



MARINE MAMMAL COMMISSION

27 January 2010

Ms. Amy Burt
Gulf of Alaska DEIS/OEIS Project Manager
Naval Facilities Engineering Command Northwest
1101 Tautog Circle, Suite 203
Silverdale WA 98315-1101

Dear Ms. Burt:

The Marine Mammal Commission, in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the Draft Environmental Impact Statement/Overseas Environmental Impact Statement (DEIS) referenced in the Navy's 15 December 2009 *Federal Register* notice (74 Fed. Reg. 65761) regarding proposed activities in the Gulf of Alaska. On 22 April 2008 the Commission commented on the Navy's Notice of Intent to prepare an environmental impact statement for those activities. The recommendations and rationale that follow either reinforce or expand upon those earlier comments.

RECOMMENDATIONS

The Marine Mammal Commission recommends that the Navy—

- revise its DEIS to ensure that (1) all activities included under the no-action alternative have been evaluated, (2) the alternatives evaluated and presented to decision-makers and the public include a reduction in activity level, and (3) the scope of decision-making is not constrained unnecessarily;
- resolve inconsistencies, omissions, and errors in the DEIS and either reissue it or use some other mechanism to allow decision-makers and the public to review and respond to the revised information;
- withdraw the current section of the DEIS dealing with Cook Inlet beluga whales, conduct the essential analysis of effects on this endangered stock, and reissue at least that section of the amended DEIS;
- provide explicit and detailed descriptions of the measures that will be used to avoid risks to certain species or stocks of special concern (i.e., eastern population of North Pacific right whales, western population of Steller sea lions, AT1 pod of killer whales in and around Prince William Sound [although occasionally ranging more widely], sperm whales, humpback whales, fin whales, and sei whales);
- expand the description of marine mammal habitat use in the Gulf of Alaska by reviewing the considerable body of information on species-specific distribution and movement patterns obtained from whaling records, scientific research, and other sources over the past century;
- evaluate the anticipated effectiveness of monitoring and mitigation measures; and
- require vessel commanders to retain vessel logs and reports for a minimum of three years.

RATIONALE

The Commission offers the following rationale for its recommendations.

No-Action Alternative

The Marine Mammal Commission continues to believe that an action agency should use the “No-Action” alternative to represent continued activity at the same level only if those activities already have been evaluated in a previous environmental analysis. Further, a previous analysis may not be adequate for that purpose if the activities that were initially evaluated have since changed. To fulfill their purpose of fully informing decision-makers, environmental impact statements must include or at least reference evaluations of all the activities in the proposed alternatives, whether those activities are ongoing or new.

A hypothetical example may help explain the shortcomings of the Navy’s current approach. If the Navy initiated activities in the Gulf of Alaska 10 years ago by conducting two exercises of one type each year, it should have completed an environmental analysis of the effects of those two exercises. If, over the past 10 years, the Navy increased its activities so that it now conducts five exercises of that type and three exercises of yet another type, then an environmental analysis based on historical data would be inadequate to describe the effects of all the Navy’s current activities because the historical record does not in fact reflect the current level of activity. This undermines the intent of the National Environmental Policy Act.

The Marine Mammal Commission also continues to believe that it is inappropriate for the Navy to exclude alternatives that result in a reduction in its activities in the Gulf. By doing so, the Navy essentially limits the scope of decision-making because decision-makers are not presented with information about the consequences of possible reductions in training activities. Such an approach constrains rather than empowers decision-makers to make fully informed decisions and thereby undermines the intent of the National Environmental Policy Act.

For those reasons, the Marine Mammal Commission recommends that the Navy revise its DEIS to ensure that (1) all activities included under the no-action alternative have been evaluated, (2) the alternatives evaluated and presented to decision-makers and the public include a reduction in activity level, and (3) the scope of decision-making is not constrained unnecessarily.

Inconsistent Descriptions of the Alternatives and Other Errors

Certain inconsistencies, omissions, and errors in this DEIS are likely to misguide decision-makers and the public and therefore warrant attention. The following are four examples of such shortcomings.

