MARINE MAMMAL COMMISSION
4340 East-West Highway, Room 700
Bethesda, MD 20814-4447

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Naval Facilities Engineering Command, Atlantic
Attention: Code EV22TW (GOMEX EIS/OEIS PM)
6506 Hampton Blvd.
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To Whom It May Concern:

The Marine Mammal Commission, in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the Navy's Draft Environmental Impact Statement/Overseas Environmental Impact Statement (DEIS) evaluating proposed activities in the Gulf of Mexico Range Complex. The complex includes approximately 17,440 nmi^2 of offshore surface and subsurface ocean operating areas and 12,072 nmi^2 of shallow ocean area less than 100 fathoms (600 feet) deep located both inside and outside U.S. waters off the coasts of Florida, Alabama, Mississippi, Louisiana, and Texas. It also includes additional inland ranges and certain air spaces limited to special use by the Navy. The analyzed activities include vessel transits, aircraft overflights, bombing and gunnery exercises, amphibious warfare firing exercises, electronic combat, chaff and flare exercises, underwater detonations, and mine warfare. The Navy analyzed active sonar use within the Gulf of Mexico Range Complex in a separate environmental impact statement prepared for Atlantic Fleet Active Sonar Training activities.

The Navy considered three alternatives in the DEIS for the Gulf of Mexico Range Complex: one purportedly consistent with the levels of activity in prior years (the "No Action" alternative), another with an anticipated increase in activities except mine warfare training, which is eliminated (alternative 1), and the last with a further increase in all activity (alternative 2). The Navy prefers alternative 2.

RECOMMENDATIONS

The Marine Mammal Commission recommends that the Navy—

- revise its Gulf of Mexico Range Complex DEIS to include a description of past and current activity levels to verify that the activity level proposed under the no-action alternative is indeed consistent with the current level;
- revise its DEIS by incorporating a set of explicit and clear metrics that the public and decision-makers can use to make more informed judgments about the benefits and costs of various types and levels of activity;
- revise its DEIS to include an alternative involving a reduction in activity to ensure that decision-makers are both well informed and presented with a full range of alternatives;
- revise its DEIS by limiting its scope to those proposed activities that can be described in sufficient detail to provide a reliable basis for assessing benefits and costs;
- subject its reviews of marine mammal density, distribution, behavior, and habitat use to scientific peer review;

- develop and implement a plan to validate the effectiveness of monitoring and mitigation measures before beginning, or in conjunction with, operations under the final environmental impact statement and anticipated issuance by the National Marine Fisheries Service of an incidental harassment authorization; and
- implement a minimum 60-minute waiting period when deep-diving species (e.g., sperm and beaked whales) or species that cannot be identified by watchstanders are observed within or are about to enter a safety zone.

RATIONALE

The Commission's rationale for its recommendations is as follows.

Selection of Alternatives

In an environmental analysis, the no-action alternative provides an essential baseline to ensure that the full effects of a proposed action are described to the public and decision-makers. At its most basic level, "no action" means just that—the action agency does not undertake the proposed action in any form. An action agency also can use the no-action alternative to represent its current level of activity. However, it should do so only if the effects of the current level of activity have been described in a previous analysis (the preferred approach) or are described in the current analysis. However, in this instance, the types and levels of activity in previous years have not been documented, and it is therefore not possible for the public or decision-makers to verify that the assertion is true. For that reason, the Marine Mammal Commission recommends that the Navy revise its Gulf of Mexico Range Complex DEIS to include a description of past and current activity types and levels to verify that those proposed under the no-action alternative are indeed consistent with those that have prevailed in the past.

The Navy's Range Complex Management Plan indicates that current training levels are not sufficient and result in severe-to-moderate shortfalls in readiness (page ES-2). Not surprisingly, this statement implies that the amount of training in any given year is a function of desired readiness, as well as other factors, presumably related to the availability of resources or competing objectives. Because this is the first environmental impact statement prepared for this range, past tradeoffs between level of readiness and environmental protection have not been described. In this DEIS, the Navy simply asserts that certain levels of activity are necessary to achieve readiness, but it does not substantiate that claim or provide a clear explanation of the tradeoffs. Consistent with guidance in the National Environmental Policy Act, the Commission believes that the public and decision-makers can make informed decisions about the appropriate activities only if they have clear, detailed descriptions of benefits and costs over a suitable range of activity types and levels. To that end, the Marine Mammal Commission recommends that the Navy revise its DEIS by incorporating a set of explicit and clear metrics that the Navy, the public, and decision-makers all can use to make more informed judgments about the benefits and costs of various types and levels of activity.

To balance the level of training and readiness against other considerations (e.g., resources available, competing demands, environmental protection), decision-makers must be informed about and able to weigh the respective benefits and costs of alternative courses of action. If the DEIS provides decision-makers only with alternatives that maintain or increase training levels, then the document fails to inform decision-makers and provide them with a full set of options. A restricted set of alternatives unnecessarily constrains the choices available to decision-makers and, for that reason, is inconsistent with the intent of the National Environmental Policy Act. Therefore, the Marine Mammal Commission recommends that the Navy revise its DEIS to include an alternative involving a reduction in activity to ensure that decision-makers are both well informed and presented with a full range of alternatives.

