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Naval Facilities Engineering Command Northwest  
Attention: Ms. Kimberly Kler – NWTT EIS/OEIS Project Manager  
1101 Tautog Circle, Suite 203  
Silverdale, WA 98315-1101

*SUBMITTED VIA ONLINE COMMENT FORM*

**Re: NEDC Comments on the Department of the Navy’s Supplement to the Draft Northwest Training and Testing EIS/OEIS**

February 2, 2015

Dear Ms. Kler:

The Northwest Environmental Defense Center (NEDC) respectfully submits the following comments on the Department of the Navy’s Supplement to the Draft Northwest Training and Testing (NWTT) Environmental Impact Statement (EIS)/Overseas Environmental Impact Statement (OEIS) (hereafter “Supplement”), prepared pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.* NEDC is an independent, environmental non-profit based in Portland, Oregon. The organization was established by a group of professors, law students, and attorney alumni at Lewis & Clark Law School in 1969. NEDC’s mission is to protect the environment and natural resources of the Pacific Northwest. NEDC provides legal support to individuals and grassroots organizations with environmental concerns and engages in litigation independently or in conjunction with other environmental groups. NEDC’s membership consists of citizens interested in protecting the environment through legal means. Members of the organization derive educational, scientific, recreational, and spiritual benefits from the protection of natural resources, including wildlife, in the Pacific Northwest.

NEDC is concerned about the negative environmental effects of NWTT activities off the coasts of Oregon and Washington. Previously, NEDC has submitted comments to the National Marine Fisheries Service (NMFS) regarding these operations and that agency’s authorization for the Navy to take marine mammals incidental to NWTT activities under the Endangered Species Act (ESA). NEDC acknowledges that training and testing exercises are necessary for military readiness and national defense. However, NEDC encourages the implementation of such exercises in a way that minimizes negative environmental impacts. The Supplement as written does not achieve that goal. The proposed activities will result in adverse impacts to water quality, air quality, marine habitats, cultural resources, socioeconomic resources, and climate change, among others. These comments, however, focus specifically on adverse impacts to marine mammals and sea turtles. In sum, NEDC asks that the Navy (1) consider a broader range of alternatives that reduce the number of proposed sonobuoys for the NWTT, (2) propose mitigation measures to avoid adversely affecting species, and (3) assure that consultation with

NMFS and any ensuing Biological Opinion appropriately reflects the impacts of the proposed activity.

## **I. Introduction**

On January 24, 2014, the Navy released a Draft NWTT EIS/OEIS (hereafter “DEIS”) with a purpose and need of “conduct[ing] training and testing activities to ensure that the Navy meets its mission ...” DEIS, ES-1. In the two action alternatives, the Navy proposed to adjust the type and levels of activities and to adjust the tempo of activities. Recognizing that the changes represent “major Federal actions significantly affecting the quality of the human environment,” the Navy prepared a DEIS. *See* 42 U.S.C. § 4332(C). The comment period for the DEIS ran until April 15, 2014.

The Navy released the Supplement that is the subject of this comment in December of 2014. The Supplement makes corrections to the DEIS and analyzes air impacts for Maritime Security Operations (MSO). Supplement, ES-1. Significantly, the SIES also updates the kind and quantity of sonobuoys proposed for use, reflecting a substantial shift in the scope of the proposed NWTT activities. Supplement, ES-1. While the action alternatives in the Supplement propose to eliminate the use of SSQ-110 Improved Extended Echo Ranging (IEER) sonobuoys from 150 per year, it dramatically increases the number of proposed SSQ-125 non-explosive Multistatic Active Coherent (MAC) sonobuoys from 20 to 720 per year. *Id.* Overall, the action alternatives in the Supplement propose to increase sonobuoy use by 550 from the DEIS. This change is significant, as recognized by the Navy and its decision to prepare this Supplement. *See* 40 C.F.R. § 1502.9. Considering the adverse impacts to sea turtles and marine mammals posed by increased use of sonobuoys, the Navy should now make a decision that is “based on understanding of environmental consequences, and take [an] action[ to] protect, restore, and enhance the environment,” pursuant to NEPA. 40 C.F.R. §§ 1500.1(b), (c).

## **II. The NWTT activities will adversely impact leatherback sea turtles.**

The endangered leatherback sea turtle is the “largest, deepest diving, and most migratory and wide ranging of all sea turtles.” U.S. Fish and Wildlife Service (FWS), “Leatherback Sea Turtle (*Dermochelys coriacea*)” (Dec. 2012), *available at* <http://www.fws.gov/northflorida/seaturtles/turtle%20factsheets/PDF/Leatherback-Sea-Turtle.pdf> (last accessed Jan. 30, 2015) (Attachment 1). Globally, and in the Pacific Ocean in particular, leatherback populations have undergone a historic decline. Recognizing this fact, the leatherback was listed under the ESA as endangered throughout its range nearly 45 years ago. *Id.* Despite this protection, leatherback populations in the Pacific have continued to decline in the Pacific and at present, “as few as 2,300 adult females now remain.” World Wildlife Fund, “Leatherback turtle,” *available at* [http://wwf.panda.org/what\\_we\\_do/endangered\\_species/marine\\_turtles/leatherback\\_turtle](http://wwf.panda.org/what_we_do/endangered_species/marine_turtles/leatherback_turtle) (last accessed Jan. 30, 2015) (Attachment 2).

