steps be performed to assist in the assessment of potential impacts upon state-listed species, for the development of a Coastal Zone Management Act Federal Consistency Determination for proposed activities in Virginia.

A. Access the Virginia Fish and Wildlife Information Service (VAFWIS) at <https://vafwis.dwr.virginia.gov/fwis/>. A request to subscribe to VAFWIS may be submitted to [vafwis\\_support@dwr.virginia.gov](mailto:vafwis_support@dwr.virginia.gov). VAFWIS subscriptions are free of charge. As a subscriber, NOS will be able to generate an IPA for the project area (project site plus a minimum 2-mile buffer) which generates a list of imperiled wildlife and designated wildlife resources known from the project area. NOS may also access VAFWIS as a visitor, but access to data and mapping at this level is restricted.

Alternatively, NOS may contact DWR's Geographic Information Systems (GIS) Coordinator, Jay Kapalczynski, at [jay.kapalczynski@dwr.virginia.gov](mailto:jay.kapalczynski@dwr.virginia.gov), to request access to the Wildlife Mapping and Environmental Review Map Service (WERMS), which allows the user to download GIS data.

B. Access information about the location of bat hibernacula and roosts from the following locations:

- Northern Long-Eared Bats: <https://www.dwr.virginia.gov/wildlife/bats/northern-long-eared-bat-application/>.
- Little Brown Bats and Tricolored Bats: <https://www.dwr.virginia.gov/wildlife/bats/little-brown-bat-tri-colored-bat-winter-habitat-roosts-application/>.

C. Access up to date information about the location and status of bald eagle nests in Virginia by accessing the Center for Conservation Biology’s Eagle Nest Locator at <https://cbbirds.org/what-we-do/research/species-of-concern/virginia-eagles/nest-locator/>.

D. Review the DWR information, guidance, and protocols available at [www.virginiawildlife.gov](http://www.virginiawildlife.gov) in the “Additional Resources” section and implement, as appropriate.

E. Include the results of the desktop analysis in the final PEIS, Coastal Zone Consistency Determination and other project documents.

**NOS Response:** NOS provided CD letters to all coastal states and territories with approved CMPs. The CDs evaluate the coastal effects of proposed activities according to the relevant enforceable policies to make a consistency determination under the CZMA. NOS reviewed this information in the course of preparing the CD for the Commonwealth of Virginia.

**CZMA-23:** NOS is encouraged to consider the Advisory Policies of the Virginia CZM Program in accordance with 15 CFR §930.39(c). Section 930.39 gives content requirements for the consistency determination, or you may also find guidance in DEQ’s Federal Consistency Information Package on the agency’s website.

**NOS Response:** NOS provided CD letters to all coastal states and territories with approved CMPs. The CDs evaluate the coastal effects of proposed activities according to the relevant enforceable policies to make a consistency determination under the CZMA. NOS reviewed the Advisory Policies in accordance with 15 CFR 930.39(c) in the course of preparing the CD for the Commonwealth of Virginia.