



# UPDATE: JULY 15, 2019

This Update contains **FOUR** important items:

- 1: Lawsuit filed by Washington Attorney General against the Navy**
- 2. Lawsuit filed by Citizens of Ebey's Reserve against the Navy**
- 3. Actions of Senator Cantwell and Representatives Larsen and Kilmer in Defense Appropriations to require real-time noise monitoring**
- 4. Why YOU make a difference!**

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## **WA Attorney General today filed a lawsuit against the Navy**

**July 9 2019: Navy's decision to expand its operations on Whidbey Island failed to adequately analyze human health, environmental and historic impacts.**

Attorney General Bob Ferguson today filed a lawsuit against the U.S. Navy over the Navy's expansion of its Growler airfield operations on Whidbey Island.

In March, the Navy authorized an expansion of its Growler program, increasing Growler take-offs and landings to nearly 100,000 per year for the next 30 years. Growlers are aircraft that fly low in order to jam enemy communications. The aircraft's training regimen involves frequent, loud take-offs and landings.

The Attorney General's Office asserts that the Navy's environmental review process for the expansion unlawfully failed to measure the impacts to public health and wildlife in communities on and around Whidbey Island.

"The Navy has an important job, and it's critical that their pilots and crews have the opportunity to train," Ferguson said. "That does not relieve the federal government of its obligation to follow the law and avoid unnecessary harm to our health and natural resources."

"Washington will always work to defend our state's vibrant communities and natural resources," Gov. Jay Inslee said. "We are proud to host installations for our armed forces and support the nation's defense, however, the Navy has an obligation to follow the law and ensure adequate mitigation for its actions. Their efforts could result in disproportionate adverse impact to our state's environment and the health and quality of life of Washington's residents."

"Unregulated, unrestrained noise pollution from increased military training operations presents a clear threat to the health and solitude of our state's fragile ecosystems, treaty protected resources and endangered species," said Quinault Indian Nation President Fawn Sharp. "The federal government must strike the appropriate balance to ensure our national security without permanently damaging the landscapes, species and communities they are seeking to protect."

The Navy's expansion would take place at the naval air station on Whidbey Island. The military branch plans to add 36 Growler aircraft to its fleet by 2022. The number of airfield flights would increase to nearly 100,000 annual take-offs and landings, for an estimated 30 years.

In the lawsuit, filed in the U.S. District Court for the Western District of Washington, Ferguson argues that the Navy violated the National Environmental Protection Act (NEPA) and the federal Administrative Procedure Act (APA) by improperly analyzing the impact the Growler expansion would have on human and environmental health. A link to the lawsuit will be available on the Attorney General's website once it is filed.

In 2017, the Washington Department of Health provided feedback to the Navy on noise levels around the Whidbey Island airfields. The feedback outlined how exposure to noise levels similar to those at the naval air station could cause negative health impacts, including sleep disturbance, cognitive impairment and cardiovascular disease.

The Navy arbitrarily dismissed impacts to human health and child learning from increased noise, despite many studies indicating that exposure to noise can lead to adverse health outcomes. In the lawsuit, Ferguson asserts that the Navy failed to complete a thorough analysis of negative impacts to health.

The Attorney General's Office also asserts that the Navy failed to conduct any analysis on the impacts the expansion would have on wildlife in the area, in violation of the NEPA and APA.

The aircraft's training regimen involves frequent, loud take-offs and landings near important habitats for birds, including bald eagles and threatened seabirds called marbled murrelets. Over time, these birds would be exposed to millions of loud Growler flights, affecting their ability to feed and breed. Despite this, the Navy did not analyze if the additional flights would cause any harm.

Additionally, historic properties like Ebey's Landing National Historic Reserve would experience increased noise levels caused by the expansion. The noise levels may impact visitors and wildlife in the area, and would spoil the rural character of the reserve for which it was created. The Attorney General asserts that the Navy did not consider reasonable measures to provide more protection for the historic site.

In addition to filing the lawsuit, Attorney General Ferguson sent a letter today, giving notice of additional claims he will add to the lawsuit under the Endangered Species Act unless the federal government makes changes. The Endangered Species Act requires a 60-day notice before the Attorney General's Office files a lawsuit.

Assistant Attorney General Bill Sherman and Special Assistant Attorney General Aurora Janke with the Counsel for Environmental Protection are handling this case on behalf of the Attorney General's Office.

Protecting the environment is one of Ferguson's top priorities. In 2016, he created the Counsel for Environmental Protection to protect our environment and the safety and health of all Washingtonians.

**Watch this video of the press conference:**

<https://www.youtube.com/watch?v=CgcVOwS1dzo>

# CITIZENS OF EBHEY'S RESERVE

*protecting our land, homes, and health*

## COER also filed a lawsuit against the Navy

July 9, 2019

Today, both Citizens of the Ebey's Reserve ("COER") and the Washington State Attorney General filed lawsuits against the U.S. Navy under the National Environmental Policy Act ("NEPA"). COER thanks Attorney General Robert Ferguson and his outstanding staff, for taking a hard look at the Navy's EIS and Record of Decision expanding EA18-G "Growler" operations at NAS Whidbey, and for unequivocally saying to the Navy that this decision is unreasonably harmful, unsustainable, and contrary to federal law. In filing their NEPA suit, the Attorney General largely validates what COER has been saying for most of the past decade: the Navy decision to base all Growler electronic attack aircraft on Whidbey Island with training over civilian populations, near schools and the hospital, over Ebey's Reserve, the Olympic National Forest and Park, and Deception Pass State Park, must be reversed.

COER has been engaged with the Navy in a struggle for our civilian communities, our Salish Sea environment, and in broader sense for our democracy itself. This fight is to return civilian control over military actions and to force the Navy to comply with federal law in its basing and training decisions.

