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Supreme Court Rules for Navy in Sonar Case



National Oceanic and Atmospheric Administration, via Associated Press

Environmental groups say mass strandings are among sonar's effects on whales. Above, melon-headed whales stranded off Kauai.

By ADAM LIPTAK
Published: November 12, 2008

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.

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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

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to suffer lasting physical trauma, strandings and changes in breeding and migration patterns. They contend that courts are perfectly capable of weighing

are perfectly capable of weighing the competing security and environmental concerns. 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

military authorities" in making decisions about personnel, training and priorities. Justice Ginsburg 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

conditions which would have to be met if war existed," can guarantee a prepared Navy. Justice Ginsburg held a conference call with reporters, lawyers for the Natural Resources Defense Council and other groups 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 reporting on the Navy and seeking to modify what it called dangerous testing and training would continue.

Justice Ginsburg said. 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." Justice Ginsburg called midfrequency active sonar, which emits pulses of sound and receives acoustic signals 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

any marine mammal" in over 40 years of similar exercises off the California coast. Justice Ginsburg said.

Justice Roberts wrote, those injuries are "outweighed by the public interest and the Navy's

interest and the Navy's interest in effective, realistic training of its sailors." Justice Ginsburg joined by 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

Justice Ginsburg for himself on this point, said he would have imposed more limited restrictions.

Sonar is linked to mass strandings of marine mammals, hemorrhaging around the brain and acute effects on the central nervous system as well as

central nervous system as well as "lesions in vital organs," Justice Ginsburg wrote. Justice Ginsburg said 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 decided that a current set of exercises off the California coast would cause lasting injuries to hundreds of beaked whales,

whales, al

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behavioral disturbances to whales, dolphins and sea lions.

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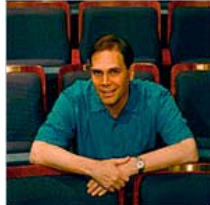
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