



[Main page](#) | [Archive](#)

Press Release

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FACING LAWSUIT, NAVY DECLARES ITSELF ABOVE THE LAW IN HIGH-INTENSITY SONAR FIGHT

Underwater Sonic Assault Threatens Marine Mammals Near New Ocean Sanctuary; Pentagon Rejects Simple Steps to Fix Longstanding Problem Before Giant War Game

LOS ANGELES (June 30, 2006) - With the U.S. Navy facing a lawsuit to stop its illegal use of high-intensity sonar in a massive practice exercise that began this week, the Pentagon today took the unprecedented step of declaring the military exempt from the basic law protecting whales, dolphins, and other marine mammals. The drill is taking place in a 210,000 square nautical mile area near the Northwestern Hawaiian Islands Marine National Monument, created just two weeks ago by President Bush.

The suit was filed on Wednesday by the Natural Resources Defense Council (NRDC) and other conservation groups after the Navy ignored requests for a safe resolution of the problem and forged ahead with its sonar plans for the biennial Rim of the Pacific (RIMPAC) maneuvers. High intensity, mid-frequency sonar is a technology that has been directly associated with mass strandings of marine mammals around the world.

"This is an historic and unprecedented retreat by the U.S. Navy from our national commitment to protect whales, dolphins and other marine life," said Joel Reynolds, a senior attorney at NRDC and director of its Marine Mammal Protection Project. "It's not that the Navy can't comply with the law; it's that the Navy chooses not to."

In a two paragraph memorandum, Deputy Defense Secretary Gordon England excused the Navy for a period of six months from any and all provisions of the Marine Mammal Protection Act (MMPA) in its use of high-intensity, mid-frequency sonar. The memo from Deputy Secretary England states that in that period, the Navy will work with "the Department of Commerce to address the regulatory authorization process and expedite the analysis and regulatory steps necessary to come into full compliance with the requirements of the Marine Mammal Protection Act." (Click [here](#) for PDF file of memo.)

In other words, the Pentagon today acknowledged that its use of mid-frequency sonar does not comply with the Marine Mammal Protection Act.

Numerous mass strandings and mortality incidents have been associated with sonar use, including events in Hawaii, Washington State, North Carolina and the Bahamas. Whales exposed to high-intensity sonar have been found bleeding from the eyes and ears, with lesions in their organ tissue. Biologists worry that whales found dying on beaches are only the tip of an iceberg, and that many more are dying at sea.

"Whales and other marine mammals shouldn't have to die for practice," said Reynolds. "The Navy has more than enough room in the oceans to train effectively without injuring or killing endangered whales and other marine species. When the Navy decides to stage a war game in the middle of some of the richest underwater habitat on earth, it is legally obligated to take simple, common sense steps to protect that ecosystem."

Among preventive measures that the Navy has refused to accept: a larger safety zone at all times around the sonar source, as the Navy uses for other sonar systems; adding an extra spotter on board ships during all sonar training; reducing the sonar power level at night or at other times when spotters' visibility is compromised; and avoiding areas in or near significant marine mammal habitat like whale breeding and feeding areas and migratory routes.

During the last RIMPAC exercise in 2004, a group of over 150 melon-headed whales stranded in Hanalei Bay on the island of Kauai following a Navy sonar exercise. After that incident, NRDC and other organizations approached the Navy about the need for planning, review, and mitigation measures to prevent a recurrence. The filing of litigation this week followed the Navy's refusal to include adequate protective measures or to obtain legally required permits and review.

Despite the Marine Mammal Protection Act exemption invoked today by Deputy Secretary England, the groups say the Navy is also operating in violation of the National Environmental Policy Act, and they plan to vigorously pursue the pending lawsuit regardless of today's action.

"The rule in this country has always been that no one is above the law, including the military," said Richard Kendall, a litigation partner at the Los Angeles law firm of Irell & Manella and co-counsel for plaintiffs in the lawsuit. "We intend to continue our efforts to force the Navy to mitigate its sonar use in RIMPAC by prosecuting the Navy's other violations of law."

The lawsuit was brought by NRDC in conjunction with the International Fund for Animal Welfare, the Cetacean Society International, the Ocean Futures Society, and Jean-Michel Cousteau. It was filed in the U.S. District Court for the Central District of California, in Los Angeles.

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 nationwide, served from offices in New York, Washington, Los Angeles and San Francisco.

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