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Supreme Court Rules for Navy in Sonar Case

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WASHINGTON — Courts must be wary of second-guessing the military's considered judgments, the [Supreme Court](#) said Wednesday in lifting judicial restrictions on submarine training exercises off the coast of Southern California that may harm marine mammals.

In balancing military preparedness against environmental concerns, the majority came down solidly on the side of national security.

"The lower courts failed properly to defer to senior [Navy](#) officers' specific, predictive judgments," Chief Justice [John G. Roberts Jr.](#), joined by four other justices, wrote for the court in the first decision of the term.

For the environmental groups that sought to limit the exercises, Chief Justice Roberts wrote, "the most serious possible injury would be harm to an unknown number of marine mammals that they study and observe." By contrast, he continued, "forcing the Navy to deploy an inadequately trained antisubmarine force jeopardizes the safety of the fleet."

The decision, in *Winter v. [Natural Resources Defense Council](#)*, No. 07-1239, came in the latest of a series of skirmishes between the Navy and environmental groups, which have fought the service's use of sonar for about a decade. The environmentalists have had some success, using lawsuits, negotiation and persuasion, in limiting that use in training exercises around the world.

The groups say that sonar can be as loud as 2,000 jet engines, causing marine mammals to suffer lasting physical trauma, strandings and changes in breeding and migration patterns. They contend that courts are perfectly capable of weighing the competing security and environmental concerns.

Chief Justice Roberts took a different view. Courts, he said, quoting a 1986 decision of the justices, must "give great deference to the professional judgment of military authorities" in making decisions about personnel, training and priorities.

He cited an observation, made by [President Theodore Roosevelt](#) in a 1907 message to Congress, that only "practice at sea, under all the conditions which would have to be met if war existed," can guarantee a prepared Navy.

In a conference call with reporters, lawyers for the Natural Resources Defense Council sought to minimize the importance of the decision, stressing that the Navy had agreed to abide by other restrictions on the exercises and that the group's work in monitoring and seeking to modify what it called dangerous testing and training would continue.

Chief Justice Roberts emphasized the importance and difficulty of sonar training exercises. The nation's adversaries, he said, have at least 300 diesel-electric submarines that "can operate almost silently, making them extremely difficult to detect and track."

So-called midfrequency active sonar, which emits pulses of sound and receives acoustic echoes back, is effective at finding enemy submarines, the chief justice said, but only if sonar operators have become proficient in its use. He said the extent of harm to marine mammals was sharply disputed, noting that the Navy asserted that there had not been "a single documented sonar-related injury to any marine mammal" in over 40 years of similar exercises off the California coast.

Whatever the correct answer to how many animals could be harmed, Chief Justice Roberts wrote, those injuries are "outweighed by the public interest and the Navy's interest in effective, realistic training of its sailors."

Justice [Stephen G. Breyer](#), joined by Justice [John Paul Stevens](#), concurred in the decision lifting two restrictions imposed by lower courts in California, saying those courts had not adequately explained why they had rejected the Navy's contentions. But Justice Breyer, writing only for himself on this point, said he would have imposed more limited restrictions.

Justice [Ruth Bader Ginsburg](#), joined by Justice [David H. Souter](#), dissented.

"Sonar is linked to mass strandings of marine mammals, hemorrhaging around the brain and ears" and acute effects on the central nervous system as well as "lesions in vital organs," Justice Ginsburg wrote.

And though the Navy has said it can find no previous documented case of sonar-related injury to a marine mammal in such exercises, Justice Ginsburg said the service had predicted that a current set of exercises off the California coast would cause lasting injuries to hundreds of beaked whales, along with vast behavioral disturbances to whales, dolphins and sea lions.

Justice Ginsburg would have upheld restrictions imposed by a federal judge in Los Angeles and affirmed in February by the United States Court of Appeals for the Ninth Circuit, in San Francisco. The restrictions, which the appeals court stayed while the Supreme Court considered the case, required the Navy to suspend the use of sonar if it detected a marine mammal within 2,200 yards and to reduce sonar levels when water temperatures reached certain levels whether or not animals were present.

Chief Justice Roberts took issue with both restrictions. The Navy had agreed to shut down its sonar if marine mammals were sighted within 200 yards. The appeals court's requirement that it increase the zone to 2,200 yards, Chief Justice Roberts said, would "expand the surface area of the shutdown zone by a factor of over 100," given "the exponential relationship between radius length and surface area."

He also discounted the appeals court's conclusion that the rarity of the temperature condition, "surface ducting," made restrictions on sonar use acceptable.

"This reasoning is backwards," Chief Justice Roberts wrote. "Given that surface ducting is both rare and unpredictable, it is especially important for the Navy to be able to train under these conditions."

Neither the majority nor Justice Breyer's opinion directly addressed the merits of the case, reaching only the question of whether a preliminary injunction had been properly entered.

Justice Ginsburg, by contrast, concluded that the Navy had violated the National Environmental Policy Act, which requires the government to prepare environmental impact statements before undertaking major actions that will affect the environment. In this case, Justice Ginsburg wrote, the Navy is scheduled to publish the impact statement only upon completion of the current exercises, which are to end in January.

The larger message of the majority opinion was one of judicial deference to military judgments. Quoting a passage from the majority opinion in last term's Guantánamo decision, [Boumediene v. Bush](#), Chief Justice Roberts stressed that "neither the members of this court nor most federal judges begin the day with briefings that may describe new and serious threats to our nation and its people."

He went on to quote from sworn statements in the sonar case submitted by senior Navy officers emphasizing the importance of the exercises.

"Of course," Chief Justice Roberts added, "military interests do not always trump other considerations, and we have not held that they do. In this case, however, the proper determination of where the public interest lies does not strike us as a close question."

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