

APPENDIX I: RELATIONSHIP WITH FEDERAL LAWS AND REGULATIONS

A summary of the Federal laws, implementing regulations, and Executive Orders (EOs) applicable to the proposed actions is provided below.

National Environmental Policy Act

The National Environmental Policy Act of 1969 (NEPA), as amended, contains policy and guidance to ensure that potential impacts from proposed Federal actions are assessed using a systematic and interdisciplinary approach. This PEIS has been prepared in accordance with Section 102(2)(C) of NEPA, CEQ regulations on implementing NEPA procedures (40 CFR 1500-1508), and Navy regulations on implementing NEPA procedures (32 CFR Part 775).

Executive Order 12898

Consistent with EO 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” it is Army policy to identify and address disproportionately high and adverse human health or environmental effects on members of minority and low-income populations. Due to the nature of the proposed action and its location within the boundaries of an existing military installation (PTA), the proposed action would not result in disproportionately high and adverse human health or environmental effects on minority or low-income populations (see Appendix 4.13, Socioeconomics/Environmental Justice).

Endangered Species Act

The Endangered Species Act of 1973 (ESA), as amended, empowers the Secretary of the Interior and the Secretary of Commerce to establish a listing of endangered and threatened species and critical habitats designated for protection. The ESA prohibits jeopardizing endangered and threatened species or adversely modifying critical habitats essential to their survival. The ESA defines “take” as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct” (16 USC §1532(19)). Section 7 of the ESA requires that the Army consult with USFWS and/or NMFS if it has reason to believe that an endangered or threatened species may be present in the area affected by the project and that implementation of the proposed action would likely affect such species. Consultation with USFWS is necessary because there are several listed plant species under USFWS jurisdiction that may be affected by the proposed action. Consultation with NMFS is not required because the Army has determined, that no endangered or threatened species under NMFS’ jurisdiction are likely to be affected by the proposed action. The Army prepared a Biological Assessment to initiate consultation under Section 7 of the ESA (see Appendix G). In response, USFWS will issue a Biological Opinion which will be included in the Final PEIS.

Sikes Act Improvement Act

Sikes Act Improvement Act (SAIA) of 1997 (16 U.S.C. §670a-670o), requires that an installation's INRMP shall reflect the mutual agreement of the parties concerning conservation, protection, and management of fish and wildlife resources^[1]. The Sikes Act further permits that these management plans are consistent with the use of military installations to ensure the preparedness of the Armed Forces, and the sustainable multipurpose use of the [installation's] resources that include hunting, fishing, trapping, and nonconsumptive uses. The Act further states that these uses are subject to safety requirements and military security while allowing for public access to military installations.

Coastal Zone Management Act

The Coastal Zone Management Act of 1972 (CZMA), as amended, provides for the effective management, beneficial use, protection, and development of the U.S. coastal zone. The CZMA enables individual States to develop and implement regulatory guidelines to ensure appropriate protection and compatibility of uses within their coastal zones. Modernization of infrastructure would have no effect on coastal resources. The proposed action would occur on the mainland, and not within State waters or along the coastline, and would not directly or indirectly affect coastal resources or uses of the State. As the entire state of Hawai'i is considered within the coastal zone, a formal consistency determination under Section 307 of the CZMA has been submitted to the Hawai'i Coastal Zone Management Program.

