



July 20, 2009

Naval Facilities Engineering Command, Atlantic
Attn: Code EV22 (USWTR EIS/OEIS Project Manager)
6506 Hampton Blvd.
Norfolk, Virginia 23508-1278

VIA FACSIMILE: 757.322.4894

RE: Modification of Negative Determination and Phased Consistency Determination
Approach to Undersea Warfare Training Range (USWTR)

Dear Commander:

The Navy's April 29, 2009 Negative Determination letter was based on an evaluation of the planning, design and construction of the Undersea Warfare Training Range (USWTR) plus its operational use for anti-submarine warfare (ASW) training. The Georgia Coastal Management Program's (GCMP) June 26, 2009 Objection to Negative Determination letter outlined several potential impacts to coastal resources arising from the operation of USWTR that the Program did not feel were adequately evaluated in the pre-release FEIS.

There have been several exchanges of information between both parties since that time and the Program remains concerned about potential impacts to North Atlantic right whales from the operational use of mid-frequency active (MFA) sonar as outlined in our letter: "the potential for direct impacts (i.e. takes) by MFA sonar should be evaluated to the fullest extent prior to implementation of the project. Additionally, mechanisms should be included to monitor the long-term acoustic effects of the USWTR, including management triggers to modify MFA sonar use if negative impacts are documented."

Our letter went on to suggest that: "In situ measurements of MFA sonar levels should be made in the field using actual MFA sonar equipment and a passive acoustic array" to validate the accuracy of the acoustic effects model at this specific site. We feel this request is warranted given: 1) the Navy's CASS/GRAB model has not been validated in the USWTR study area; 2) the physical characteristics of the area are unique and will likely affect the transmission of MFA sonar energy; 3) the study area is adjacent to the only calving grounds of the critically endangered North Atlantic right whale; and 4) the cost of validating the model would not be excessive (stated as approximately \$200,000 during our July 1, 2009 conference call).

We also suggest: "Long-term acoustic monitoring of the calving grounds adjacent to the USWTR should be integrated into the Integrated Comprehensive Monitoring Program (ICMP)." Passive acoustic sensors should be integrated into the USWTR array and/or mounted on moored buoys at intervals *between* the USWTR project area and shore. Such sensors would allow the Navy, National Marine Fisheries Service (NMFS) and independent researchers to: 1) quantify

the extent to which sonar noise propagates from the USWTR and into the adjacent right whale calving grounds and 2) modify MFA sonar use if negative impacts are documented. Likewise, the Navy should use the USWTR array and other passive acoustic sensors *within* the USWTR project area to listen for right whale vocalizations, thereby determining the extent to which right whales inhabit waters within the USWTR study area and other areas east of the Southeast U.S. Seasonal Management Area (SEUS SMA).

The Program would like to see the Navy revise the ICMP to incorporate the pre- and post-operational (i.e. long-term) concerns listed above. Results from pre-operational study are needed to assess the presence or absence of reasonably foreseeable impacts to coastal resources, and as such, will be needed before the Program can concur to the operational phase of this project. The materials that have been provided to date require considerable speculation and are insufficient to assess the anticipated effects of the proposed project. The Program believes NMFS will need similar data prior to issuing a Letter of Authorization (LOA) under the Marine Mammal Protection Act (MMPA). At the very least, the Navy should determine the site-specific acoustic footprint of the proposed project and the extent to which right whales inhabit the USWTR and other waters east of the SEUS SMA. Likewise, a plan for post-operational monitoring will be needed to ensure that any long-term impacts are documented and mitigated accordingly.


The Program is aware that the Navy may not have allocated funding needed to revise the ICMP. It should be noted that Coastal Zone Management Act regulations prohibit federal agencies from using a general claim of a lack of funding or insufficient appropriated funds or failure to include the cost of being consistent in federal budget and planning processes as a basis for not being fully consistent with a coastal management program [15 CFR 930.32(a)(3)]. The Program is also cognizant that this proposed project may be a matter of national defense and assumes that some, although not all, information may be Classified (in accordance with the substantive and procedural requirements of an Executive Order). We are amenable to using third parties with appropriate security clearances to review any classified information and to provide non-classified comments regarding the activity's reasonably foreseeable coastal effects as allowed under 15 CFR 930.32(c).

The Program remains concerned about the potential for right whale/vessel collisions during vessel transits to the USWTR from ports at Mayport, FL and Kings Bay, GA. The Program contends that limiting vessel speeds to 10 knots within the SEUS SMA (in addition to other measures outlined in the FEIS) would be the simplest, most effective way to mitigate vessel impacts to right whales. While sovereign vessels were exempted from the federal ship strike rule, NMFS has requested that federal agencies voluntarily observe conditions of the rule and has stated that potential impacts from federal agencies will be addressed through consultation. GDNR did not object to the exemption of sovereign vessels from the ship strike rule with the understanding that speeds of federal vessels would be mitigated through consultation with NMFS, yet the Navy has resisted such measures to date. The collision of a National Oceanic and Atmospheric Administration research vessel with a right whale near Stellawaggen Bank National Marine Sanctuary on April 19, 2009 provides ample evidence that a vessel with trained lookouts and crew is capable of colliding with a right whale. At the very least, the right whale-specific mitigation measures currently outlined in the FEIS should be applied to the entire SEUS SMA, not just to the smaller Critical Habitat and adjacent 5 NM-wide "associated area of concern."

All parties have agreed to treat the April 29, 2009 Negative Determination as a Phased Determination as described under 15 CFR 930.36(d) that evaluates the planning, design and construction phases only. All parties agree that the operation phase will require a second evaluation of reasonably foreseeable impacts to coastal uses and resources in approximately 3-4 years when the Navy applies to NMFS for a LOA to take marine mammals under the MMPA.

The Georgia Coastal Management Program **concurs** that the proposed activities of planning, design and construction of USWTR complies with the Program to the maximum extent practicable. Operational use for training in the USWTR will be evaluated separately at a future date. If you have any technical questions regarding our comments, please contact Brad Winn or Clay George at (912) 264-7355. If you have any questions regarding this federal consistency determination conditional concurrence, please contact Kelie Moore at (912) 264-7218.

Sincerely,



Susan Shipman
Director

SS/km

Cc: DNR/WRD/Nongame
DNR/CRD/GPMP