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Navy Agrees to Limit Underwater Assaults on Whales and Dolphins

Settlement will protect habitat for vulnerable marine mammal populations in Southern California and Hawai'i

HONOLULU (September 14, 2015) —A federal court today entered an order settling two cases challenging the U.S. Navy's training and testing activities off the coasts of Southern California and Hawai'i, securing long-sought protections for whales, dolphins, and other marine mammals by limiting Navy activities in vital habitat. The settlement stems from the court's earlier finding that the Navy's activities illegally harm more than 60 separate populations of whales, dolphins, seals, and sea lions.

For the first time, the Navy has agreed to put important habitat for numerous populations off-limits to dangerous mid-frequency sonar training and testing and the use of powerful explosives. The settlement aims to manage the siting and timing of Navy activities, taking into account areas of vital importance to marine mammals, such as reproductive areas, feeding areas, migratory corridors, and areas in which small, resident populations are concentrated.

Many of the conservation organizations who brought the lawsuits have been sparring legally with the Navy and the National Marine Fisheries Service—the agency charged with protecting marine mammals—for more than a decade, demanding that the Navy and Fisheries Service comply with key environmental laws by acknowledging that the Navy's activities seriously harm marine mammals and taking affirmative steps to lessen that harm.

"We can protect our fleet and safeguard our whales," said **Rhea Suh, president of the Natural Resources Defense Council**, whose lawyers challenged the Navy's activities in Southern California and Hawai'i on behalf of NRDC, Cetacean Society International, Animal Legal Defense Fund, Pacific Environment and Resources Center, and Michael Stocker. "This settlement shows the way to do both, ensuring the security of U.S. Navy operations while reducing the mortal hazard to some of the most majestic creatures on Earth. Our Navy will be the better for this, and so will the oceans our sailors defend."

"If a whale or dolphin can't hear, it can't survive," said **David Henkin, an attorney for the national legal organization Earthjustice**, who brought the initial challenge to the Navy's latest round of training and testing on behalf of Conservation Council for Hawai'i, the Animal Welfare Institute, the Center for Biological Diversity, and the Ocean Mammal Institute. "We challenged the Navy's plan because it would have unnecessarily harmed whales, dolphins, and endangered marine mammals, with the Navy itself estimating that more than 2,000 animals would be killed or permanently injured. By agreeing to this settlement, the Navy acknowledges that it doesn't need to train in every square inch of the ocean and that it can take reasonable steps to reduce the deadly toll of its activities."

Scientific studies have documented the connection between high-intensity mid-frequency sounds, including Navy sonar, and serious impacts to marine mammals ranging from strandings and deaths to cessation of feeding and habitat avoidance and abandonment. Nonetheless, until now the Navy has refused to set aside biologically important areas to minimize such harm to vulnerable marine mammal populations.

Until it expires in late 2018, the agreement will protect habitat for the most vulnerable marine mammal populations, including endangered blue whales for which waters off Southern California are a globally important feeding area; and numerous small, resident whale and dolphin populations off Hawai‘i, for which the islands are literally an oasis, their only home.

“This settlement proves what we’ve been saying all along,” said **Marsha Green, president of Ocean Mammal Institute**. “The Navy can meet its training and testing needs and, at the same time, provide significant protections to whales and dolphins by limiting the use of sonar and explosives in vital habitat.”

“This agreement will enhance the welfare of dozens of species that call the Pacific Ocean home by extending vital protections to places they need to rest, feed, reproduce and care for their young,” said **Susan Millward, executive director at the Animal Welfare Institute**.

Southern California

Southern California provides some of the most important foraging areas anywhere on the globe for vulnerable species such as endangered blue and fin whales, and contains important habitat for small populations of beaked whales, a family of species that is considered acutely sensitive to naval active sonar, with documented injury and mortality.

“Numerous beaked whale strandings and deaths have been linked to naval uses of high-intensity sonar,” said **Bill Rossiter, executive director for Advocacy, Science & Grants of Cetacean Society International**. “Now, beaked whale populations in Southern California that have been suffering from the Navy’s use of sonar will be able to find areas of refuge where sonar will be off-limits.”

Key terms of the settlement applicable to Southern California include:

- The Navy is prohibited from using mid-frequency active sonar for training and testing activities in important habitat for beaked whales between Santa Catalina Island and San Nicolas Island.
- The Navy is prohibited from using mid-frequency active sonar for training and testing activities in important habitat for blue whales feeding near San Diego.
- Navy surface vessels must use “extreme caution” and travel at a safe speed to minimize the risk of ship strikes in blue whale feeding habitat and migratory corridors for blue, fin and, gray whales.

“Ship strikes pose a serious risk to blue whales and other large whales off the coast of California,” said **Stephen Wells, executive director of the Animal Legal Defense Fund**. “We expect this settlement will help save lives by lowering that risk when Navy vessels reduce their speed in important blue whale habitat and migratory corridors.”

Hawai‘i

In the vast Pacific Ocean, Hawai‘i represents an oasis for numerous, vulnerable populations of toothed whales, such as spinner dolphins, melon-headed whales, and endangered false killer whales. Studies have shown that they are distinct from other populations in the tropical Pacific and even, in some cases, from populations associated with other islands, with only a few hundred individuals in existence. The Big Island of Hawai‘i and the Maui 4-Island Complex host many of these populations.

