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### Federal Court Rejects Bush Navy Sonar Exemption

Judge Reaffirms Order that Navy Must Reduce Harm  
to Whales, Porpoises and Dolphins from Intense Sound Blasts

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*"The Navy doesn't need to harm whales to train effectively with sonar.  
By following the carefully crafted measures ordered by the court, the Navy can  
conduct its exercises without imperiling marine mammals."*

- Joel Reynolds, Director, Marine Mammal Protection Project, NRDC



Humpback Whale off central California coast.  
Photo courtesy of Monterey Bay Whale Watch.

Earthfiles, news category.

**February 5, 2008 Los Angeles, California** – The National Resources Defense Council reports that on February 4, 2008, "a federal court struck down a waiver issued by the White House purporting to exempt the U.S. Navy from complying with a bedrock environmental law during sonar training exercises off southern California. [ See Earthfiles More Information below.]

"In nullifying the waiver, the court reaffirmed an injunction issued early in January, requiring the Navy to reduce harm to whales and other marine mammals from sonar training. The Navy has acknowledged that the high-intensity, mid-frequency sonar at issue can injure and kill whales and other marine mammals.

'The Court has affirmed that we do not live under an imperial presidency,' said Joel Reynolds, Director of the Marine Mammal Protection Project at NRDC, which obtained the injunction against the Navy. 'The Navy doesn't need to harm whales to train effectively with sonar. By following the carefully crafted measures ordered by the court, the Navy can conduct its exercises without imperiling marine mammals.'

"On January 15, President Bush issued the Navy an unprecedented waiver under the Coastal Zone Management Act (CZMA), and allowed the Navy an 'emergency' waiver under the National Environmental Policy Act (NEPA), for a series of training exercises involving high-intensity, mid-frequency sonar now underway. Those statutes are the basis of a January 3, 2008, injunction issued by U.S. District Court Judge Florence-Marie Cooper, requiring the Navy to monitor for and avoid marine mammals while operating sonar during the SOCAL naval exercises."

In rejecting the Bush administration's waiver under NEPA, Judge Cooper wrote:

"The Navy's current 'emergency' is simply a creature of its own making, i.e., its failure to prepare adequate environmental documentation in a timely fashion." Judge Cooper later added that the Navy's position "produces the absurd result of permitting agencies to avoid their NEPA obligations by re-characterizing ordinary, planned activities as 'emergencies' in the interests of national security, economic stability, or other long-term policy goals. . . . This cannot be consistent with Congressional intent."

In addition, although Judge Cooper expressed “significant concerns about the constitutionality of the President’s exemption of the Navy from the requirements of the Coastal Zone Management Act,” she wrote that no finding on the issue is necessary because the “Court is satisfied that its injunction stands firmly on NEPA grounds.”

The court also reaffirmed its January 3 injunction, which requires the Navy to maintain a 12 nautical mile no-sonar buffer zone along the California coastline; to avoid other key whale habitat; to shut down sonar when marine mammals are spotted within 2,000 meters; and to monitor for marine mammals using various methods, among other measures. More than one year ago, the California Coastal Commission had urged the Navy to adopt similar protective measures during these exercises, finding them necessary to bring the training exercises into compliance with California’s coastal laws.

The high-intensity MFA sonar system can blast vast areas of the oceans with dangerous levels of underwater noise and has killed marine mammals in numerous incidents around the world. The waters off Southern California have some of the richest marine habitat in the country, and include five endangered species of whales, a globally important population of blue whales, the largest animal ever to live on earth, and as many as seven individual species of beaked whales, which are known to be particularly vulnerable to underwater sound.

“It is a bedrock principle of our government that neither the military nor the president is above the law,” said Richard Kendall, a senior partner at the Los Angeles law firm of Irell & Manella, and co-counsel with NRDC in the lawsuit. “Judge Cooper has upheld that fundamental doctrine.”

NRDC was joined in the lawsuit by the International Fund for Animal Welfare, Cetacean Society International, League for Coastal Protection, Ocean Futures Society, and Jean-Michel Cousteau.

The Natural Resources Defense Council is a national, nonprofit organization of scientists, lawyers and environmental specialists dedicated to protecting public health and the environment. Founded in 1970, NRDC has 1.2 million members and online activists, served from offices in New York, Washington, Chicago, Los Angeles, San Francisco and Beijing.

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### More Information:

#### **Updated: January 18, 2008 - Judge Issues Temporary, Partial Stay in Sonar Case; Naval High-Intensity Sonar Training Exercises Are A Go**

U.S. District Judge Florence-Marie Cooper has temporarily stayed part of her own injunction requiring the Navy to protect whales from high-intensity sonar during upcoming training exercises in Southern California waters. The Navy will now use high-intensity sonar in upcoming training exercises *without* shutting off sonar if marine mammals are detected within 2,000 meters of a sonar source, as originally required in Judge Cooper’s injunction to restrict Navy exercises with high-intensity sonar in order to protect marine animals, consistent with federal Coastal Zone Management Act and the National Environmental Policy Act. The Bush Administration wants an exemption for the Navy in spite of proven sonar damage to whales and dolphins.

*“This exemption will enable the Navy to train effectively and to certify carrier and expeditionary strike groups for deployment in support of worldwide operational and combat activities, which are essential to national security.” - U. S. Pres. George Bush*



Photographed on July 2, 2004, these melon-headed whales were stranded for a time the next day in Hanalei Bay off the Hawaiian island of Kauai at the same time the Navy was testing sonar in the area. Image © 2004 by AP.

*“This is definitely an attempted end run around the National Environmental Policy Act, the grandfather of our environmental laws.”*

On January 16, 2008, the White House released a Bush exemption waiver to override a January 2008 federal court injunction by U.S. District Judge Florence-Marie Cooper that restricted the Navy from using mid-frequency active sonar within twelve miles of the coast and which ordered the Navy to shut down its submarine-detection sonar technology when marine mammals are within 2,200 yards. Bush and Justice Department lawyers claim the Navy is exempt from the Coastal Zone Management Act and the National Environmental Policy Act, the two statutes upon which Judge Cooper based the injunction to protect marine mammals.

A Bush Justice Department attorney asked that the 9th U. S. Circuit Court of Appeals to repeal Judge Cooper's restrictions. The U.S. Ninth Circuit Court of Appeals said that U.S. District Judge Cooper should decide the merits of an emergency motion filed last night by the Navy, which included waivers issued by the Bush administration purporting to exempt the Navy from complying with the injunction issued by Judge Cooper.

So, on Wednesday, January 16, the 9th U. S. Circuit sent the issue back to the U.S. District Court in Los Angeles for re-consideration. Now the question is: Can the White House override the requirements of a federal law upheld in U. S. District Judge Cooper's injunction?

For further reports about other marine damage, please see below a few of the many related reports in the **Earthfiles Archive**:

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- 06/24/2006 — "High Confidence" Earth Is Warmest in 400 Years - Maybe Even 2,000 Years
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## Website:

**National Resources Defense Council (NRDC):** <http://www.nrdc.org/>

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