- The description of the three alternatives on page E-1 does not match the more detailed descriptions on page ES-9 and in the body of the DEIS. In particular, the Portable Undersea

Training Range is included only in Alternative 2 on page E-1 but is included in Alternative 1 in all subsequent discussions.

- The DEIS does not provide an adequate description of SSQ-125 (Multi-Static Active Coherent or MAC), the replacement for the SSQ-110 non-explosive sound source. Although the specific source characteristics may be classified, sufficient unclassified information must be provided to permit verification in at least a general sense of the anticipated risk posed by what is obviously going to be a very loud and widely used source in Navy training.
- The DEIS does not describe the specifications for the Killer Tomato target simulator. Although it appears by inference to be some kind of smoke or optical beacon, the DEIS does not describe the device or its function or identify it with an official designation (e.g., Mk-85, TALD or LUU-2B/B) so that the reader is able to seek additional information from other resources.
- In the next to last paragraph of page 3.8-111, the DEIS includes what we believe is a typographical error in which the word *constructed* appears in place of the apparently intended word *constricted*.
- In the same paragraph, the DEIS cites speculation in Tyack (2009) that beaked whales may avoid all sounds equally. Indeed, this is just speculation on Tyack's part, and he identifies it as such. The Commission believes it is inappropriate and unreasonable to infer that sonars pose no greater risk than other sound sources when, in fact, the little evidence available on this subject indicates otherwise.

To ensure that decision-makers and the public are accurately informed about the activities proposed in this DEIS, the Marine Mammal Commission recommends that the Navy resolve inconsistencies, omissions, and errors in the DEIS and either reissue it or use some other mechanism to allow decision-makers and the public to review and respond to the revised information.

Cook Inlet Beluga Whales

The Navy excludes consideration of Cook Inlet beluga whales from analysis in the DEIS. It justifies this exclusion by citing a 1995 Air Force environmental impact statement as the appropriate document for analysis of this stock. However, the Air Force environmental impact statement does not contain an analysis of effects of aircraft noise on beluga whales in Cook Inlet and, even if it did, that analysis would be out of date. Since preparation of the 1995 statement, the Navy appears to have changed the number of aircraft and associated traffic patterns as part of an increase in joint activities with other armed forces, as noted in the current DEIS. Furthermore, since preparation of the 1995 statement, the Cook Inlet beluga whale stock has declined markedly to approximately 300 to 400 individuals, has been designated as depleted under the Marine Mammal Protection Act, and has been listed as endangered under the Endangered Species Act. Thus, neither the 1995 statement nor the DEIS under consideration provides adequate analysis of the potential effects of the proposed activities on this endangered beluga whale stock. The Marine Mammal Commission considers this a serious oversight and recommends that the Navy withdraw the current section of

the DEIS dealing with Cook Inlet beluga whales, conduct the essential analysis of effects on this endangered stock, and reissue at least that section of the amended DEIS.

Other Species or Stocks of Special Concern

As it did in its 22 April 2008 letter, the Marine Mammal Commission also recommends that the Navy provide explicit and detailed descriptions of the measures that will be used to avoid risks to certain species or stocks of special concern. These include the eastern population of North Pacific right whales, which has been reduced to fewer than 100 individuals and is vulnerable to disturbance and vessel strikes (based on data from the closely related North Atlantic right whale). Cook Inlet beluga whales were mentioned previously in this letter. Although outside the Navy's designated operating area, they are exposed to increased activity at Elmendorf Air Force Base and possibly other joint service exercises in Cook Inlet and coastal areas within the stock's range. Steller sea lions, AT1 killer whales in and around Prince William Sound (although occasionally ranging more widely), sperm whales, humpback whales, fin whales, and sei whales also were mentioned in our 22 April 2008 letter. The Commission concurs that sea otters are unlikely to enter the Navy training range area due to the distance from shore.