“Some of the marine mammals threatened by Navy activities are already on the brink of extinction, such as the Hawaiian monk seal, our state mammal and one of the world’s most endangered species,” said **Conservation Council for Hawai‘i’s Marjorie Ziegler**. “This settlement helps protect marine habitat the Fisheries Service just last month identified as essential to the seal’s survival.”

Key terms of the settlement applicable to Hawai‘i include:

- The Navy is prohibited from using mid-frequency active sonar and explosives for training and testing activities on the eastern side of the Island of Hawai‘i and north of Moloka‘i and Maui, protecting Hawaiian monk seals and numerous small resident populations of toothed whales including the endangered insular population of false killer whales and Cuvier’s beaked whales.
- The Navy is prohibited from exceeding a set number of major training exercises in the channel between Maui and Hawai‘i Island and on the western side of Hawai‘i Island, limiting the number of times local populations will be subjected to the massive use of sonar and explosives associated with major training exercises.
- Navy surface vessels must use “extreme caution” and travel at a safe speed to minimize the risk of ship strikes in humpback whale habitat.

“This is a huge victory for critically endangered species like Hawai‘i’s insular false killer whale, which is down to only about 150 animals,” said **Miyoko Sakashita, oceans director at the Center for Biological Diversity**.

Background

Under the Navy’s five-year plan for training and testing, the Navy is permitted to harm whales, dolphins, and other marine mammals nearly 9.6 million times while conducting high-intensity sonar exercises and underwater detonations. These harmful impacts include millions of instances of temporary hearing loss and significant disruptions in vital behaviors, such as habitat abandonment, as well as permanent hearing loss, permanent injury, and more than 150 deaths.

In March, the U.S. District Court, District of Hawai‘i, found that the U.S. Navy and the National Marine Fisheries Service violated the law when they failed to meet multiple requirements of the Marine Mammal Protection Act, the Endangered Species Act, and the National Environmental Policy Act when authorizing the Navy’s plan.

Ocean noise is one of the biggest threats worldwide to the health and well-being of marine mammals, which rely on sound to ‘see’ their world. Navy sonar activities, shipping noise, and seismic exploration by oil and gas companies have made our oceans noisier in recent decades, resulting in widespread disruption to feeding, communication, mating, and more. Southern California and Hawai‘i represent two of the Navy’s most active ranges for mid-frequency sonar and explosives use.

Conservation Council for Hawai‘i, et al. v. National Marine Fisheries Service, et al. was brought by Earthjustice in December 2013 in the District of Hawai‘i, representing Conservation Council for Hawai‘i, the Animal Welfare Institute, the Center for Biological Diversity, and the Ocean Mammal Institute.

Natural Resources Defense Council, et al. v. National Marine Fisheries Service, et al. was brought by NRDC in January 2014 in the Northern District of California, representing NRDC, Cetacean Society International, Animal Legal Defense Fund, Pacific Environment and Resources Center, and Michael Stocker, a marine bio-acoustics researcher and director of Ocean Conservation Research.

In March 2014, the NRDC case was transferred to the District of Hawai‘i, which consolidated the two cases. Today’s order settles both cases.

Resources:

- [Court Rules Navy War Games Violate Law Protecting Whales and Dolphins](#), March 31, 2015
- [Court rules Navy Training in Pacific Violates Laws Meant to Protect Whales, Sea Turtles](#), April 1, 2015

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The Natural Resources Defense Council (NRDC) is an international nonprofit environmental organization with more than 2 million members and online activists. Since 1970, our lawyers, scientists, and other environmental specialists have worked to protect the world’s natural resources, public health, and the environment. NRDC has offices in New York City, Washington, D.C., Los Angeles, San Francisco, Chicago, Bozeman, MT, and Beijing. Visit us at www.nrdc.org and follow us on Twitter [@NRDC](#).

Earthjustice is the premier nonprofit environmental law organization. We wield the power of law and the strength of partnership to protect people’s health, to preserve magnificent places and wildlife, to advance clean energy, and to combat climate change. We are here because the earth needs a good lawyer. For more information, visit www.earthjustice.org.

Conservation Council for Hawai‘i is a Hawai‘i-based, non-profit environmental organization founded in 1950 to protect native Hawaiian species and ecosystems for future generations. For more information, visit www.conservehi.org.

Animal Welfare Institute is a national non-profit charitable organization founded in 1951 and dedicated to reducing animal suffering caused by people. AWI engages policymakers, scientists, industry, and the public to achieve better treatment of animals everywhere—in the laboratory, on the farm, in commerce, at home, and in the wild. For more information, visit www.awionline.org.

The Center for Biological Diversity is a national, non-profit conservation organization with more than 900,000 members and online activists dedicated to the protection of endangered species and wild places. For more information, visit www.biologicaldiversity.org.

Ocean Mammal Institute is a non-profit organization dedicated to doing ecologically sensitive research on cetaceans and their interactions with humans and on the protection of marine life and marine ecosystems. For more information, visit www.oceanmammalinst.org.

Ocean Conservation Research is focused on understanding the impacts of human-generated noise on marine life; using our findings to inform ocean policy and practice.

Animal Legal Defense Fund (ALDF) was founded in 1979 with the unique mission of protecting the lives and advancing the interest of animals through the legal system. For more information, please visit www.aldf.org.

Cetacean Society International (CSI); Saving whales since 1974.