Migratory Bird Treaty Act

The Migratory Bird Treaty Act of 1918 (MBTA) (16 USC §§701-715s) is the primary legislation in the U.S. established to conserve migratory birds. The MBTA implements the U.S.' commitment to four bilateral treaties, or conventions on migratory birds between the U.S. and Great Britain, Mexico, Japan, and the former Union of Soviet Socialist Republics (19 November 1976) for the protection of a shared migratory bird resource. The MBTA prohibits the taking, killing, and possession of migratory birds within U.S. territory unless permitted by regulation. The MBTA protects over 800 bird species, 58 of which are currently legally hunted as game birds. Any species or family of birds that lives, reproduces, or migrates within or across international borders at some point in their annual life-cycle is considered a migratory bird. The species of birds protected by the MBTA appear in 50 CFR 10.13. On 2 December 2003, the President signed the 2003 NDAA. The NDAA 2003 provides that the Secretary of the Interior shall exercise authority under the MBTA to prescribe regulations to exempt the Armed Forces from the incidental taking of migratory birds during military readiness activities authorized by the Secretary of Defense. The regulations must have the concurrence of the Secretary of Defense. The final rule authorizing the DoD to take migratory birds during military readiness activities was published on 28 February 2007 in the *Federal Register* at 50 CFR Part 21. The proposed ship shock trial qualifies as a military readiness activity, as defined in Section 315(f) of the 2003 NDAA. The regulation provides that the Armed Forces must confer and cooperate with the USFWS on the development and implementation of

^[1] Cooperating parties according to the regulation are the U.S. Department of Interior (DOI) and the USFWS. The PTA INRMP was further developed in cooperation with the Hawai'i State Department of Land and Natural Resources (DLNR), other Federal and State agencies, and Native Hawaiian organizations.

conservation measures to minimize or mitigate adverse effects of a military readiness activity if it determines that such activity may have a significant adverse effect on a population of a migratory bird species.

For the proposed action, PTA is located away from the principal routes of migratory birds; thus no short-term or long-term impacts are anticipated. No significant impacts to migratory birds would occur from the proposed action.

Executive Order 13186 Responsibilities of Federal Agencies to Protect Migratory Birds

EO 13186, “Responsibilities of Federal Agencies To Protect Migratory Birds” (10 January 2001), requires Federal agencies to support the conservation intent of the migratory bird conventions by integrating bird conservation principles, measures, and practices into agency activities; by avoiding or minimizing adverse impacts on migratory bird resources; and by minimizing the intentional take of species of concern.

The proposed action is located away from the principal routes of migratory birds; thus no short-term or long-term impacts are anticipated. No significant impacts to migratory birds would occur from the proposed action.

Executive Order 13112 Invasive Species

EO 13112, “Invasive Species”, requires all Federal agencies to prevent the introduction of invasive species, provide control, and minimize the economic, ecologic, and human health impacts that invasive species may cause. Invasive species consist of non-indigenous species (e.g. plants, wildlife, and invertebrates) that adversely affect the habitats they invade economically, environmentally, or ecologically.

Clean Air Act

The Clean Air Act (CAA) of 1970 (42 USC §7401 *et seq.*, 40 CFR Parts 50-96) and subsequent amendments specify regulations for control of the nation’s air emissions from area, stationary, and mobile sources. The CAA authorizes the EPA to establish National Ambient Air Quality Standards (NAAQS) to protect the environment and public health. The goal of the CAA was to set NAAQS for each State and to develop SIPs applicable to appropriate industrial sources. The CAA Amendments of 1990 require Federal facility compliance with all applicable substantive and administrative requirements for air pollution control and address problems such as acid rain, ground-level ozone, ozone depletion, and air toxics. These Amendments expanded the scope and content of the CAA’s conformity provisions by providing a more specific definition of conformity. Federal and State ambient air standards have been established for six criteria pollutants (total suspended particulates, sulfur dioxide, nitrogen oxides, carbon monoxide, ozone, and lead).

As stipulated in Section 176(c), conformity is defined as “conformity to the State Implementation Program's purpose of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of such standards.” EPA published final rules on general conformity that apply to Federal actions in areas designated nonattainment for any of the criteria pollutants under the CAA (40 CFR Parts 51 and 93) in the November 30, 1993 *Federal Register*. Since the entire state of Hawai‘i is classified as being in attainment with all national ambient air quality standards, this rule is not applicable.

Executive Order 11988 Floodplain Management

EO 11988, “Floodplain Management”, requires Federal agencies to determine whether a proposed action would occur within a floodplain and to take action to minimize occupancy and modification of floodplains. At a minimum, areas designated as floodplains are susceptible to 100-year floods. EO 11988 requires that Federal agencies proposing to site a project in a 100-year floodplain must consider alternatives to avoid adverse effects and incompatible development in the floodplain. The proposed action is not located within a floodplain; the proposed action would not impact floodplains.

