



DEPARTMENT OF THE NAVY
COMMANDER
UNITED STATES PACIFIC FLEET
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PEARL HARBOR, HAWAII 96860-3131

IN REPLY REFER TO:
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February 12, 2007

Mr. Peter Douglas
Executive Director
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Dear Mr. Douglas:

SUBJECT: **CD-086-06**, U.S. NAVY PACIFIC FLEET'S OFFSHORE AND
ONSHORE MILITARY TRAINING EXERCISES IN SOUTHERN
CALIFORNIA (JTFEX AND COMPTUEX)

The Navy would like to thank the California Coastal Commission (Commission) for their January 24, 2007, letter responding to our desire to work to resolve our differences concerning the Navy's proposed exercises off the coast of southern California. The Navy also appreciates Mark Delaplaine's visit to San Diego on February 2, 2007, to continue these discussions. We have been engaged in a long dialogue, both before and after the two public hearings and we appreciate the Commission's and your Staff's professionalism, patience, and courtesy throughout this process.

The Navy recognizes California's role in protecting our nation's coastal resources, however, we are unable to agree to the conditions regarding the use of mid-frequency active (MFA) sonar as set forth in the Commission's January 11, 2007, letter for several reasons.

First, these conditions (1-11, and 14) relate to an activity that was not before the Commission. The Navy determined that a portion of the activities conducted as part of a JTFEX or COMPTUEX could have effects on California's coastal uses and/or resources, and as such submitted a Coastal Consistency Determination on October 30, 2006 (CD-086-06). These activities included Demolition Operations (DEMO), Ship Mine Countermeasures Exercise (SMCM), Amphibious Exercise (Amphib), Mining Exercise (MINEX), and Naval Surface Fire Support (NSFS). At its January 10, 2007, hearing, the Commission concurred with the conduct of these exercises with the conditions that the Navy would retrieve inert mine shapes to the maximum extent feasible (condition 12) and provide the Commission with any monitoring results that the Navy would provide to the National Marine Fisheries Service (NMFS) (condition 13). The Navy is committed to complying with both of these conditions.

As previously indicated in our January 8, 2007, and January 17, 2007, letters to the Commission, use of MFA sonar during JTFEX and COMPTUEX conducted in waters off the coast of southern California will not result in reasonably foreseeable effects to California's coastal uses or resources. Therefore, federal consistency under the Coastal Zone Management Act (CZMA) was not triggered and, under the Federal consistency regulations (15 CFR 930.33(a)(2)), the Navy was not required to include MFA sonar usage associated with JTFEX and COMPTUEX and did not do so. Navy made this determination based on the geographic location of these activities, as well as the nature of potential effects. All of the MFA sonar use will occur well offshore of the coastal zone of the State of California. In addition, the Navy determined that exposure to MFA sonar may elicit a behavioral response in certain marine mammal species. These behavioral effects would be temporary and on the individual marine mammal and would not result in an effect on the population of these marine species. In accordance with 15 CFR 930.33, the Navy determined that a negative determination under section 930.35 was not required and, therefore, was not required to coordinate with the State regarding this portion of the exercise. Even if a negative determination had been provided, the Navy would still conclude that these temporary behavioral responses would not result in reasonably foreseeable effects to uses or resources of California's coastal zone.

Because the Navy is complying with conditions 12 and 13 pertaining to activities in which it sought a consistency determination from the Commission, these exercises will be conducted in a manner consistent to the maximum extent practicable with the enforceable policies of California's coastal management program.

Second, assuming solely for the sake of argument that MFA sonar activities were before the Commission for a determination and the effects on uses or resources of California's coastal zone were reasonably foreseeable, conduct of these activities would be done to the maximum extent practicable with the enforceable policies of the California Coastal Management Program.

The Navy conducted acoustic propagation modeling and effects analysis and determined that the nature of potential effects on marine mammals from exposure to MFA sonar would primarily be of a behavioral reaction. The Commission referenced the same scientific studies in its explanation as how these conditions would bring the Navy's action into full compliance with the California Coastal Management Program. The preponderance of these studies do not indicate that exposure to MFA sonar would have an effect on the population of marine mammals, rather these studies indicate that there is a potential for behavioral effects. California's enforceable policy (section 30230-Marine Resources) requires that marine resources be maintained, enhanced and, where feasible, restored. Exposure of individual marine mammals to MFA

sonar will not impede California's ability to meet this goal. Additionally, the policy requires that uses of the marine environment be conducted in a manner that will "maintain healthy populations of all species of marine organisms... for long-term commercial, recreational, scientific, and educational purposes." Exposure to MFA sonar potentially may cause behavioral effects to some marine mammal species; however, these effects would not have any consequence to the population at large, and will have no impact to the long-term enjoyment of these species by the commercial, recreational, educational, and scientific communities. Therefore, Navy is conducting its action fully consistent with the enforceable policies of the California Coastal Management Program.

