



**By Facsimile and Overnight Mail**

January 30, 2006

Mr. Keith Jenkins  
Naval Facilities Engineering Command Atlantic (Code EV21KJ)  
6506 Hampton Boulevard  
Norfolk, VA 23508  
Fax: (757) 322-4894

Re: Draft Overseas Environmental Impact Statement/ Environmental Impact Statement for the Undersea Warfare Training Range

Dear Mr. Jenkins:

On behalf of the Natural Resources Defense Council (“NRDC”) and our more than 650,000 members, over 70,000 of whom reside in potentially affected states, we are writing to submit these additional comments on the Navy’s Draft Overseas Environmental Impact Statement/ Environmental Impact Statement (“DEIS”) for a proposed Undersea Warfare Training Range. See 70 Fed. Reg. 62102 (Oct. 28, 2005).<sup>1</sup>

Since we submitted our main body of comments two weeks ago, a number of events have occurred that bear on the Navy’s environmental analysis.

First, some preliminary information has become available on the unusual multi-species mass stranding of whales that occurred on North Carolina’s Outer Banks in January 2005. As we observed in our January 13 letter, that event could have enormous significance for the Navy’s analysis, both because it would provide further evidence of the potential for mortalities at the proposed North Carolina site and because it would demonstrate that the range of marine mammals vulnerable to strandings is broader than the Navy suggests.<sup>2</sup> On January 17, under orders from a federal court, NMFS turned over a preliminary summary of its investigation, which contains several findings suggesting the whales may

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<sup>1</sup> Our comments are joined by the Whale Dolphin Conservation Society (“WDSCS”). As with our earlier letter, the comments that follow do not constitute a waiver of any factual or legal issue raised in any other comments submitted on the Navy’s DEIS and not specifically discussed herein.

<sup>2</sup> Letter from Joel R. Reynolds and Michael D. Jasny, NRDC, to Keith Jenkins, Naval Facilities Engineering Command Atlantic, Navy, at 30-31 (Jan. 13, 2006) (hereinafter “Jan. 13 letter”).

have been injured by sonar. While a second, but still not final summary released by the agency states that some of the lesions that had originally been observed, microemboli in the liver, “were not confirmed,” it continues to note the presence of other lesions, such as hemorrhaging in the acoustic fats, and, indeed, finds that the number of animals exhibiting them have increased.<sup>3</sup> Both summaries rule out other potential causes of the strandings, including viral, bacterial, and protozoal infection, direct blunt trauma, and fishery interactions.<sup>4</sup> It has additionally been reported that the Navy may have been operating sonar as close as 50 nm to one of the stranding sites, about 90 nm south-southeast of Oregon Inlet.<sup>5</sup> Any analysis must take the location of Navy vessels into account, recognizing that the stranded whales belong to deep-water species that generally reside offshore, where the sonar presumably was used.

We urged the Navy, in our January 13 letter, either to withdraw its DEIS or to extend its public comment deadline until after NMFS’ report and data from the North Carolina investigation are issued; otherwise, it would effectively deny the public and scientific community the opportunity to comment on a core factual issue, in violation of the National Environmental Policy Act (“NEPA”). Jan. 13 letter at 31. We would further note that NEPA requires agencies to prepare a supplemental analysis, and release it for public comment, if “significant new circumstances or information relevant to environmental concerns” happen to emerge. 42 C.F.R. § 1502.9(c)(1)(ii). Clearly NMFS’ report on the 2005 strandings and the data underlying it will meet the legal standard of “significance.” For example, the fact that the strandings involved species other than beaked whales make the range’s impacts “highly uncertain”; and the broad coverage that NMFS’ preliminary reports received in the national and regional press—including Nature and the Washington Post—indicate an extraordinary degree of public and scientific controversy. 42 C.F.R. § 1508.27(b)(4), (5).<sup>6</sup> At the very least, the Navy must issue a supplemental environmental impact statement once materials from the investigation are released.

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<sup>3</sup> NMFS, Preliminary Report on the Mass Stranding in North Carolina, January 15, 2005 and Updated Report on the January 14-15, 2005 Multi-Species Mass Stranding in North Carolina, enclosed in Letter from Michael J. Garcia, U.S. Attorney for the Southern District of New York, to Erin Tobin, Attorney, Meyer Glitzenstein & Crystal, at 2-3 (Jan. 17, 2006) (attached to this letter at Exhibit (“Ex.”) A).

<sup>4</sup> Id.

<sup>5</sup> Kate Wiltrout, “Reports on Beached Whales Show Gap over Cause,” Virginian-Pilot, Jan. 20, 2006; Marc Kaufman, “Whale Stranding in N.C. Followed Navy Sonar Use,” Washington Post, Jan. 28, 2005.

