

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

29 October 2008

Navy Facilities Engineering Command, Northwest
Attn.: Mrs. Kimberly Kler (EIS/OEIS PM)
1101 Tautog Circle, Suite 203
Silverdale, WA 98315-1101

Dear Mrs. Kler:

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) for the Keyport Range Complex submitted by the U.S. Navy. The applicant is seeking comments on the potential environmental consequences of extending the operational areas of the Keyport Range Complex and increasing the average annual number of tests and testing days at two of the three range sites that make up the complex (Keyport Range site and Quinault Undersea Test Range).

The Commission also has reviewed the National Marine Fisheries Service's 8 July 2008 *Federal Register* notice announcing receipt of the Navy's application for an incidental harassment authorization under the Marine Mammal Protection Act for activities in the Keyport Range Complex. The Commission's 4 August 2008 letter to the Service (appended and thereby incorporated here) commented on the Navy's application, expressed a number of concerns regarding risks to marine mammals, and made a number of recommendations. Here, we highlight several key concerns and recommendations.

RECOMMENDATIONS

The Marine Mammal Commission recommends that the Navy—

- provide a comprehensive description of the risk estimation process used for the Keyport Range Complex, subject that process to independent review, explain any differences between the processes used at Keyport versus those used at other sites, and assess and report the significance of those differences with respect to estimating risks to marine mammals;
- work with the National Marine Fisheries Service to plan and conduct an independent assessment of the Navy's proposed monitoring and mitigation methods;
- incorporate in the DEIS a requirement to submit to the Service annual reports providing full documentation of methods, results, and interpretation pertaining to all monitoring and mitigation efforts, including dates and locations of operations and marine mammal sightings, and estimates of the amount and nature of potential takes of marine mammals; and
- modify the DEIS to include the need to halt activities that result in the serious injury or death of a marine mammal, determine the cause of the injury or death, assess the number of animals involved, and determine how the activity should be modified to avoid future injuries or deaths.

RATIONALE

Risk Estimation

With regard to marine mammals, the fundamental problem for the Navy is that its various operations pose unintentional but potentially significant risks. To provide a basis for judging the level and significance of those risks, the Navy has been attempting to develop risk estimation procedures. The Navy also has conducted or supported extensive research to collect data needed for the risk estimation process. All of these efforts are commendable, and the data collected will likely prove valuable for a number of purposes. Nonetheless, risk estimation is confounded by great uncertainty, particularly regarding marine mammals, their distribution and movement patterns, and their vulnerability to noise generated by the Navy's operations.

In its comments on previous DEISs, the Commission has pointed out that the risk estimation process is not adequately described. The Commission has requested and received a briefing on the Navy's risk estimation processes, but a great deal of uncertainty remains. Resolving this uncertainty is crucial if these processes are to be considered scientifically credible. Doing so will be particularly challenging because it appears to us that the Navy may be using different risk estimation procedures at different sites. We would expect that certain elements of risk estimation would change to take into account different operations, as well as changes in the local environment and the suite of marine mammals that may be affected. However, we also would expect the basics of the process to be the same or at least consistent. For the Keyport DEIS it is not clear that that is the case. For the risk estimation process to be considered scientifically credible, it must be repeatable, which means it must be described in sufficient detail that someone could undertake the same process and get the same results, and it must be peer-reviewed to ensure, to the extent possible, that the process is conceptually sound.

The Navy's explanation of risk estimation methods used for the Keyport Range Complex is the most detailed and complete to date. Still, uncertainty remains about those methods, and it is not clear, for example, if the Keyport methods are the same as those used for all other range complexes (e.g., Hawaii Range Complex) or whether they were only used for the Keyport Range Complex. For all of these reasons, the Marine Mammal Commission recommends that the Navy provide a comprehensive description of the risk estimation process used for the Keyport Range Complex, subject that process to independent review, explain any differences between the processes used at Keyport versus those used at other sites, and assess and report the significance of those differences with respect to estimating risks to marine mammals.

Monitoring and Mitigation

As in its previous DEISs, the Navy estimates the risks to marine mammals and then indicates that it can reduce those risks by implementing various monitoring and mitigation measures. The lowering of risk is based on the assumption that monitoring and mitigation measures are effective to a degree, and in some cases the effectiveness is apparent (e.g., scheduling activities during seasons when no marine mammals are present). However, the utility of most monitoring and

mitigation measures used to reduce or eliminate risk to marine mammals is not known with certainty but is expected to be low—sometimes exceedingly so (e.g., visual surveys for beaked whales). Despite the uncertainty regarding their utility, the Navy continues to implement its measures as though they are sufficient to address the underlying concerns about risks to marine mammals. In the Commission’s view, reliance on untested monitoring and mitigation measures is both misleading and unjustified. The Navy is capable of testing the effectiveness of these measures but to date has chosen not to do so. Failure to assess monitoring and mitigation measures is inconsistent with the Navy’s stewardship responsibilities. To address this persistent problem, the Marine Mammal Commission recommends that the Navy work with the National Marine Fisheries Service to plan and conduct an independent assessment of the Navy’s proposed monitoring and mitigation methods. Such an assessment will require considerable work, as the efficacy of these measures is likely to vary by species, oceanographic conditions, and a number of other variables. However, until such tests are conducted, the Commission does not believe that the Navy has a legitimate basis for making assumptions about the reliability of its monitoring and mitigation measures.

Reporting

The DEIS, like the letter of authorization application that preceded it, stated that “[p]rocedures for reporting marine mammal sightings on the Keyport Range complex shall be promulgated, and sightings shall be entered into the Range Operating System and forwarded to NOAA/NMML Platforms of Opportunity Program.” However, we were not able to find in the DEIS the specific reporting protocol described in the IHA request. Post-event reports have great potential value to the Navy, the Service, and all interested parties. Those reports help describe whether and what kind of marine mammals were detected during exercises, what measures the Navy took to avoid significant adverse effects, and whether those measures were effective. Therefore, the Marine Mammal Commission recommends that the Navy incorporate in the DEIS a requirement to submit to the Service annual reports providing full documentation of methods, results, and interpretation pertaining to all monitoring and mitigation efforts, including dates and locations of operations and marine mammal sightings, and estimates of the amount and nature of potential takes of marine mammals.

Lethal Taking/Serious Injury

Based on its analyses in the DEIS, the Navy has chosen not to request authorization to take animals by Level A harassment. In the absence of such a request, the incidental take authorization, if issued, should require suspension of the associated Navy activity if a marine mammal is seriously injured or killed and the injury or death could be associated with the activity. Therefore, the Marine Mammal Commission recommends that the Navy modify the DEIS to include the need to halt activities that result in the serious injury or death of a marine mammal, determine the cause of the injury or death, assess the number of animals involved, and determine how the activity should be modified to avoid future injuries or deaths. It should be clear to all interested parties that more information is required to understand the potential effects of sound on marine mammals, and full investigation of such incidents is essential to provide more complete information on potential effects.

Naval Facilities Engineering Command, Northwest
29 October 2008
Page 4

Please contact me if you have questions about the Commission's recommendations.

Sincerely,

A handwritten signature in cursive script, appearing to read "Michael L. Gordin", followed by a horizontal line and the letters "for".

Timothy J. Ragen, Ph.D.
Executive Director

Enclosure