

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

11 August 2008

Naval Facilities Engineering Command, Atlantic Division
Attention: Code EV22CM (JAX EIS/OEIS PM)
6506 Hampton Boulevard
Norfolk, VA 23508-1278

To Whom It May Concern:

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) provided by the Navy to evaluate its planned training and defense-related research on the Jacksonville Range Complex Operating Area. The DEIS covers the potential environmental impacts over a 10-year period associated with Navy Atlantic Fleet training; research, development, testing and evaluation activities; and related range enhancements (including infrastructure improvements). Covered activities include vessel movements, aircraft overflights, mine warfare activities, weapons firing, high-explosive ordnance, and missile exercises. The DEIS does not include mid-frequency sonar training and exercises, which are covered in the environmental impact statement for the Atlantic Fleet Active Sonar Training activities. The Navy analyzes three alternative scenarios for the types and amount of activity on the Jacksonville operating area. The “no-action” alternative includes historical levels of activity plus surge effort consistent with the Fleet Readiness Training Plan. Alternative 1 includes the no-action alternative plus increased operational training, expanded warfare missions, changes in force structure, and minimal enhancements to meet the objectives of the proposed action. Alternative 2 includes Alternative 1 plus additional mine warfare training capabilities and additional enhancements to the range complex to meet future requirements. The Navy prefers Alternative 2.

The Marine Mammal Commission notes that in the recent past the Navy has made considerable progress in the development of a model (i.e., NODE report) for estimating the exposure of marine mammals to noise generated by Navy activities. The model appears to be a highly sophisticated effort to combine existing knowledge of marine mammal abundance and distribution with patterns of sound generation and propagation. The Marine Mammal Commission considers this to be ground-breaking science and commends the Navy for making such a contribution to our general understanding of the effects of anthropogenic sound on marine mammals and ecosystems. The second of the Commission’s two recommendations below focuses on following up on the development of this model.

RECOMMENDATIONS

With regard to proposed activities at the Jacksonville Range Complex Operating Area, the Commission has identified two elements of the DEIS in need of further consideration and revision: (1) the no-action alternative does not comply with guidance from the Council on Environmental Quality and (2) the Navy report on marine mammal density estimates for operational areas would benefit from peer review. To address these concerns, the Marine Mammal Commission recommends that the Navy—

- resubmit for public review a revised DEIS including (1) a true no-action alternative that consists solely of the current level of activity and fully analyzes the environmental effects of that level, (2) a new alternative based on a reduced level of activity, (3) a new alternative based on the current level of activity plus surge activities (described and analyzed in detail), and (4) any additional alternatives that the Navy wishes to consider and that are necessary to sharply define the issues and describe environmental effects, and
- submit the NODE report to independent scientific review in keeping with standard scientific process and make the report of that independent review panel available to the public before the Navy and National Marine Fisheries Service complete the final environmental impact statement and consider any associated rulemaking for incidental taking or incidental harassment authorization under the Marine Mammal Protection Act.

RATIONALE

Recommended revisions to the DEIS are as follows.

The No-Action Alternative

The Marine Mammal Commission has noted on a number of occasions that the Navy is misusing the “no-action” label. The Council on Environmental Quality (CEQ) has provided direction on the use of that term as set forth in question 3 of its “40 FAQs within the Memorandum for Federal NEPA Liaisons, Federal, State, and Local Officials and other Persons Involved in the NEPA Process” (<http://nepa.gov/nepa/regs/40/1-10.HTM#3>). That document compares two interpretations of the term, the first being that no management is undertaken, which does not apply in this case. The second interpretation is explained as involving “an action ... where ongoing programs initiated under existing legislation and regulations will continue, even as new plans are developed. In these cases “no action” is ‘no change’ from current management direction or level of management intensity.” Here, “the ‘no action’ alternative may be thought of in terms of continuing with the present course of action until that action is changed” and “alternatives would include management plans of both greater and lesser intensity, especially greater and lesser levels of resource development.”

We believe that the Navy’s use of the term in this DEIS is improper on two counts. First, the DEIS does not include alternatives of greater and lesser intensity—all of its alternatives are of greater intensity. Secondly, its no-action alternative extends beyond current levels to include “surge” activities that have not been previously analyzed. That is, the level of activity covered under this alternative—and the associated environmental risk—are not the same as historical levels and would not meet even the most liberal interpretation of “no action.”

Further, in the Executive Summary (page ES-4) and in the fuller analysis of options (pages 2-1 and 2-18), surge activities are described generally as constituting an increase in training and

research, development, testing, and evaluation activities to support the Fleet Readiness Training Plan (and therefore not a baseline historical activity) but are not described in detail or quantified, either in terms of the type and number of new activities or their potential environmental effects. Thus, the alternatives presented by the Navy do not compare a “no action” or “continued baseline” alternative to two alternatives of increased impact but instead comprise three alternatives that all involve incompletely described but increased effort and effects relative to historical levels. Moreover, the impacts of historical activities have not been evaluated and described in a National Environmental Policy Act (NEPA) analysis. In our view, the Navy’s approach is inconsistent with and fails to meet the standards and intent of NEPA analysis. For that reason, the Marine Mammal Commission recommends that the Navy resubmit for public review a revised DEIS including (1) a true no-action alternative that consists solely of the current level of activity and fully analyzes the environmental effects of that level, (2) a new alternative based on a reduced level of activity, (3) a new alternative based on the current level of activity plus surge activities (described and analyzed in detail), and (4) any additional alternatives that the Navy wishes to consider and that are necessary to sharply define the issues and describe environmental effects.

NODE Animal Density Estimates

The foundation of the Navy’s estimation of risk to marine mammals depends on a regionalized estimate of animal density derived from a contracted 2007 report entitled “Navy OPAREA density estimates (NODE) for the Southeast OPAREAS: VACAPES, CHPT, JAX/CHASN and Southeastern Florida and AUTEC-Andros. Final Report. Contract Number N62470-02-D-9997” (referenced on page 7-23 of the Jacksonville DEIS as “Navy, 2007b”). As noted previously, the Commission’s initial review of this report indicates it is of generally high quality in terms of methods for integrating existing information into a quantitative estimate of regional animal density. The estimation procedure or model will almost certainly contribute significantly to our understanding of sound effects on marine mammals.

At the same time, the model constitutes a new area of scientific investigation, and the methods are still a matter of scientific discussion and debate within the expert community. For that reason, we believe it is critical that the Navy obtain adequate independent peer review of this report before applying it in the DEIS or using it to estimate take levels under the Marine Mammal Protection Act. The Marine Mammal Commission therefore recommends that the Navy submit the NODE report to independent scientific review in keeping with standard scientific process (e.g., as practiced by the National Research Council and most professional periodicals such as *Science* and *Nature*), and make the report of that independent review panel available to the public before the Navy and National Marine Fisheries Service complete the final environmental impact statement and consider any associated rulemaking for incidental taking or incidental harassment authorization under the Marine Mammal Protection Act.

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Please contact me if you have any questions or wish to discuss our recommendations and comments.

Sincerely,



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Executive Director

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