Habitat Analyses

With regard to marine mammals, the habitat analyses in the DEIS focus almost entirely on areas designated as critical habitat for those species that are listed as endangered or threatened under the Endangered Species Act. Such areas clearly are important and warrant extra protection, but they also are insufficient in two important respects. First, critical habitat for listed species often is poorly understood, so key habitat areas for those species may not be included. For example, critical habitat for the North Pacific right whale includes two areas, one in the southeastern Bering Sea and one off Kodiak Island in the Gulf of Alaska. The right whales that use these two areas are not thought to represent separate populations; rather, they likely move back and forth between the Gulf (and other areas of the North Pacific) and Bering Sea through certain important passes in the Aleutian Islands (e.g., Unimak, Akutan, Umnak, and Sequam Passes). These areas also may be vital to protect as they must funnel or concentrate the whales during their seasonal movements. Second, a number of species in the Gulf area are not listed under the Endangered Species Act but still use and depend on specific habitat. In fact, the records of marine mammal habitat use in the Gulf of Alaska are extensive, dating back to the 1800s. For example, northern fur seals appear to use and depend on offshore areas south of the Yakutat area. C. H. Townsend described the use of this "Fairweather Sealing Ground" and other important seal habitat in the late 1800s based on records of pelagic seal harvests. Both pinnipeds and cetaceans use the Gulf extensively. More recently, much of this information is being collected and archived and is available for management purposes. Products from the OBIS SEAMAP are available from a Web-based data archive, which also comes with a toolkit for analysis. In fact, the Navy notes on page 1-6 that the Gulf of Alaska is a complex system of shelf edges, canyons, seamounts, and freshwater intrusions, all features that are of great relevance and attractive to marine mammals and other critical ecosystem components. Although this statement generally is correct, a thorough review of existing data on marine mammal distribution and movements in the North Pacific would give the Navy much more insight into habitat use and

the kinds of measures that might be needed to protect that habitat. With that in mind, the Marine Mammal Commission recommends that the Navy expand the description of marine mammal habitat use in the Gulf of Alaska by reviewing the considerable body of information on species-specific distribution and movement patterns obtained from whaling records, scientific research, and other sources over the past century. The Commission recognizes that this represents a considerable amount of work, but we note that the thorough literature research already completed for the “Affected Species” portions of the DEIS will probably also provide most of the information needed to define and plot the typical habitats used by each species and then factor that information into an analysis of places of special concern.

Effectiveness of Proposed Mitigation Measures

The Marine Mammal Commission repeats its now frequent recommendation that the Navy evaluate the effectiveness of its monitoring and mitigation measures. Performance tests for monitoring and mitigation measures are both technically feasible and economically reasonable. Such tests could either strengthen the Navy’s position that its existing measures are adequate or, more likely, point toward steps needed to improve them. Both outcomes would provide useful information for managers responsible for ensuring the protection of marine mammals and their habitat. The Navy subjects all tactical systems to performance evaluation and doing so with its environmental systems also is necessary for the Navy to meet its commitment to good environmental stewardship.

Retention of Vessel Logs and Records

The DEIS proposes (page 5-10) that logs and records relevant to marine mammal sightings and mitigation efforts, and other critical environmental data will be destroyed after 30 days. The Marine Mammal Commission believes that destruction of such records is entirely contrary to efforts by the Navy, the regulatory agencies (primarily the National Marine Fisheries Service), the Marine Mammal Commission, and all parties interested in better characterization of interactions between Navy operations and marine mammals. Navy activities pose a variety of risks to marine mammals including, but not limited to, those emanating from the introduction of noise (e.g., sonar), blasting (e.g., ship-shock trials, weapons testing and training), and ship strikes (e.g., especially those that involve endangered large whales). Records of Navy interactions with marine mammals are critical to characterizing those risks, evaluating the efficacy of monitoring methods, evaluating the utility of mitigation measures, and identifying alternatives for avoiding unnecessary risks. To understand the effects of Navy operations, investigators must be able to reconstruct the circumstances surrounding events such as those that occurred in Haro Strait in 2003, Haro Strait in 2004, and Hanalei Bay in 2004. Destruction of vital Navy records precludes such reconstruction and undermines efforts to identify solutions that allow the Navy to conduct its exercises while ensuring that marine mammals are protected. For that reason, and because investigation of marine mammal interactions can take several years, the Marine Mammal Commission recommends that the Navy require its vessel commanders to retain vessel logs and reports for a minimum of three years.

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We hope that you find these recommendations and rationale helpful. Please contact us if you have any questions or wish to discuss them.

Sincerely,



Timothy J. Ragen, Ph.D.
Executive Director