



DEPARTMENT OF THE NAVY

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5000
Ser N3N5N7/1810
September 6, 2002

Admiral James D. Watkins, USN (RET)
Chairman
U.S. Commission on Ocean Policy
1120 20th ST NW
Suite 200N
Washington, DC 20036

Dear Admiral Watkins:

Thank you for your letter dated July 15, 2002. We appreciate your efforts to develop a comprehensive and coordinated national ocean policy. As noted in your letter, the Commissioners submitted additional questions for our consideration. Our comments on each of the four subject areas are presented in the enclosure.

We welcome the opportunity to provide additional comment upon these important issues. The Navy looks forward to future discussions with the Commission in this regard.

Sincerely

A handwritten signature in black ink, appearing to read "R. T. Moeller", is written over the word "Sincerely". The signature is stylized and cursive.

R. T. MOELLER
Rear Admiral, U.S. Navy
Deputy Chief of Staff for
Operations, Plans, Policy and
Training

Enclosure (1)

Balancing economic, environmental and national security interests has been and will likely continue to be a perpetual issue requiring regular communication and frequent negotiation. What type of framework or mechanism would be most effective in providing a forum where this balance can be achieved in a timely manner? Is a regional mechanism desirable, and if so, to what degree must it be responsive to and consistent with national priorities?

The Navy believes that the key to balancing economic, environmental and national security interests lies in establishing and maintaining open and effective communication. This communication must include the efficient exchange of issues up and down the chain of command and between the 'National/Headquarters Offices and Commands' and 'Regional/Local Offices and Commands'. A two-tiered framework or mechanism would be the most effective approach. Specifically, the framework should include a 'National' and a 'Regional' component. The 'National' component would be at a Headquarters-to-Headquarters level, and would address over all ocean policy and international issues and would ensure that National policy is standardized across regions. The 'Regional' component would provide local military commanders the opportunity to interact with local regulators. Geographically specific and project specific issues would be dealt with at the 'Regional' level. However, as noted above, it will be critical that such 'Regional' decisions are compatible with 'National/Headquarters' level guidance and policy.

Our mission requires maintaining military readiness and it is our goal to do this while balancing environmental concerns and critical military readiness needs. Currently, however, the processes used to develop the environmental policies and regulations governing activities that may affect the world's oceans and seas do not adequately consider DOD's Title 10 mission requirements. CINCPACFLT believes discussions should be held among the relevant Executive Branch agencies to develop a formal process that evaluates and considers the potential effects a proposed action may have on DOD's missions requirements before the decision to proceed with any such action is made.

By adopting a two-tiered framework and more thoroughly incorporating DOD Title 10 responsibilities into the evaluation process, CINCPACFLT believes that a more appropriate balance between environmental policies and regulations and National security needs will be achieved.

We are specifically interested in DOD's views on how it would recommend speeding up the interagency "permitting" process and refine definitions used in ocean use laws and regulations. As a corollary, we are interested in DOD's view on whether those who have acknowledged expertise and made substantial investment in understanding certain ocean science disciplines might be delegated special permitting authorities.

As this question requests a DOD position, CINCPACFLT has referred it to the DOD Task Force in support of the Oceans Commission, which will forward it to the Office of the Secretary of Defense for review and appropriate response.

At all of our public hearings, we have heard recommendations that areas of the ocean be set aside for various uses, such as for fisheries refuges, bio-prospecting, preserving habitat, etc. However, we are also aware that there are a great many considerations that must be factored into the establishment of these types of areas. The Commission would like to know your opinion on how best to come to an agreement on this issue. How should areas in need of protection be set-aside without unnecessarily impacting a whole range of activities?

CINCPACFLT believes there are two key elements to addressing this issue. First, the areas being established must identify specifically the following requirements/objectives in order to effectively protect and manage the resource:

- (1) What resources need to be protected; and
- (2) From what risks those resources need to be protected.

Secondly, the benefits of the actions being taken must be weighed against the adverse effects any such actions may have on other important interests and activities.

In general, the regulatory community has relied on broadly written restrictions in an attempt to achieve their goals. By frequently failing to identify the specific resource and associated threat, these broad restrictions and designations sometimes fail to achieve their objectives and may inadvertently affect areas and activities unrelated to their objectives. Furthermore, they frequently create unnecessary burdens upon other resource user-groups. Essential Fish Habitat designations are an example of this approach. By considering everything from the shoreline out to depths of 1000 meters (e.g., the Pelagic Fish Fishery Management Plan for the Hawaiian Islands), the regulation loses its meaning and the specific resource objectives are not achieved.

Concerns with whale watching boats in Alaska provide another clear example. The June 26, 2000 proposed "Regulations Governing the Approach to Humpback Whales in Alaska" (65 Fed. Reg. 39336) stated that the need was to "...manage the threat caused by...whale watching..." However, the proposed regulation was directed at all vessels, even when there was no reasonably demonstrated affect upon the species.

The direct and indirect benefits of a proposed action must also be weighed against its affects on other important activities. For example, DOD training and testing locations serve as de-facto preserves by protecting these areas from commercial and destructive fishing practices, inappropriate land use practices and improper sewage discharge and ocean dumping. Some of the world's best remaining marine habitats are located in the vicinity of active DOD/Navy sites (e.g., Diego Garcia, Wake Island, and Johnston Atoll).

