

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

16 March 2009

Mariana Islands Range Complex EIS  
258 Makalapa Drive, Suite 100  
Attention: EV2  
Pearl Harbor HI 96860-3134

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 Mariana Islands Range Complex. The complex includes approximately 501,873 nmi<sup>2</sup> of open ocean and coastal waters in the western Pacific Ocean from south of Guam to north of Pagan, Commonwealth of the Mariana Islands, and from the middle of the Philippine Sea to the Pacific Ocean east of the Mariana Islands. It also includes additional restricted land areas and air space as well as portions of the Marianas Trench National Monument. It does not include the territorial waters of the Commonwealth of the Mariana Islands (out to 12 nmi). The DEIS analyzes vessel movements, aircraft overflights, exercises using non-explosive practice munitions, use of mid-frequency antisubmarine sonar, and underwater detonations of high-explosive ordnance.

The DEIS describes three alternatives: one purportedly consistent with the levels of activity in prior years (the Navy's no-action alternative), another with an anticipated increase in activity (alternative 1), and a third with a further increase in activity (alternative 2). The Navy prefers alternative 2.

## RECOMMENDATIONS

The Marine Mammal Commission recommends that the Navy—

- revise its DEIS by providing a comprehensive description of past activity levels in the Mariana Islands Range Complex so that the reader can judge whether the activity types and levels proposed under the no-action alternative are, indeed, consistent with past practices;
- revise its DEIS by incorporating a set of explicit and clear metrics that the Navy, the public, and decision-makers can use to make informed judgments about various levels of readiness based on their benefits and costs;
- revise its DEIS to include an alternative involving a reduction in activity types and levels to ensure that decision-makers are fully 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; and

- develop and implement a plan to evaluate 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.

## **RATIONALE**

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

### **Describing Past Activity Levels**

In an environmental impact statement, 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 only do so if the effects of the current level of activity have been analyzed previously (the preferred approach) or are revealed by the current analysis.

In this DEIS the Navy is using the no-action alternative to represent past types and levels of activity. The implication of this approach is that under the no-action alternative, the environmental effects will be the same as those arising from past activities. However, past types and levels of activity are not described adequately in this DEIS, and it is therefore not possible for the public or decision-makers to verify that such is indeed the case.

On pages ES-9 and 2-24 of the DEIS, the Navy provides brief descriptions of past activities in the complex, but those descriptions are insufficient. For example, the 1999 document on military training describes activities taking place a decade ago but only addresses shoreside effects of land and air activities plus nearshore mine warfare and small explosive ordnance training. The other environmental analyses cited in the DEIS pertain to airborne activities and a single large-scale training exercise, Valiant Shield. It appears then that previous analyses do not evaluate a number of activities that are included in the no-action alternative in the DEIS.

Although regulations under the National Environmental Policy Act encourage the practice of referencing existing documents and building on previous analyses, this DEIS does not point clearly to the essential references. The DEIS only gives examples of analytic documents rather than listing the complete set that would be needed to fully inform readers. Furthermore, the Commission questions whether it is reasonable to expect readers to find other pertinent documents, synthesize the material in them, and then compare the result to the list in the DEIS to determine what was or was not covered in prior analyses. As the action agency, the Navy has the responsibility to provide the relevant information in a clear and comprehensive manner and, in this case, the Commission does not believe the Navy has done so.

Readers could simply assume that the activities described in the no-action alternative are consistent with those in past years. However, that assumption seems inconsistent with the recent increasing trend in naval activities generally and in the Mariana Islands Range Complex in particular. For example, the Commission understands that shoreside support services in the Philippines and Japan have increased in recent years.

For all of these reasons, the Commission believes that the DEIS falls short of providing the required analyses. Failure to do so seems inconsistent with the intent of the National Environmental Policy Act. Therefore, the Marine Mammal Commission recommends that the Navy revise its DEIS by providing a comprehensive description of past activity levels in the Mariana Islands Range Complex so that the reader can judge whether the activity types and levels proposed under the no-action alternative are, indeed, consistent with past practices.

### **Including Explicit and Clear Metrics for Evaluating the Alternatives**

The underlying premise for this analysis (and similar analyses for other Navy ranges) is that certain levels of activity are essential to maintain national security readiness. The Commission assumes that the Navy uses certain explicit scaled metrics of readiness, but in this and previous DEISs the Navy does not describe those metrics. The Commission believes that the public and decision-makers can make informed decisions only if they have clear measures of benefits and costs over a suitably wide range of activity types and levels. Therefore, 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 can use to make informed judgments about various levels of readiness based on their benefits and costs.

