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BY ELECTRONIC SUBMISSION AND REGULAR MAIL

February 2, 2015

Naval Facilities Engineering Command, Northwest, EV21.KK
Attention: Ms. Kimberly Kler – Environmental Planner
1101 Tautog Circle, Suite 203
Silverdale, WA 98315-1101

Re: Supplement to the Draft Environmental Impact Statement/Overseas
Environmental Impact Statement for Northwest Training and Testing

Dear Ms. Kler:

On behalf of our organizations and our millions of members, activists, and supporters, we write to submit comments on the Navy's Supplement to the Draft Environmental Impact Statement/ Overseas Environmental Impact Statement ("Supplement") (December 2014) for its training and testing activities in the Pacific Northwest. The Supplement discusses two changes to the Navy's proposed training and testing activities made after release of the Draft Environmental Impact Statement/ Overseas Environmental Impact Statement ("DEIS") in January, 2014. Because the Supplement incorporates and continues to rely on the DEIS in all other respects, we reiterate and hereby incorporate by reference previous comments to that document submitted April 15, 2014.¹ Please include these comments in the administrative record.²

¹ See Letter from Animal Welfare Institute, Center for Biological Diversity, Cetacean Society International, Earthjustice, Environmental Protection Information Center, Friends of the Earth, Friends of Miller Peninsula State Park, Friends of the San Juans, The Humane Society of the United States, Humboldt Baykeeper, International Fund for Animal Welfare, InterTribal Sinkyone Wilderness Council, Klamath Forest Alliance, Natural Resources Defense Council, North Olympic Group Sierra Club, Northcoast Environmental Center, Ocean Mammal Institute, Orca Network, Surfrider Foundation Humboldt Chapter, Surfrider Foundation, Mendocino Coast Chapter, and Whale and Dolphin Conservation to Naval Facilities Engineering Command, Northwest (Attention: Ms. Kimberly Kler – NWTT EIS/OEIS Project Manager) dated April 15, 2014.

² We are aware that comments may be submitted separately by government agencies, individual scientists, environmental organizations, and the public. All of these comments are hereby incorporated by reference.

As we have explained, the Navy’s compliance with the National Environmental Policy Act (“NEPA”), 42 U.S.C. 4321 *et seq.*, is vital to ensuring that whales, dolphins, and other marine life are protected from unnecessary harm from the Navy’s activities. The DEIS, however, included a picture of unremitting and inadequately mitigated harm: more than 500,000 instances of marine mammal “take” (significant behavioral disruptions and injury) over five years (from 2015 to 2020), including almost 275,000 instances of temporary hearing loss, and more than 600 instances of permanent hearing loss from the use of sonar and explosives. *See* DEIS at 3.4-150 to 151; 3.4-158 to 159. While these projections are shocking—and, we believe, still underestimate the harm to marine mammals from the Navy’s activities—they confirm what stranding events have evidenced, scientists have studied, and the public has believed for years: Navy training and testing activities endanger whales and dolphins at intolerable levels.

The activities included in the Supplement add almost 415,000 instances (about 83,000/year for five years) of marine mammal take to this total – nearly doubling the total disclosed in the DEIS. *See* Supplement at 3-21. This massive increase in exposures and commensurate behavioral disruption and injury to marine mammals, however, is not accompanied by an appropriate level of analysis or mitigation. Indeed, the Navy proposes no new or additional mitigation to avoid or alleviate any of the projected harm to marine mammals from the increase in sonar use disclosed in the Supplement. Instead, the Navy tersely concludes that “these increases do not result in any long-term consequences for any marine mammal population or species,” and leaves unchanged its analysis and conclusions in the DEIS. *Id.* at 3-22.

While the scale of these combined impacts does not change the Navy’s obligations under NEPA, it highlights why it so important that the Navy fully comply with both the letter and spirit of the law. Congress intended the NEPA process to inform the Navy’s decisions on its proposed activities; after reviewing the DEIS, decision makers must understand the breadth of harm to impacted species, must be able to choose a course of action from a range of alternatives that provide options for meeting the Navy’s goals while still reducing harm to species, and must have at their disposal a range of mitigation measures that will significantly lessen environmental impacts. The DEIS and the Supplement fail to meet these requirements and do so in such a way that the failures cannot be remedied through the issuance of a final EIS. **Accordingly, we continue to believe that the document must be thoroughly revised and reissued as a draft for further public review and comment.**