Extensive scientific data supports the conclusions that the five most significant threats to marine resources are attributable to the following:

- Commercial fishing and destructive fishing practices,
- Non point source pollution,
- Domestic and industrial sewage discharge,
- Inappropriate coastal land use practices, and
- Commercial and industrial coastal development.

DOD is not involved in commercial fishing and rigorous DOD and Navy compliance and stewardship programs have reduced DOD 'contributions' from the other four impact categories.

Furthermore, the affects of Navy actions upon marine natural resources are significantly less than those arising from activities undertaken by industry and the general public. For example, the tonnage of military shipping compared to commercial shipping is less than 3% nationally, and much less than that globally. More-over, the Navy follows a strict no-plastics-discharge at sea policy.

As noted above, CINCPACFLT believes that the DOD should be given appropriate credit for the benefits its bases, ranges and training areas have provided to natural resources. Although such benefits were not the primary objective in creating these facilities, their benefits have been clearly demonstrated.

In summary, CINCPACFLT believes that:

- Regulations should be developed that target specific resources and only specific threats to those resources. Broadly written, non-specific regulations should be revised or replaced. Regulations should be focused on the

elimination or control of the specific causal factors adversely affecting the resources of concern.

- The direct and indirect benefits to marine natural resources from Naval activities, bases, ranges and training areas often significantly outweigh any adverse effects attributable to Navy activities. This is due, primarily, to the fact that the effects from these routine activities frequently result in indirect benefits to those resources by shielding them from commercial development, overfishing and other potentially detrimental activities. These benefits must be weighed against any impacts associated with activities conducted in these areas.

Some nations are already mapping the seafloor beyond their EEZs in preparation for claiming these areas under the United Nations Convention on the Law of the Sea (UNCLOS). If the U.S. were to sign UNCLOS, it is not clear that our mapping efforts are properly preparing us to make claims beyond our own EEZ. Is the U.S. Navy examining this issue?

The U.S. Navy is not examining this issue. Neither the Navy nor DOD is responsible for mapping of the continental shelves. Economic zones are not a DOD area of responsibility and the Navy has not collected any data for the purposes of supporting or promoting economic claims. The Navy relies primarily upon mapping data generated by other Federal agencies and then adapts it, as appropriate, for military use.



DEPARTMENT OF DEFENSE
REPRESENTATIVE FOR OCEAN POLICY AFFAIRS

WASHINGTON, DC 20301-2400

15 November 2002

Admiral James D. Watkins
Chairman
U.S. Commission on Ocean Policy
1120 20th Street, NW
Suite 200 North
Washington, D.C. 20036

Dear Admiral Watkins,

By letter dated September 6, 2002, Rear Admiral R. T. Moeller, Deputy Chief of Staff for Operations, Plans, Policy and Training, U.S. Pacific Fleet, provided you with responses to three of the four questions posed in your letter of July 15, 2002, to Rear Admiral Robert F. Willard, Chief of Staff, U.S. Pacific Fleet. Rear Admiral Moeller forwarded the remaining question to the Department of Defense Task Force in support of the Oceans Commission because the question requested a Department of Defense position on the "interagency permitting process." Attached is the response to that question. Please do not hesitate to contact us should you require additional information.

Our points of contact are Mr. Richard Hillyer, CNO (N962) at (202) 762-0258 and Commander Dave Grogan, Ocean Policy/NAC at (703) 697-6671.

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MICHAEL F. LOHR
Co-Chair DoD Task Force
Rear Admiral, JAGC, U.S. Navy
DoD Representative for
Ocean Policy Affairs

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THOMAS J. WILSON, III
Co-Chair DoD Task Force
Rear Admiral, U.S. Navy
Oceanographer/Navigator
of the Navy

Copy to: DoD Task Force

We are specifically interested in DOD's views on how it would recommend speeding up the interagency "permitting" process and refine definitions used in ocean use laws and regulations. As a corollary, we are interested in DOD's view on whether those who have acknowledged expertise and made substantial investment in understanding certain ocean science disciplines might be delegated special permitting authorities.

The Department of Defense believes that several measures should be implemented to expedite the permitting process. These measures include the following:

1. Use the best available scientific data to identify potential impacts and clearly differentiate (whenever possible) between significant and nonsignificant impacts.
2. Conduct headquarters-to-headquarters discussions on how to approach potential problems. These discussions should be followed by preparation of agency-wide guidance or policies to ensure consistency between regional regulatory authorities and address any 'gray' areas in regulatory definitions and/or guidance documents.

Although the Department of Defense currently funds much of the most significant research on marine mammals, and will continue this research in the future, the Department of Defense does not believe that it should be delegated special permitting authority. Rather, we suggest that the present permitting authorities be required to: (1) utilize the best available scientific data, including Department of Defense data; and (2) expressly consider the possible national security consequences of their decisions during the permitting process.

As indicated in testimony before the Commission, one of the environmental programs that poses the greatest challenge to naval training and operations at sea today is the Marine Mammal Protection Act (MMPA). The Department of Defense recommends that as part of the ongoing MMPA reauthorization process and as included in the Administration's Readiness and Range Preservation Initiative, Congress follow the National Research Council's recommendation that the current, ambiguous definition of "harassment" of marine mammals, which includes "annoyance" and "potential to disturb," be focused on disruption of biologically important behaviors, such as breeding, feeding and migrating, to the point such behavior patterns are significantly altered or abandoned.

Attachment.