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## Court Sets August 2014 Deadline to Protect Whales and Dolphins from Navy Sonar in Pacific Northwest

Significant flaws found in previous plan put thousands of marine mammals at risk

NOVEMBER 26, 2013

SAN FRANCISCO, CA — The National Marine Fisheries Service has eight months to issue a new plan to protect thousands of whales, dolphins, porpoises, seals, and sea lions from U.S. Navy warfare training exercises ranging from Northern California to Canada.

The ruling by Magistrate Judge **Nandor Vadas** of the U.S. District Court for the Northern District of California sets a deadline of August 1, 2014 for the agency to ensure that the Navy's training activities comply with the Endangered Species Act. Today's decision stems from a September 2013 Court ruling finding the Fisheries Service at fault for green lighting Navy training based on incomplete and outdated science.



Orca L87 breaches at sunset with Whidbey Island and Mt. Baker in the background, Oct. 15, 2010. (Susan Berta / Orca Network)  
Video: [Orcas and Navy Sonar](#)

"This ruling will require the National Marine Fisheries Service to issue a responsible new plan based on the most up-to-date sound science for ocean noise," said Representative Mike Thompson (CA-5). "It is the right decision. The Navy should train in a way that respects local communities, natural resources and our environment."

"These training exercises harm Southern Resident killer whales, blue whales, humpback whales, dolphins, and porpoises—through the use of high-intensity mid-frequency sonar," said Steve Mashuda, an Earthjustice attorney representing a coalition of Northern California tribes and environmental groups. "The Fisheries Service must now employ the best science and require the Navy to protect whales and dolphins in its ongoing training exercises."

The Navy uses a vast area of the West Coast, stretching from Northern California to the Canadian border, for training. Not one square inch of this area—the size of Montana—has been set aside for marine mammals or is off-limits to high-intensity sonar. Activities include anti-submarine warfare exercises involving tracking aircraft

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and sonar; surface-to-air gunnery and missile exercises; air-to-surface bombing exercises; and extensive testing for several new weapons systems.

Hawk Rosales, executive director of the InterTribal Sinkyone Wilderness Council said, "Marine mammals will now stand a better chance of being protected from the Navy's war testing and training off our coastline."

"It is outrageous that the agency tasked with protecting marine mammals allowed the Navy to harm them. NMFS shouldn't rubber-stamp the Navy's permits to test and train in biologically significant habitat. More must be asked of the Navy to take commonsense steps to prevent harm and injury to these animals," said Zak Smith, staff attorney for NRDC.

"If the Navy's at sea with its blasting sonar and bombs, then it needs to take extra steps to protect the endangered orcas and other marine mammals that swim in those seas," said Miyoko Sakashita, oceans director at the Center for Biological Diversity. "Coming up with a new plan that will protect whales and dolphins from hearing loss, injuries and death by sonar is an urgent priority."

Kyle Loring, Staff Attorney for Friends of the San Juans said, "The use of deafening noises just does not belong in sensitive areas or marine sanctuaries where whales and dolphins use their acute hearing to feed, navigate, and raise their young."

Marcie Keever, Oceans & Vessels Program Director at Friends of the Earth, added, "It is critical that NMFS establish no sonar zones offshore of major coastal estuaries where the 81 remaining endangered Southern Resident orcas seek to find salmon if they are ever to recover."

## **Background**

Studies from 2010 and 2011 show that whales and other marine mammals are far more sensitive to sonar and other noise than previously thought. In permitting the Navy's activities, the Fisheries Service ignored this new information. In January 2012, conservation and tribal groups sued the agency for stronger protections and won.

In September 2013, the Court found that the agency violated its legal duty to use this "best available data" when evaluating impacts to endangered whales and other marine life. It also required the agency to consider the long-term effects of the Navy's activities. Today's decision sets a deadline for the Fisheries Service to apply the new science and to evaluate the full extent of the harm.

The Navy's mid-frequency sonar has been implicated in mass strandings of marine mammals in, among other places, the Bahamas, Greece, the Canary Islands, and Spain. In 2004, during war games near Hawai'i, the Navy's sonar was implicated in a mass stranding of up to 200 melon-headed whales in Hanalei Bay. In 2003, the *USS Shoup*, operating in Washington's Haro Strait, exposed a group of endangered Southern Resident killer whales to mid-frequency sonar, causing the animals to stop feeding and attempt to flee the sound. Even when sonar use does not result in these or other kinds of physical injury, it can disrupt feeding, migration, and breeding or drive whales from areas vital to their survival.

Earthjustice represented the InterTribal Sinkyone Wilderness Council, Center for Biological Diversity, Friends of the Earth, and Friends of the San Juans and has partnered with the Natural Resources Defense Council (NRDC) in the lawsuit that led to today's ruling.

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Founded as the Sierra Club Legal Defense Fund in 1971