Third, the Commission's conditions fail to recognize and consider the authority of the NMFS to manage marine mammals and endangered species protected under the Marine Mammal Protection Act (MMPA) and Endangered Species Act (ESA).

The Commission's explanation as to how the conditions regarding MFA sonar usage would bring the Navy's action into full compliance with the enforceable policies of the Coastal Management Program (as required by 15 CFR 930.4(a)(1)) rely on the definitions of harassment contained in the MMPA, which is administered by NMFS for the species of concern. As detailed in our previous correspondence, Navy has closely coordinated with NMFS regarding its compliance with the MMPA and ESA. Navy has committed to implementation of the 29 mitigation measures provided to the Commission in its January 8, 2007, letter. As required by the Deputy Secretary of Defense, these mitigation measures must be implemented in order to be exempt from the requirements of the MMPA for reasons of national defense. Additionally, the Navy is committed to implementing the terms and conditions that resulted from ESA consultation with NMFS. Therefore, the Navy has complied with all applicable federal laws and regulations, and is fully consistent, to the maximum extent practicable with the California Coastal Management Program. In addition, since NMFS' authority under the MMPA to regulate the management and take of marine mammals preempts state regulation of marine mammal management, the Navy must comply with NMFS' mitigation measures; to do otherwise, Navy would no longer be consistent to the maximum extent practicable with applicable federal law, i.e., the MMPA. Moreover, the Navy's January 17, 2007, letter requested the reasons (as required by 15 CFR 930.4(a)(1)) why the conditions on MFA sonar are necessary to ensure consistency with the coastal resource policy. The Commission's January 24, 2007, response does not adequately explain why the conditions are necessary to be consistent with the coastal policy. Instead the explanation relies on MMPA and ESA language such as "harassment," "takes," and "adversely affected," rather than focusing on impacts to coastal uses or resources. The letter does not identify how the Navy's action would fail to ensure the maintenance of healthy populations of marine mammals of the coastal zone for long-term

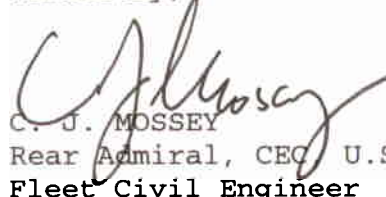
commercial, recreational, scientific, and educational purposes as described in Section 30230 of California's Coastal Act.

If the Commission has the authority to issue conditions that are not associated with a consistency determination, pursuant to the CZMA and 15 CFR 930.4(b), the Commission's conditional concurrence must be treated as an objection because the Navy cannot accept conditions 1-11, and 14 in the Commission's January 10, 2007, decision (memorialized in its January 11, 2007, letter). The Navy intends to proceed with the activities outlined in CD-086-06, with the applicable conditions 12 and 13. This letter is the Navy's written notice to the Commission that the Navy has found CD-086-06 to be consistent to the maximum extent practicable under 15 CFR 930.32 and 930.43(d) with the enforceable policies of the California Coastal Management Program. Should use of MFA sonar during JTFEX and COMPTUEX, pursuant to NMFS' requirements, indicate that longer-term effects to marine mammals may occur that would result in Navy determining that effects to California's coastal uses or resources would be reasonably foreseeable, then Navy would contact the Commission pursuant to 15 CFR 930.45(a) and/or 930.46.

Navy is appreciative of the Commission's interest in continued dialogue with respect to its training activities in and offshore California coastal waters. As you are aware, the Navy views its relationship with the State of California as essential to meeting its national security mandate. The Navy recently published a Notice of Intent for the preparation of an Environmental Impact Statement which will conduct a comprehensive analysis on all training operations in the Southern California Range Complex. We have received your comments on this important analysis, and look forward to continuing our discussions.

We look forward to continuing this essential dialogue with the Commission and the Commission's staff on these issues.

Sincerely,



C. J. MOSSEY
Rear Admiral, CEC U.S. Navy
Fleet Civil Engineer