Finally, the Navy prefers alternative 2, which involves the highest level of activity requested by the Navy under its Future Training Requirements Plan. However, this alternative depends on factors not yet determined or reliably predicted (e.g., congressional authorizations and appropriations, changes to internal Department of Defense strategic plans, acquisition of new equipment, and associated changes to training protocols). It therefore seems premature, and out of keeping with the intent of the National Environmental Policy Act, to request what amounts to a blank check for speculative increases in future activity. If those future activities cannot be described in detail, then their environmental costs also cannot be described and decision-makers cannot make informed decisions about them. To comply with the National Environmental Policy Act, the Navy should base its alternatives only on those types and levels of activity that can be described with sufficient detail to inform decision-makers about the potential costs and benefits of alternative actions. History tells us that many of the factors that should be considered in determining the effects of future Navy actions change over time. Therefore, the Marine Mammal Commission recommends that the Navy revise its DEIS by limiting its scope to those proposed activities that can be described in sufficient detail to provide a reliable basis for assessing benefits and costs.

Scientific Peer Review of Marine Mammal Density and Distribution Estimates

The Navy has done a commendable job of reviewing the existing literature on marine mammal density, distribution, behavior, and habitat use in this and similar documents. The resulting reviews are used to estimate animal density and distribution and, therefore, are an important element of the risk estimation procedure. However, the manner in which the literature is used to form conclusions about density, distribution, behavior, and habitat use has not been subject to peer review, which is an integral part of the scientific process. In the subject DEIS, the numbers used in the risk estimates are derived mainly from two Navy-contracted reports that have not been so reviewed; these are the Navy OPAREA Density Estimates (NODES) and Marine Resources Assessment for the Gulf of Mexico Operating Area. Because the Navy bases its training decisions, in part, on perceived risks to marine mammals, and the Navy's use of existing data to estimate those risks has not been subjected to scientific peer review, the reliability of the Navy's decisions is called into question. To address that concern, the Marine Mammal Commission recommends that the Navy subject its estimates of marine mammal density, distribution, behavior, and habitat use to scientific peer review.

Monitoring and Mitigation

Monitoring and mitigation measures determine, at least in part, the extent to which anticipated risks are detected and managed effectively. The Navy has established an Integrated Comprehensive Monitoring Plan to monitor, mitigate, and assess the effects of its activities over time. The DEIS indicates that this plan will "establish structure and coordination that will facilitate collection and synthesis of monitoring data" (page 5-3). The Marine Mammal Commission strongly supports the development and implementation of this plan, which is indicative of the Navy's appreciation for the value of determining and minimizing its impacts.

However, the Integrated Comprehensive Monitoring Plan and mitigation measures are only useful for determining and minimizing impacts if the various monitoring and mitigation measures incorporated in the plan are, in fact, effective. During the course of preparing its environmental analyses over the past year, the Navy has not responded to repeated Commission recommendations that it evaluate the effectiveness of its proposed monitoring and mitigation measures. Until the Navy has conducted such an evaluation, it simply cannot describe its actual impacts with a reasonable degree of confidence. The resulting uncertainty means that the Navy, and in turn readers and decision-makers, may misunderstand both the risks of proposed activities and the effects of completed activities. Furthermore, until the Navy evaluates the efficacy of its monitoring and mitigation measures, the public and decision-makers, including Navy personnel, cannot make informed decisions about where to direct efforts to make the necessary improvements. Because (1) the failure to evaluate monitoring and mitigation measures perpetuates an unnecessary level of uncertainty about the effects of Navy activities, (2) the Navy is fully capable of conducting the required tests, and (3) the Commission continues to believe that the implied efficacy of these measures is over-estimated, the Marine Mammal Commission again recommends that the Navy develop and implement a plan to validate the effectiveness of monitoring and mitigation measures before beginning, or in conjunction with, operations under the final environmental impact statement and anticipated issuance by the National Marine Fisheries Service of an incidental harassment authorization.

Shutdowns and source reductions

The Commission notes an apparent change in the waiting period following shutdowns or source reductions after a marine mammal has been detected within the safety zone (or zone of influence) around certain training exercises (DEIS page 5-9). For those exercises, the Navy has extended the waiting period from 30 to 45 minutes. The Navy did not explain the rationale for the extension, but the Commission acknowledges that it is a useful change in the right direction. That being said, the Marine Mammal Commission continues to recommend that the Navy implement a minimum 60-minute waiting period when deep-diving species (e.g., sperm and beaked whales) or species that cannot be identified by watchstanders are observed within or are about to enter a safety zone.

As a final note, on page 5-4 of the DEIS the Navy describes the value of M3R and HARP passive acoustic listening systems as monitoring and mitigation tools. However, the Navy does not

clarify whether it intends to install and use either an M3R or HARP system in the Gulf of Mexico Range Complex. If the Navy is not going to use those systems, this should be noted in the DEIS. Otherwise, readers may be misinformed about the efficacy of monitoring systems.

Please contact me if you have questions about any of our recommendations or comments.

Sincerely,

Timothy J. Ragen, Ph.D.
Executive Director

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