Congress has provided the Navy, and the other branches of the military, with millions of acres reserved for training purposes. Military reservations are where military activities should take place, not over civilian populations, not in our national and state parks, and not where training has devastating effects upon civilians, the environment and natural species.

The Navy's Growler expansion decision violated NEPA in numerous ways. Among the most egregious and critical failures are:

- ❖ The Navy segmented its decision-making process to minimize and avoid assessing cumulative impacts, thereby depriving the public and elected officials from adequately assessing Navy plans. The Growler EIS was limited in geographic scope to Whidbey Island and should have included all areas impacted, including Port Townsend, the Kitsap Peninsula and the San Juan Islands. Under NEPA the Growler EIS should have been incorporated into the larger Northwest Training and Testing EIS currently being conducted, whose scope includes all airspace, land and coastal marine environments from Northern California to the Canadian border;
- ❖ The Navy failed to examine alternative locations to basing the additional Growlers at NAS Whidbey;
- ❖ The Navy failed to ensure the **professional and scientific integrity** of its analysis as mandated by NEPA. It violated standard scientific protocols by selectively employing criteria and invalidated theories in support of what appears to be a pre-determined decision. For example, the Navy employed noise-threshold tolerance levels commonly rejected within the world scientific community as outdated, and it ignored and misrepresented major scientific findings on the non-auditory impacts of noise on human health;
- ❖ The Navy failed to adequately examine the direct and indirect impacts upon threatened and endangered

species, such as Washington's resident orcas and the marbled murrelet; and

- ❖ The Navy failed to conduct meaningful analyses of the human impacts of military jet noise by:
  - refusing to conduct actual on-site noise monitoring, relying instead upon outdated models which consistently understate actual noise levels and impacts; averaging sound levels to veil the number, frequency and duration of dangerous peak sound events; and
  - failing to explain how jet noise will affect peoples' lives (e.g., acknowledging and describing how sustained exposure to jet noise will result in permanent hearing loss and non-auditory health impacts; describing how normal life inside people's homes and businesses will be disrupted and made unbearable; disclosing the true impairments on children's learning in school and patients' recovery in the hospital; and being forthright about the incompatibility with tourism and the number of visitors who will not return to our national and state parks once driven out by military jet noise).

Relief sought in these lawsuits includes a preliminary injunction to halt the Growler expansion, and for an order requiring the Navy to withdraw its Record of Decision and to prepare a supplemental draft EIS that corrects all deficiencies in compliance with NEPA.

Citizens of the Ebey's Reserve is represented in this lawsuit by Bricklin & Newman, LLP, attorneys at law, 1424 Fourth Avenue, Suite 500, Seattle, WA 98101, telephone 206.264.8600.

For more information please contact Paula Spina, COER litigation lead, at [pspina02@aol.com](mailto:pspina02@aol.com) or 206.265.0981, or visit our [website](#) or [facebook](#).

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**June 28, 2019: Senator Cantwell** introduced an amendment to the National Defense Appropriations Act of 2020 that requires the Department of Defense to conduct real-time jet noise monitoring. **Representative Larsen** and **Representative Derek Kilmer** introduced parallel legislation in the House. (Note: Also, Washington State Senator directed a letter to U.S. Senator Patty Murray supporting noise monitoring.)

#### **The Senate version -**

**Requires** real-time monitoring of noise from local flights of EA-18G Growlers associated with Naval Air Station Whidbey Island, including field carrier landing practice at Naval Outlying Field (OLF) Coupeville and Ault Field.

**Requires** monitoring results to be made public on an Internet website of the Department of Defense;

**Requires** the report on the noise monitoring to be submitted to Congress within 6 months;

**Requires** the Secretary of Defense to work with the Director of the National Park Service and the Chief of the Forest Service to come up with a plan within 6 months for real-time noise monitoring of Growlers above or adjacent to Olympic National Park, Olympic

National Forest, and Ebey's Landing National Historical Reserve.

**Authorizes** \$1 million for the noise monitoring.

#### **Why is Noise Measurement Important?**

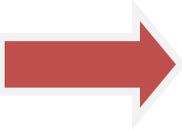
One of the key weaknesses we have pointed out in the Navy EIS is that their **noise analysis** is based on computer simulations, **not** actual noise measurements. They have been very opaque on the how the computer models work and

where the data comes from.

With real-time measurements citizens will have a stronger basis to challenge the Navy decisions. Measurements will demonstrate that the Growlers are louder than the Navy has stated and the impact on people and the environment are much more harmful.

During the EIS process organizations presented credible noise measurements made by professional engineers. The Navy dismissed their findings. They will not be able ignore their own measurements.

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## How did this happen?

- \* **Your** persistence in contacting elected officials.
- \* Banding together organizations and individuals around the Salish Sea into the **Sound Defense Alliance**. SDA is a young organization that already has credibility with elected officials.
- \* Working with local officials such as our **San Juan County Commissioners** to deliver the message to State and Federal elected officials.

**Please join the Sound Defense Alliance now.**

**If you have not done this already, please sign up to be a member of the Sound Defense Alliance. <https://sounddefensealliance.org/take-action/join-us/>.**

**Donations to the Sound Defense Alliance are greatly appreciated.**

**Remember to report Growler noise.**

**[sjcgis.org/aircraft-noise-reporting/](https://sjcgis.org/aircraft-noise-reporting/)**

Thanks to each of you for continuing to file jet noise reports ! Please continue. One way to demonstrate impact is with DATA! We send the data analysis to elected officials every two months. You can see the reports at <https://www.quietskies.info/county-website-data-summaries>

**Thank you for all you do! We depend on each other.**