I. THE SUPPLEMENT FAILS TO TAKE A HARD LOOK AT LEVEL B HARASSMENT

The Supplement continues to dismiss the significant impact Level B harassment has on marine mammals, even when faced with a 16-fold increase in takes for harbor porpoises, a species the Navy and the National Marine Fisheries Service recognize as being “especially sensitive to sound.” DEIS at 3.4-104. Nonetheless, the Navy continues to conclude that for harbor porpoises and other marine mammals the projected impacts are “unlikely to cause long-term consequences

for individual animals or populations.” Supplement at 3-18. This conclusion is not supported by the best available science or the Navy’s analysis.³

For military readiness activities, Level B harassment is defined as “any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavior patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, *to a point where such behavioral patterns are abandoned or significantly altered.*” 16 U.S.C. § 1362 (18)(B)(ii) (emphasis added). In other words, over the course of five years, marine mammals in the Pacific Northwest will be subjected to more than 900,000 instances of exposure that will or are likely to cause the affected animal to significantly alter or abandon essential breeding, feeding, or migration behaviors. This is far from trivial, as the best available science shows.

The scientific literature cited by the Navy in the DEIS (*e.g.*, Southall et al. 2007, Goldbogen et al. 2013, Miller et al. 2012, New et al. 2013, etc.) demonstrates that such disturbances are far from minor or “fleeting” and many can have long-term consequences for individual animals and populations. Nonetheless, the DEIS and the Supplement fail to analyze the consequences of repeated behavioral disruptions, especially those that have the greatest potential for population-level effects. The treatment of harbor porpoises is particularly troubling and illustrative of the Navy’s overall failure to take a hard look at the impact significant behavioral disruptions will have on individual fitness and populations. The Navy’s modeling, after taking mitigation and behavioral avoidance into account, projects nearly 35,000 annual instances of significant behavioral disruption for a population of harbor porpoises that numbers less than 16,000 and more than 50,000 annual instances of harm for a population numbering less than 40,000. These projections show the possibility of every member of entire populations abandoning or significantly altering essential life behaviors.

The Supplement fails to assess what impact this will have on these harbor porpoise populations, sweeping aside disruptions like temporary hearing loss, the separation of mothers and calves, prolonged cessation of vocal behavior, and long-term avoidance of an area as fleeting and “unlikely to cause long-term consequences for individual animals or populations.” Supplement at 3-18. Such conclusions are unsupported by the best available science and contradict the Navy’s cooperating agency, the National Marine Fisheries Service, which has stated that temporary hearing loss “sustained during [a] time when communication is critical for successful mother/calf interactions” may have “serious impacts.” 78 Fed. Reg. 6978, 6998 (Jan. 31, 2013); *see also id.* at 7002 (explaining that long-term “disruptions of mother/calf pairs or mating displays have the potential to affect the growth and survival or reproductive effort/success of individuals”).

³ The Supplement’s conclusions on ship strikes are similarly flawed. Mentioning a relevant factor and considering it rationally in light of the evidence are not the same thing. The fact that “large marine mammals occur less frequently” does not mean that “the risk of a vessel strike is minimal.” Supplement at 3-18. Large whales do occur in Puget Sound and, apparently, may be struck in the Sound (*see, e.g.*, Biologists say dead whale found at Seattle ferry dock was struck by propeller of large vessel, available at <http://www.foxnews.com/us/2015/01/24/biologists-say-dead-whale-found-at-seattle-ferry-dock-was-struck-by-propeller/>). The Navy cannot so easily dismiss the threat to whales from ship strikes in Inland Waters. Conclusory statements do not substitute for reasoned consideration.

The Navy's failure is compounded by the fact that many of these marine mammal populations are relatively naïve to sonar harassment. As the Navy has previously noted, sonar use in the Pacific Northwest has been limited in comparison to other ranges. And this history informs the Supplement's adoption of the DEIS's conclusion that the impacts will not have any "long-term consequences for any marine mammal population or species." Supplement at 3-22 (citing to "8 years of observations, research, and 80+ monitoring reports"). This conclusion fails to recognize the large increase in activities and consequent take outlined in the Supplement, especially in the context of such relatively naïve populations. In comments to the Navy on its activities in Hawaii and Southern California, Dr. Robin Baird noted that such populations may be particularly vulnerable, yet the "analysis" in the DEIS and Supplement fails to account for this vulnerability.⁴

It is simply not enough to identify avenues of harm, how such harm has impacted other animals or may hurt animals generally, without taking the analysis further. NEPA's "hard look" requires more. The Supplement should have presented a specific analysis of the projected impact to *these* animals from the proposed increase in activities, including the impact the projected significant behavioral disruptions may have on individual animals or populations. The Supplement and DEIS should be withdrawn and revised to address this failure.

