



- The Navy must ensure proposed Phase III Hawaii-Southern California Training and Testing (HSTT) activities are conducted in compliance with the **Endangered Species Act (ESA)** and **Marine Mammal Protection Act (MMPA)**.
- The ESA and MMPA prohibit “take” of the species they protect, however they each have a process to obtain exemptions from those prohibitions. Federal agencies apply to, or consult with, NOAA Fisheries to obtain take exemptions for federal actions.
- Our ESA and MMPA analyses rely on the **best available scientific and commercial information**, including data collected through the Navy’s Marine Species Monitoring Program.

During these processes, NOAA Fisheries will review the Navy’s proposed action, evaluate the effects of the action, and propose mitigation and monitoring measures to reduce or avoid effects on protected species.

Endangered Species Act Section 7(a)(2)

- Applies to species listed under the ESA (e.g., green turtle, blue whale, Hawaiian monk seal) and their habitats (e.g., designated critical habitat for Hawaiian monk seals).
- U.S. federal agencies must consult with NOAA Fisheries to **ensure that any actions they authorize, fund, or carry out are not likely to jeopardize the continued existence** of any endangered or threatened species or result in the destruction of adverse modification of designated critical habitat under NOAA Fisheries jurisdiction.

During Section 7 consultation, NOAA Fisheries evaluates:

- **Status of the Species:** biology, ecology, abundance, and population trend of species
- **Environmental Baseline:** impacts of past and present human activities
- **Effects of the Proposed Action on Species and Habitats:** stressors, exposure, response, and risk associated with the proposed action
- **Cumulative Effects:** impacts of future state or private activities that are reasonably certain to occur.

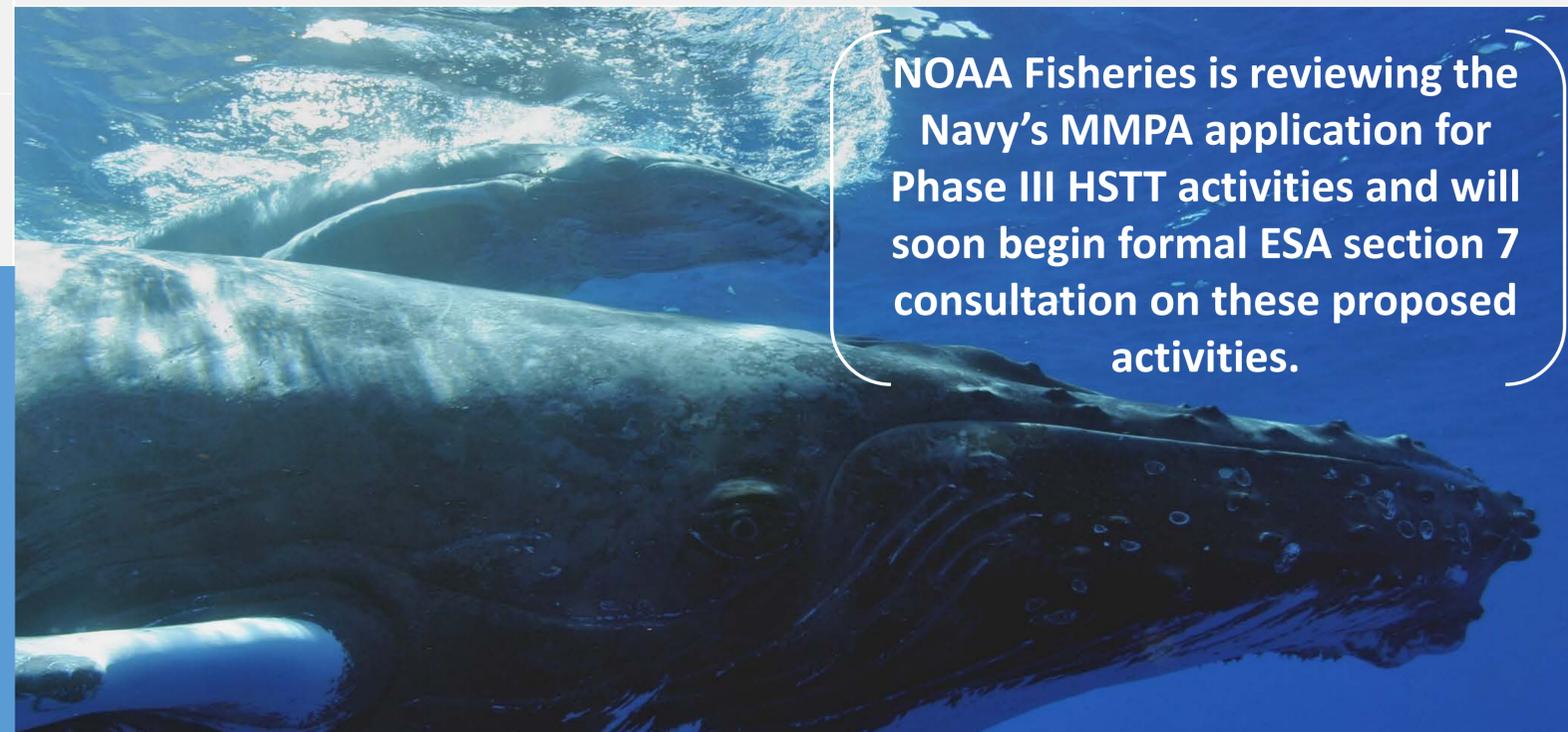
- At the end of formal consultation, NOAA Fisheries will provide a **biological opinion** to the Navy documenting our conclusions.

Glossary of Regulatory Terms:

- **Incidental:** not intentional (it does not mean unexpected); not the purpose of the proposed action
- **Take (ESA):** to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct.
- **Minor Change Rule (ESA):** when exempting take, the terms and conditions to minimize the impacts of incidental take must not alter the basic design, location, scope, duration, or timing of the action, and can involve only minor changes.
- **Negligible Impact (MMPA):** an impact that is not expected to, and is not reasonably likely to, adversely affect the species or stock through effects to annual rates of recruitment or survival
- **Take (MMPA):** to harass, hunt, capture, or kill, or to attempt to do so
 - **Level A harassment for military readiness activities:** any act that injures or has the significant potential to injure a marine mammal or marine mammal stock
 - **Level B harassment for military readiness activities:** any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavior patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behaviors are abandoned or significantly altered

Marine Mammal Protection Act Section 101(a)(5)(A)

- Applies to all marine mammal species
- Upon request, NOAA Fisheries authorizes incidental take of marine mammals, as long as the proposed activity has a **negligible impact** on marine mammal species/stocks and will not have unmitigable adverse impacts for subsistence uses.
- The authorization prescribes **permissible methods of taking, mitigation measures**, and requirements for **monitoring and reporting**.
- The **public has the opportunity to comment** on the notice of receipt and our proposed rule under the MMPA.
- To comply with the National Environmental Policy Act, we must review our proposed action (i.e., the issuance of an incidental take authorization) with respect to potential impacts on the human environment. NOAA Fisheries is a cooperating agency on the Navy’s Environmental Impact Statement.



NOAA Fisheries is reviewing the Navy’s MMPA application for Phase III HSTT activities and will soon begin formal ESA section 7 consultation on these proposed activities.