The National Oceanic and Atmospheric Administration (NOAA) has repeatedly elected to establish critical habitat for the species—though not required by the statute—in areas “essential to the conservation of the species.” 16 U.S.C. § 1532(5)(A). Critical habitat exists for

the species along the U.S. Virgin Islands, California, and recently along the coasts of Oregon and Washington. *Id.*; NOAA, “NOAA designates additional critical habitat for leatherback sea turtles off West Coast,” (Jan. 27, 2012), *available at* [http://www.noaanews.noaa.gov/stories2012/20120120\\_leatherback.html](http://www.noaanews.noaa.gov/stories2012/20120120_leatherback.html) (last accessed Feb. 2, 2015) (Attachment 3). The recently designated critical habitat in the Pacific Northwest represents a substantial portion of the Study Area for the NWTT activities. Supplement, 2-4.

Despite the leatherback’s imperiled status, and recent efforts to protect critical habitat in the Pacific Northwest, the Navy proposes NWTT activities that will adversely impact the species. The modifications in proposed alternatives in the Supplement result in changes to the impacts predicted in the DEIS in four areas: acoustic, physical disturbance and strike, entanglement, and ingestion. These modifications, and the resulting determination of adverse impact, trigger requirements under the ESA.

**A. The Navy’s Supplement indicates that the modified NWTT activities will result in additional adverse impacts to leatherback turtles.**

First, the Navy improperly concludes in the Supplement that entanglement and ingestion, under all three of the alternatives, would not adversely affect leatherback turtles. ES-6. However, an increase of 550 sonobuoys and associated decelerator/parachutes would lead to important changes in the action alternatives. Supplement, 3-23. In a 1997 Recovery Plan authored by NMFS, the agency cited entanglement and ingestion of marine debris, including parachutes, as a factor that “potentially threatens the survival of leatherback turtles in the eastern Pacific.” NMFS, “Recovery Plan for U.S. Pacific Populations of the Leatherback Turtle (*Dermochelys coriacea*),” 24 (Dec. 23, 1997) *available at* [http://www.nmfs.noaa.gov/pr/pdfs/recovery/turtle\\_leatherback\\_pacific.pdf](http://www.nmfs.noaa.gov/pr/pdfs/recovery/turtle_leatherback_pacific.pdf) (last accessed Feb. 2, 2015) (Attachment 4). The Supplement contemplates the use of 8,952 decelerator/parachutes expended annually in offshore areas through training activities in either of the action alternatives. Supplement, 3-8. Over 1,000 additional decelerator/parachutes would be expended annually in offshore areas in testing operations for either of the two action alternatives. *Id.* In contrast, the “No Action” alternative contemplates the use of 17 expended decelerator/parachutes annually in offshore areas. *Id.*

Leatherback sea turtles often mistake decelerator/parachutes for the jellyfish upon which they feed. Yet the Supplement dismisses any potentially negative effects due to the rate at which the decelerator/parachutes sink and the “general improbability” of a sea turtle being in the precise location near the decelerator/parachutes. Supplement 3-23. The presence of critical habitat extremely near the offshore area coupled with the devastating effects of entanglement and ingestion of marine debris among sea turtles caution against such a swift dismissal of impacts. *Compare* Supplement, 2-4 *with* Critical habitat for leatherback turtles (*Dermochelys coriacea*), 50 C.F.R. § 226.207.

Second, under the two action alternatives, by the Navy’s own admission, physical disturbance and strike and acoustic impacts “may affect, and [are] likely to adversely affect, leatherback turtles.” ES-6. While physical disturbance and strike were anticipated to have an adverse effect on endangered sea turtles in the DEIS, the adverse determination for acoustic

impacts are new in the Supplement. DEIS, ES-13–14; Supplement, ES-5–6. A recent study conducted by the Bureau of Ocean Energy Management (BOEM) within the U.S. Department of the Interior found that leatherback sea turtles have acoustic sensitivity to habitat stressors, including low-frequency sonar, and further investigation is warranted to determine the “potential psychological and behavioral impacts.” Dow Piniak, W.E., *et al.*, BOEM, “Underwater hearing sensitivity of the leatherback sea turtle (*Dermochelys coriacea*),” vii (Sept. 2012) *available at* [www.data.boem.gov/PI/PDFImages/ESPIS/5/5279.pdf](http://www.data.boem.gov/PI/PDFImages/ESPIS/5/5279.pdf) (last accessed Feb. 2, 2015) (Attachment 5).