II. THE SUPPLEMENT FAILS TO PROPOSE OR ANALYZE NECESSARY, REASONABLE, AND MEANINGFUL MITIGATION ACTIONS

Our overriding concern with the Supplement is the Navy's continued failure to protect biologically important areas for marine mammals within the Northwest Training and Testing ("NWTT") Study Area. There is a general consensus among the scientific community, as NOAA has recognized, that "[p]rotecting marine mammal habitat is...the most effective mitigation measure currently available" to reduce the harmful impacts of mid-frequency sonar on marine mammals.⁵ Nonetheless, the Supplement, like the DEIS, does not consider establishing any protection zones in the NWTT Study Area where training or testing could be limited or excluded, despite the common-sense efficacy of such measures.

In all, the NWTT Study Area encompasses air, surface, and subsurface operating areas, including a more than 120,000 square nautical mile offshore area extending approximately 250 nautical miles into the Pacific Ocean from the coastlines of Washington, Oregon, and Northern California, an area the size of the state of Montana. While the Supplement "clarifies" that the eastern boundary of this area is generally 12 nm from the coastline, the Navy admits that the range extends to the shoreline in a large portion of Washington State – including within the Olympic National Marine Sanctuary. Supplement at 2-5. Regardless of the precise boundaries of this large area, the Navy has again failed even to consider minimizing harm to marine life by refraining from training and testing in a single square yard of this vast area of ocean.

⁴ See Letter from Robin Baird to HSTT EIS/OEIS Project Manager, Naval Facilities Engineering Command, Pacific dated October 27, 2013 ("Marine mammal individuals and populations that are only rarely exposed to MFA sonar exposure are likely more vulnerable than populations that regularly are exposed to MFA sonar (Falcone et al. 2009; Baird et al. 2011)"), attached.

⁵ See Letter from Jane Lubchenco, Under Secretary of Commerce for Oceans and Atmosphere to Nancy Sutley, Chair, Council on Environmental Quality dated Jan. 19, 2010, *available at* <http://www.nrdc.org/media/docs/100119.pdf>

The Navy's failure to do is particularly troubling in light of the emerging information on potentially important habitat for marine mammal populations in the NWTT Study Area. Over the last few years, the National Oceanic and Atmospheric Administration ("NOAA") has been guiding the work of two working groups to improve the tools available to agencies, including the Navy, to evaluate and mitigate the impacts of anthropogenic noise on marine mammals. The Working Groups' draft products were recently released and one key product of this effort was the Cetacean Density and Distribution Mapping Working Group's (CetMap) identification of density and distribution maps for marine mammal populations in the Pacific Northwest—potentially important habitat for marine mammals. Nonetheless, this information was not incorporated into the Navy's analysis through the development of reasonable alternatives or examined as possible mitigation measures based on limiting or excluding training and testing activities in these areas.⁶

Indeed, the Navy continues to rely largely on visual detection and power-down protocols to mitigate for its activities. As we have described many times in the past, while these methods may reduce some of the potential for harmful exposures from sonar and other activities as part of a comprehensive mitigation scheme, they are by themselves a wholly inadequate basis for reducing the amount and severity of impacts to marine mammals. *See* Comments on DEIS at 30-31 (describing limits of visual detection). The Navy's reliance on visual detection also suffers from the fact that visual detection, is at best, designed to detect animals at close distances where exposure to sound levels is most likely to result in permanent physical injury or death. It is extremely ineffective at distances where exposure results in temporary hearing loss and significant behavioral disruption (Level B harassment). Thus, the Navy's entire mitigation proposal is designed to reduce the incidences of only one kind of harm and harassment. NEPA does not allow an agency to examine mitigation for only one category of harm while ignoring others.

The Navy's mitigation scheme also fails to address the disproportionate impact projected harms from increased activities may have on relatively naïve and particularly sensitive populations. For example, in the case of harbor porpoises, which are extremely sensitive to lower dB sounds, the Navy fails to examine any mitigation designed to limit the tens of thousands of incidences of Level B harassment, which will cause these animals to significantly alter or abandon essential breeding, feeding, or migration behaviors.