### **Including an Alternative that Reduces Activity Types and Levels**

The Navy's DEIS for the Mariana Islands Range Complex limits the alternatives available to decision-makers. That is, a decision-maker informed solely by this DEIS would only be able to choose between maintaining the level of activity described as the status quo or increasing it. The option of decreasing activity types and levels is not evaluated, but such may be required under certain fiscal conditions, be reasonable under certain security-related conditions, or be necessary under certain environmental conditions. The reader is offered no analysis of the readiness consequences of such reductions in activity, whether for the purpose of reducing adverse environmental effects or for other reasons. The approach taken in this DEIS therefore constrains the public and decision-makers rather than enlightening them. To address this shortcoming, the Marine Mammal Commission recommends that the Navy revise its Mariana Islands Range Complex DEIS to include an alternative involving a reduction in activity types and levels to ensure that decision-makers are fully informed and presented with a full range of alternatives.

### **Limiting the Scope of the Analysis to Activities That Can Be Described in Detail**

The Navy prefers alternative 2, which involves the highest level of activity but also is dependent upon factors not yet determined or reliably predictable (e.g., congressional direction and funding for additional fleet assets, internal Department of Defense strategic decisions, changes in anticipated national security concerns). It therefore seems premature, and out of keeping with the intent of the National Environmental Policy Act, to request the equivalent of a blank check for speculative increases in future activity. If 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 in sufficient detail for a meaningful risk/benefit analysis. It can then supplement its analyses and any related permits or authorizations when future circumstances 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 (e.g., budget, threats to security, military technology, and environmental conditions) will 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. This DEIS relies on information summarized in the “Mariana Islands Marine Resources Assessment” and “Marine mammal and sea turtle survey and density estimates for Guam and the Commonwealth of the Northern Mariana Islands,” both Navy documents. These reviews are used to estimate animal density and distribution and therefore are an important element of the risk estimation procedure. However, they have not been subject to scientific peer review, which is an important part of the scientific process. The reliability of the Navy’s decisions must be called into question if the Navy bases its training decisions, in part, on perceived risks to marine mammals but its use of existing data to estimate those risks has not been subjected to peer review. To reduce such uncertainty, the Marine Mammal Commission recommends that the Navy subject its reviews of marine mammal density, distribution, behavior, and habitat use to scientific peer review.

### **Monitoring and Mitigation**

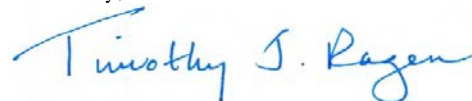
The Navy has established an Integrated Comprehensive Monitoring Plan to monitor, mitigate, and assess the effects of its activities over time. If properly implemented, the plan will improve both our understanding of the effects of sound from military activities and our ability to monitor and mitigate such effects. The Marine Mammal Commission strongly supports the development and implementation of this plan. Similarly, the Navy describes a commitment to an adaptive management approach (page 5-14 in the DEIS) that includes in its goals “an increase in the probability of detecting marine mammals.” However, the Navy does not describe in quantitative

terms the probability of detecting marine mammals now, nor does it describe a plan for developing, evaluating, and implementing new monitoring and mitigation capabilities to increase the probability of detecting marine mammals.

In its current form, the DEIS seems inconsistent with an adaptive management approach because it does not describe the accuracy or reliability of its mitigation measures or plans to characterize such information. The Commission continues to believe that the probability of detecting marine mammals using existing monitoring measures, and the subsequent likelihood of implementing necessary source-level reductions and other mitigation measures, are far lower than are implied in the DEIS. The Commission also believes that the Navy is capable of conducting the tests needed to characterize the effectiveness of monitoring and mitigation measures. The knowledge gained from such tests would justify the relatively small effort and time required. Such assessments of system performance are standard Navy procedure, and the Navy has conducted such tests to evaluate the effectiveness of monitoring and mitigation measures for similar operations (e.g., SURTASS LFA). For these reasons, the Marine Mammal Commission recommends that the Navy develop and implement a plan to evaluate 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. During the past year, the Commission has repeated this recommendation to the Navy but has not observed or been informed of positive steps in the recommended direction. The Commission would welcome an opportunity to discuss this matter with the Navy.

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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