## **B. ESA Requirements for Changes in Impacts**

Section 7(a)(2) of the ESA establishes a procedural requirement for a Federal agency to consult with either FWS or NOAA to determine whether its proposed action is likely to jeopardize any endangered or threatened species. 16 U.S.C. § 1536(a)(2). Before any agency can begin an action, section 7(a)(2) requires an inquiry into whether any listed species are present in the proposed action area. Because endangered leatherback sea turtles are listed as present in the area, the Navy should ensure that consultation with NMFS appropriately considers new adverse impacts to leatherbacks before embarking upon the NWTT activities.

The DEIS, released in January 2014, and the Supplement, released in December 2014, differ markedly in their stated effects on leatherback turtles. First, the DEIS stated that the NWTT action alternatives is not likely to adversely affect listed leatherback sea turtles. DEIS, ES-13-14. Subsequently, the Supplement states that “[p]ursuant to the ESA, sonar and other active acoustic sources associated with training activities under Alternative 1 *may affect, and are likely to adversely affect* leatherback sea turtles.” Supplement, 3-25 (emphasis added). Because the Supplement was created to assess the Navy’s proposed changes in NWTT activities, and particularly the increase of MAC sonobuoys to 720, the Navy must ensure that subsequent consultation with NMFS assesses the impact of its new proposed activities, pursuant to the ESA. 16 U.S.C. § 1536(2)(a). If such consultation is lacking, the Navy will not meet its obligations under the ESA regarding new, adverse acoustic impacts to endangered leatherback sea turtles.

## **III. The NWTT activities will adversely impact marine mammals.**

Many species of marine mammals rely on underwater sound to survive. Southern resident killer whales, for example, rely on sound to utilize echolocation to find Chinook salmon, upon which the species feeds. Tampering with the fine-tuned auditory sense of marine mammals through the use of underwater sonar in NWTT activities could disrupt essential behaviors. The testing and training activities alter feeding patterns for whales and could, in turn, cause habitat displacement. Without the ability to find food, whales may move to new and different areas in a search for nourishment. A report released by the military of the United Kingdom found that such detrimental impacts were possible even while using low-level sonar. Cressey, Daniel, Nature, “Sonar does affect whales, military report confirms,” (Aug. 1, 2008), *available at* <http://www.nature.com/news/2008/080801/full/news.2008.997.html> (last accessed Feb. 2, 2015) (Attachment 6). Further, sonar activities could elicit a startling response, disorienting whales. This disorientation caused by manmade acoustic stressors has been shown to cause mass strandings. The NWTT activities proposed in the Supplement exacerbate negative impacts to marine mammals associated with sonar activity.

The NWTT activities will also negatively impact marine mammals through acoustic stress and physical disturbance and strike. The Supplement improperly and summarily dismisses physical disturbance and strike impacts to marine mammals due to increased vessel movement during MSO events, stating, “large mammals occur less frequently” in those areas. Supplement 3-18. On the other hand, the Supplement does recognize that acoustic stressors in the action alternatives will constitute “Level B behavioral harassment under the Marine Mammal Protection Act (MMPA),” will “result in inadvertent takes of marine mammals in the Study Area,” and “may affect, and is likely to adversely affect, humpback whale, blue whale, fin whale, sperm whale, southern resident killer whale, and Guadalupe fur seal” (all listed species under the ESA). 3-18, 3-21, 3-22.

Under the two action alternatives in the proposed NWTT activity plan, the Supplement represents a dramatic increase in the potential exposure of marine mammals to Level B harassment under the MMPA—from 24,199 proposed annual events in the DEIS to 107,062 annual events in the Supplement. This more than four-fold increase in annual events represents a remarkable increase in the anticipation of events that may cause “disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering...” 50 C.F.R. § 216.3. The change is so dramatic, in fact, that it may constitute Level A harassment (“potential to injure a marine mammal”) under the MMPA or additional takes (“harass, harm...”) under the ESA. *Id.*; 16 U.S.C. § 1532. Regardless, the Supplement underestimates negative effects of harassment and the subsequent consequences to the species that are likely to flow.

As with the leatherback sea turtles described above, the change in the number and type of sonobuoys used will have a corresponding change in the effects on marine mammals. Though both the DEIS and Supplement found that the NWTT actions were likely to adversely effect various listed marine mammal species, the magnitude of the change requires consultation with NMFS, and a Biological Opinion that appropriately reflects the impacts of the proposed actions.

#### **IV. Conclusion**

The Supplement proposes to dramatically increase the number of sonobuoys in use for training and testing activities and thereby creates or exacerbates detrimental impacts to both leatherback sea turtles and marine mammals. As explained above, the analysis of impacts and ensuing steps to minimize adverse effects to these species in the Supplement are inadequate. To remedy this inadequacy, the Navy should consider a broader range of alternatives that reduce the number of proposed sonobuoys for the NWTT, propose mitigation measures to avoid adversely affecting species, and assure that consultation with NMFS and any ensuing Biological Opinion appropriately reflects the impacts of the proposed activity.

Sincerely,

Jeff Speir, Volunteer  
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Northwest Environmental Defense Center