Especially now that the Navy is proposing to nearly double the number of takes in the NWTT area through the increased use of sonobuoys, it is even more vital to analyze all new information and develop alternatives and mitigation measures in a wholesale revision of the DEIS. As we stated in our previous comments, effective mitigation measures should include barring or limiting the use of sonar or other training in areas with high biological value and provide a buffer for marine mammals that limits the received level of sound. *See* DEIS Comments at 30-32. As noted above, NOAA has completed a series of workshops designed to learn more about important marine mammal habitats. The results of these workshops are available and the Navy

⁶ While the Navy's examination of potentially important habitat should inform its identification and analysis of mitigation, the usefulness of CetMap's tools extends beyond designing protective measure. The Navy should also analyze and incorporate this and other information when developing reasonable alternatives.

must assess the information and develop mitigation measures based on protecting such areas. In addition, we continue to believe that the Olympic Coast National Marine Sanctuary should be just that, a sanctuary for the marine environment and marine life from the harms associated with human activity, including the Navy's training and testing.

III. THE NAVY MUST COMPREHENSIVELY EVALUATE THE IMPACTS OF ITS INTERCONNECTED AND INTERRELATED ACTIONS

The release of the Supplement represents the third time in the past five years that the Navy has announced an incremental increase in the intensity of its training actions in this sensitive area. Starting in 2010, the Navy announced a 17% increase in the use of its mid-frequency active sonar. It announced an even larger increase – of approximately 225% -- in the DEIS in January 2014. The Supplement now increases this amount of sonar by an additional 16%.

During this same period, the Navy has proposed and elsewhere evaluated other new or increased training proposals including increasing the number of EA-18G Growlers and Growler squadrons at Whidbey Naval Air Station, and an electronic warfare action on the Olympic Peninsula.⁷ The individual increases in activity have not gone unnoticed by the public, but has so far been unaccompanied by any programmatic disclosure or analysis for what is evidently a decision or series of decisions to increase the Navy's training activities in the Pacific Northwest.

NEPA requires the scope of a federal agency's analysis to include "connected actions" that "automatically trigger other actions," "cannot or will not proceed unless other actions are taken previously," or "are interdependent parts of a larger action and depend on the larger action for their justification." 40 C.F.R. § 1508.25. NEPA also requires federal agencies to consider the cumulative environmental impacts of their actions in their environmental analyses. 40 C.F.R. § 1508.25(c). A cumulative impact is defined as:

the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

40 C.F.R. § 1508.7.

Although each of the Navy's activities affects the same area, many of the same resources, and likely would not occur but for the Navy's continued conduct of other actions, the Navy has not considered them in a single or programmatic analysis, nor has it evaluated their specific impacts together as interdependent and interrelated activities or as cumulative impacts.⁸ This type of

⁷ See <http://www.whidbeveis.com/> (EIS for proposed addition of up to 36 aircraft to NAS Whidbey Island); http://www.cnmc.navy.mil/regions/cnmw/om/environmental_support/EIC_TOC/electronic-warefare-facts-and-review-infomration.html (Environmental Assessment for electronic warfare training on Olympic Peninsula).

⁸ For example, although the Navy states that its Olympic Peninsula electronic warfare activity "is being addressed in the NWTTS EIS/OEIS," neither the DEIS nor the Supplement adequately analyze these specific activities. Environmental Assessment for electronic warfare training on Olympic Peninsula at 2-8. Nor were these increased

complete and comprehensive analysis is necessary if the public and Navy decision-makers are to be fully informed, can meaningfully evaluate the Navy's proposed actions, and can ensure that the Navy is not making decisions without considering the larger picture.

CONCLUSION

Our organizations continue to recognize the Navy's vital role in ensuring national security. We also value the security a clean and healthy environment provides. National security and environmental integrity are not mutually exclusive, and we encourage the Navy to train and test in ways that protect the Pacific Northwest's valuable natural resources. We urge the Navy to satisfy its obligations under NEPA and other applicable laws by substantially revising its DEIS, taking a "hard look" at impacts, reasonable alternatives, and mitigation measures that will significantly reduce the impact to the marine environment, and by providing an opportunity for public comment.

Thank you for your consideration of our comments; we welcome the opportunity to discuss this matter with you at any time.

Sincerely,

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electronic warfare activities adequately addressed (even on a programmatic level) in the previous 2010 NWTRC EIS.

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