Executive Order 11990 Protection of Wetlands

EO 11990, “Protection of Wetlands”, requires Federal agencies to ensure their actions minimize the destruction, loss or degradation of wetlands. EO 11990 also assures the protection, preservation, and enhancement of US wetlands to the fullest extent practicable during the planning, construction, funding and operation of transportation facilities and projects. There are no wetlands located at PTA; the proposed action would not impact wetlands.

Clean Water Act

The Clean Water Act (CWA), as amended (Public Law 92–500, 33 U.S.C. §1251), is the primary Federal law regulating water pollution. The CWA regulates water quality of all discharges into “waters of the United States.” Both wetlands and “dry washes” (channels that carry intermittent or seasonal flow) are considered “waters of the United States.” Administered by the EPA, the CWA protects and restores water quality using both water quality standards and technology-based effluent limitations. The EPA publishes surface water quality standards and toxic pollutant criteria at 40 CFR Part 131. Water quality standards are the foundation of the water quality–based control program mandated by the CWA.

The CWA also established the National Pollution Discharge Elimination System (NPDES) permitting program (Section 402) to regulate and enforce discharges into waters of the United States. The NPDES permit program focuses on point-source outfalls associated with construction, industrial wastewater, and municipal sewage discharges. Congress has delegated to many States the responsibility to protect and manage water quality within their legal boundaries by establishing water quality standards and identifying

waters not meeting these standards. The state of Hawai‘i Department of Health (HDOH) administers the NPDES program under Title 11, Chapter 10 55, Hawai‘i Administrative Rules (HAR).

The CWA also requires Federal agencies to accommodate concerns for the potential impacts from Federal projects with State nonpoint source pollution control programs. “Nonpoint source water pollution” now more commonly called “polluted runoff” is a term for all the material originating from natural and human activity that are carried by rainwater from the land and the air into streams and oceans. Polluted runoff is a major cause of water quality degradation nationwide.

Section 404 of the CWA provides for the protection of the nation’s waters and wetlands by establishing a program regulating the discharge of dredge and fill material within waters of the U.S., including wetlands, and requiring a permit for such activities. The USACE, EPA, and USFWS jointly administer the wetlands program. The USACE administers the day-to-day program, including authorizing permits to place dredge and fill material in waters of the United States and making jurisdictional determinations of waters of the United States, including wetlands. USACE permits are required for all activities resulting in the discharge of dredged or fill material to U.S. waters, including wetlands.

Section 401 of the CWA provides authority for States to require that a Water Quality Certification (WQC) which for Hawai‘i may be obtained from HDOH before issuance of a Section 404 permit. Additional protection to surface water and aquatic biological resources from impacts associated with stormwater runoff is provided by Section 402, which requires a NPDES permit for various land development activities.

There are no surface streams, lakes or other bodies of water within the boundaries of PTA. Water quality impacts would not likely occur.

Safe Drinking Water Act

The Safe Drinking Water Act (SDWA) provides for the protection of public health by regulating the U.S. public drinking water supply (P.L. 93–23, 42 U.S.C. §300f). The SDWA aims to protect drinking water and its sources (e.g., rivers, lakes, reservoirs, springs, and groundwater wells) and authorizes EPA to establish national health-based standards for drinking water to protect against naturally occurring and man-made 20 contaminants. Every public water system in the U.S. is protected by the SDWA. Under Section 1424(e) the SDWA prohibits Federal agencies from funding actions that would contaminate a sole-source aquifer or its recharge area. Any Federally funded project with the potential to contaminate a designated sole-source aquifer is subject to review by EPA. EPA’s regulations implementing the SDWA requirements are found in 40 CFR 141–149. Federal SDWA groundwater protection programs are generally implemented at the State level. The proposed action would not impact any aquifers or the public drinking water supply in the area.