<sup>6</sup> See, e.g., Marc Kaufman, “Reference to Sonar Deleted in Whale-Beaching Report,” Washington Post, Jan. 20, 2006 (attached to this letter at Ex. B); Rex Dalton, Panel Quits in Row over Sonar Damage, 439 Nature 376, 377 (2006) (attached to this letter at Ex. C); Gareth McGrath, “Public Comment Period Likely Over,” Wilmington Star-News, Jan. 25, 2006 (attached to this letter at Ex. D); Editorial, “Science Not Spin,” Charlotte News & Observer, Jan. 23, 2006 (attached to this letter at Ex. E); Bo Petersen, “Report on Whale Deaths Criticized,” Charleston Post and Courier, Jan. 21, 2006 (attached to this letter at Ex. F); Wade Rawlins, “Sonar’s Role in Beaching Uncertain,” Charlotte News & Observer, Jan. 19, 2006 (attached to this letter at Ex. G); Kate Wiltrout, “Reports on Beached Whales Show Gap over Cause,” Virginian-Pilot, Jan. 20, 2006 (attached to this letter at Ex. H). The Washington Post story was subsequently published by papers around the country, including the Los Angeles Times (California), the Fort Worth Star Telegram (Texas), and the Bremerton Sun (Washington).

Second, on January 25-26, for example, at least four Cuvier's beaked whales were found to have mass-stranded in the vicinity of Mojacar, on the southeast coast of Spain. This recent event reflects circumstances that, in the past, have later been shown to have coincided with the use of anthropogenic noise sources: namely, the stranding of multiple beaked whales, particularly Cuvier's beaked whales, over several miles of coastline. The Spanish strandings must be meaningfully addressed in the Navy's EIS, including any data produced by the investigation now underway.<sup>7</sup>

Third, a number of Northern right whales have been sighted off the North Carolina coast by the U.S. Coast Guard and others. According to NMFS, three sightings have been reported off North Carolina, apparently within the Navy's Cherry Point Op Area, since the beginning of the year.<sup>8</sup> One occurred about 60 miles east of Cape Lookout, lending further support to the hypothesis, noted in our Jan. 13 letter, that one of the whales' migration routes through the region may run along the shelf break.<sup>9</sup> Such a route would take this critically endangered species directly through the proposed training range. Again, available evidence does not support the Navy's conclusion that right whales would rarely if ever occur within its preferred site.

Fourth, NMFS issued a notice concerning a series of Air Force gunnery missions, at Eglin Air Force Base in the Gulf of Mexico, that suggest the variety of mitigation measures which may be consistent with military training. For example, the harassment authorization proposed by NMFS would require aerial monitoring of marine mammals and other protected species; relocation or suspension of exercises if marine mammals or sea turtles are sited within a 5 nm target area; the use of modified ammunitions, at least under some circumstances, that put out only a small fraction of the power of regular rounds; the use of ramp-up; suspension of operations in sea states greater than Beaufort 3, at which point visual monitoring becomes substantially less effective; siting of individual exercises to avoid slope waters, where some of the most sensitive species in the operations area are expected to reside; commencement of visual monitoring 60 minutes in advance of each exercise; and detailed monitoring and reporting requirements. 71 Fed. Reg. 3474, 3483-84 (Jan. 23, 2006). Most of these measures are already contained in the Air Force's application for authorization. Id. Again, as we noted at length in our January

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<sup>7</sup> See Ana Cañades, SEC-Spanish Cetacean Society, "Update on the Beaked Whales Stranded on 26 January in SE Spain" (Jan. 29, 2006) (message posted on the Marine Mammal Research and Conservation (MARMAM) discussion list, hosted by Dalhousie University).

<sup>8</sup> NMFS Northeast Fisheries Science Center, 2006 Sightings Advisory System Sighting Report at 1 (2006) (available at NMFS, "Right Whale Sightings by Year," [rwhalesightings.nefsc.noaa.gov/yearly.html](http://rwhalesightings.nefsc.noaa.gov/yearly.html) (accessed Jan. 29, 2006)). See also Navy, Marine Resource Assessment for the Cherry Point Operating Area: Final Report at 3-9, Fig. B-3 (June 2002).

<sup>9</sup> Jan. 13 letter at 46 (citing R. Kenney, C. Mayo, and H. Winn, Migration and Foraging Strategies at Various Spatial Scales in North Atlantic Right Whales: A Review of Hypotheses, 2 Journal of Cetacean Research and Management: Special Issue 251 (2001)).

Mr. Keith Jenkins

January 30, 2006

Page 4

13 letter, NEPA requires the Navy to consider a full range of measures for reducing the environmental impacts of its proposed range.

For the reasons set forth in our January 13 letter, as supplemented by the information presented here, we once more urge the Navy to withdraw its DEIS on the Undersea Warfare Training Range and to revise and recirculate the document for public comment.

Very truly yours,

Joel R. Reynolds  
Senior Attorney  
Director, Marine Mammal Protection Project

Michael D. Jasny  
Senior Consultant

Cc: Hon. Donald C. Winter (Navy)  
Donna Wieting (NMFS)  
Steve Leathery (NMFS)

Encl.