



ANIMAL WELFARE INSTITUTE

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December 29, 2004

David Cottingham, Executive Director
Marine Mammal Commission
4340 East West Highway, Suite 905
Bethesda, MD 20814

Re: Advisory Committee on Acoustic Impacts on Marine Mammals

Dear Mr. Cottingham:

As advocates long interested in the protection of marine life, the Animal Welfare Institute (AWI) was pleased when Members of Congress expressed concern with the problems associated with anthropogenic ocean noise and its affect on marine mammals. The Congress went further, allocating funds for the creation of the Advisory Committee on Acoustic Impacts on Marine Mammals (the Committee). At the first meeting of the Committee in February 2004, we expressed our hope that open and honest dialogue between the various stakeholders represented on the Committee would lead to real and creative solutions. Subsequently, we have diligently attended and participated at every Committee meeting and workshop to which we have been invited to attend.

At this juncture, following four plenary meetings we wish to express our urgent concern that the most critical product to be expected to come from the Committee – the setting of the level at which each cetacean species is considered to be harmed – appears to be relegated to an outside noise criteria group. This group to date has made a single presentation to the Committee at the second plenary meeting under the title “Session III: Emerging Approaches.

The presentation, entitled “Noise Exposure Criteria” and introduced by Dr. Roger Gentry of NOAA Fisheries (NMFS) Acoustics Program, explained the history of a “noise criteria panel” that has been looking into marine mammal noise exposure criteria since the 1990s. This panel, reported to have originated out of the High Energy Seismic Studies (HESS) and National Research Council Panels, has now evolved into the Noise Exposure Criteria Group (the NEC Group). The NEC Group has been charged by NMFS, in regard to marine mammals, to “Develop science-based criteria for the onset of tissue injury and behavioral disruption from noise exposure without considering “harassment” as defined by present law”.

The body of the presentation contained a detailed overview of the NEC Group’s work to date to meet the charge and included NEC Group members, Dr. James Finneran of the US Navy Marine Mammal Program SPAWAR and Dr. Peter Tyack of Woods Hole Research Institute, presenting examples of recommended “Injury (Permanent Threshold Shift) Criteria” and “Behavioral Disturbance Criteria” thresholds for mid-frequency cetaceans and pinnipeds for different types of noise source. Our concerns with this presentation made to the Committee are threefold.

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Firstly, we question the makeup of the NEC Group and their impartiality. The list of the members of the NEC Group is comprised, for instance, almost entirely of either US Navy contractors or consultants, funded by the Office of Navy Research. Not one scientist is included that is known to have publicly opposed the deliberate release of anthropogenic noise into the ocean or who has embraced the precautionary principle approach in this regard. We are not alone in our concern. We witnessed at the same meeting, a request from a Committee member for information on the financial backgrounds of each of the members of the NEC Group. This request was agreed to in the spirit of transparency. It is our understanding that this information, to date, has not been made available. This serves only to heighten our concerns over the impartiality of the NEC Group. Indeed, Dr. Gentry is reported as saying at the Committee's September 2004 International London Workshop meeting that he does not believe that the discharge of anthropogenic sound into the ocean constitutes a legitimate threat to cetaceans. This should give a clear indication to the Committee that the objectivity required when setting such noise criteria is not present.

Secondly, we question the timing of this presentation. The Committee was established to "*fund an international conference or series of conferences to share findings, survey acoustic 'threats' to marine mammals, and develop means of reducing those threats while maintaining the oceans as a global highway of international commerce.*" This is a lofty charge, which we envisaged would take many months and several meetings to accomplish, as the process of deciding what and when constituted genuine threats to marine mammals developed. Yet, by only the second meeting, the NEC Group was already presenting their preliminary recommendations on the actual criteria for noise exposure for each species of marine mammal.

Finally, we question the narrow scope of the NEC Group. They seem to focus almost exclusively on only certain effects of noise on marine mammals, such as 'temporary' and 'permanent' threshold shift (TTS and PTS), on unambiguous avoidance behavior and on the belief that the ability to hear is the sole measure of the damage caused by sound. Meanwhile, long term behavioral and physiological effects such as elevated stress levels, increased incidence of tumors and viral illness, compromised immune systems, slow population recovery, and other synergistic effects of a compromised environment are given short minimal attention or dismissed altogether.

The NEC Group was asked to present their recommendations to the Committee, which perhaps indicates that the priorities of some members of the Committee are already weighted toward minimizing the sound-generating industry's burden to mitigate rather than toward a concern for the health, welfare and sustainability of marine mammal populations. In this subtle and "scientific" way perhaps, industry and military bias may be translated into policy. We would be interested to know who extended this invitation.

In light of the concerns expressed above, we implore the Committee to reject the validity of any recommendation in this regard presented by the NEC Group and urge the use of peer-reviewed research whose funding sources are clearly identified.

If the Committee intends to incorporate any type of noise exposure criteria into its report to Congress, we strongly recommend that the Committee establish its own Noise Criteria Subcommittee comprising a diversity of scientific expertise, specifically including scientists that have identified that certain anthropogenic sound constitutes a threat to marine mammals. This would be in line with how the Committee has handled other controversial issues that it faces, such as the Subcommittee on Synthesis of Current Knowledge and the Subcommittee on Management and Mitigation.

Thank you for your attention to this urgent problem and in your capacity as Chair of the Committee, we ask that you forward a copy of our letter to all members of the Committee.

Sincerely,


Cathy Liss
President

cc. Suzanne G. Orenstein
Facilitator, Advisory Committee on Acoustic Impacts on Marine Mammals
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