National Historic Preservation Act of 1966

The National Historic Preservation Act of 1966 (NHPA) (P.L. 89–665, 16 U.S.C. §470) directs the Federal government to consider the effects of its actions on historic and cultural resources under Section 106 through a four-step compliance process. It is noteworthy, however, that the law does not necessarily mandate preservation but does require a carefully considered decision making process. Projects within Hawai‘i must also consider the impacts to the culture of Native Hawaiians. Consideration must be given to Native Hawaiian concepts, culture, and landscapes. Cultural resources are defined within Chapter 3.10, Cultural Resources. After determining if the proposed action meets the definition of a Federal undertaking, per 36 CFR Part 800, the Federal agency must take the effects of the proposed action on cultural resources into account. An Area of Potential Effect (APE) must be identified to ensure that impacts to cultural resources within the APE can be fully evaluated. Consultation with the Hawai‘i SHPO has been initiated because there are cultural resources that may be affected by the proposed action.

Comprehensive Environmental Responsibility, Compliance, and Liability Act

The Comprehensive Environmental Responsibility, Compliance, and Liability Act (CERCLA) (42 USC 9601) defines a hazardous substance as any substance that, due to its quantity, concentration, or physical and chemical characteristics, poses a potential hazard to human health and safety or to the environment. CERCLA has created national policies and procedures to identify and remediate sites contaminated by hazardous substances. This PEIS addresses the following specific hazardous materials and wastes in Chapter 3.11 Hazardous Wastes/Hazardous Materials: Ammunition, Live-Fire, and UXO; POLs and Storage Tanks; Oil-Water Separators (OWS), Wash Racks, and Grease Traps; Lead; Asbestos; PCBs; Pesticides/Herbicides; Radon; and Biomedical Wastes.

Energy Independence and Security Act of 2007

The Energy Independence and Security Act of 2007 (EISA 207) was enacted to increase energy efficiency, increase use of renewable energy, and decrease dependence on foreign fuel sources. The provisions associated with EISA 2007 that affect Army activities include those on fleet fuel economy, lighting efficiency, and energy efficiency in electronics (EISA 2007).

As a DoD entity, compliance with Section 438 of the EISA is also required as it applies to facilities construction projects with a footprint greater than 5,000 gross ft². The objective of Section 438 of EISA is to maintain predevelopment hydrology and prevent and net increases in stormwater runoff⁵. EISA requires project site design options to be evaluated to achieve the design objective to the maximum extent technically feasible. The “maximum extent technically feasible” criterion requires full employment of accepted and reasonable stormwater retention and reuse technologies, subject to site and applicable regulatory constraints.

⁵ DoD defines “predevelopment hydrology” as the pre-project hydrological conditions of temperature, rate volume, and duration of stormwater flow from the project site.

Executive Order 13423 Strengthening Federal Environmental, Energy, and Transportation Management in Acquisition

EO 13423 established goals for Federal agencies to “conduct their environmental, transportation, and energy-related activities under the law in support of their respective missions in an environmentally, economically and fiscally sound, integrated, continuously improving, efficient, and sustainable manner.” Goals set under EO 13423 include reducing energy intensity by 3% annually; reducing water consumption intensity by 2% annually; reducing petroleum consumption by 2% annually; increasing alternative fuel consumption by 10% annually; and ensuring that 15% of new Federal construction incorporates sustainable building practices. In addition to these quantifiable targets, EO 13423 also sets a number of other more general sustainability goals, such as reducing hazardous waste production, increasing renewable energy consumption and sustainable acquisition practices, and preventing excess waste.

Executive Order 13514 Federal Leadership in Environmental, Energy, and Economic Performance

Executive Order 13514 expands upon EO 13423 by requiring that Federal agencies make greater strides in reducing GHGs. EO 13514 establishes a series of edicts for Federal agencies to reduce GHGs, with deadlines, including appointment of a Senior Sustainability Officer; setting reduction targets for scope 1 and scope 2 GHG emissions; setting reduction targets for scope 3 GHG emissions and drafting a Strategic Sustainability Performance plan; and conducting a GHG inventory.