

JAY INSLEE
Governor



STATE OF WASHINGTON
OFFICE OF THE GOVERNOR

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July 17, 2020

Jolie Harrison, Chief
Permits and Conservation Division
Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910

Dear Chief Harrison:

On behalf of the State of Washington, I write today regarding the proposed rule on marine mammal take as part of the U.S. Navy's Northwest Training and Testing Activities (NOAA-NMFS-2020-0055). As you know, our state has made significant investments to restore the ecosystem of the Puget Sound and our coastal waterways. These efforts have involved working with state and federal partners, the maritime and fishing industries, conservation and environmental groups, and Native American and Indigenous people. The Navy remains a committed partner with the state in these efforts and participated in our Southern Resident Killer Whale Task Force. The Navy has operated in the waterways of the Puget Sound since before our statehood, and has maintained installations in our state for over 75 years.

However, those operations — combined with commercial, scientific and recreational activities in our waterways — have had a cumulative impact on this unique and fragile ecosystem. We recognize and appreciate the Navy's longstanding commitment to responsible stewardship of our natural resources, including the Southern Residents. We believe that commitment needs to drive a more robust avoidance and mitigation strategy in protection of marine mammals. It is in this spirit I write to share our state's concerns with the proposed rule, and to urge the National Marine Fisheries Service (NMFS) to work with the U.S. Navy on significant revisions that incorporate more robust avoidance and mitigation measures in their application to dramatically reduce the number of incidental takes of marine mammals.

In my comments to NMFS and the U.S. Navy last year regarding the Supplemental Environmental Impact Statement (SEIS) on Northwest Testing and Training Activities, I expressed concern over the amount of sonar exposure to marine life at-sea and pier side, as well as growing concern over vessel strikes. Based on the proposed rule it is clear these concerns have not been addressed and further changes are needed. Simply put, Washington considers the level of incidental takings of marine mammals in the proposed rule to be unacceptable. Additional mitigation and avoidance measures should include but not be limited to: (1) expanding the "no use" range for sonar to be 1,000 yards of any killer whales; (2) incorporation of real-time whale alert systems, in addition to the manned spotter systems onboard vessels; and (3) establishing seasonal limitations on the use of sonars in traditional whale foraging areas. Additional detail on each of these recommendations, among other concerns, can be found in the attached comments submitted by Washington state agencies under executive branch purview.



Thank you for your consideration of these comments. Washington understands that a trained and capable U.S. Navy is integral to our nation's defense. We look forward to continued partnership with NMFS and the Navy as we work together on this very important issue.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jay Inslee". The signature is fluid and cursive, with a large initial "J" and "I".

Jay Inslee
Governor



STATE OF WASHINGTON

July 16, 2020

Jolie Harrison, Chief
Permits and Conservation Division, Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910

Comments submitted electronically

Re: Taking Marine Mammals Incidental to the U.S. Navy Training and Testing Activities in the Northwest Training and Testing Study Area, NOAA-NMFS-2020-0055

Dear Jolie Harrison:

On behalf of the state of Washington, we write today regarding the proposed rule for *Taking Marine Mammals Incidental to the U.S. Navy Training and Testing Activities in the Northwest Training and Testing Study Area*. As you know, our state has made significant investments to restore the ecosystems of the Puget Sound and our coastal waterways. We appreciate that the National Marine Fisheries Service (NMFS) and the U. S. Navy have a history of partnering with the Washington Department of Fish and Wildlife, the Puget Sound Partnership, the Department of Natural Resources, and many other state agencies on a number of important issues. We also appreciate that NMFS and Navy staff actively participated in Governor Inslee's Southern Resident Killer Whale (SRKW) Task Force proceedings during its second year.

However, we have serious concerns with NMFS's proposed rule for the incidental take of Southern Resident Killer Whales by the Navy and urge that no such rule be finalized until significant revisions are made.

The amended Navy application and NOAA's proposed rule now predict and would allow for a vastly increased level of incidental take—formerly 2 takes, now 51 takes—every year. **The approval of such a high level of incidental take without requiring any additional mitigation measures represents gross neglect of the agency's management responsibilities under the Endangered Species Act and the Marine Mammal Protection Act to avoid or mitigate impacts to this highly endangered and iconic species.**

In our review of the application and many supporting documents, we have deduced that because 49 of 51 estimated takes are in "testing" rather than "training," and because the vast

majority of testing activities are deployments of sonobuoys off the coast, that it would be the active (e.g., DICASS) and Multistatic Active Coherent sonobuoys (AN/SSQS-125) that would lead to the most incidental takes. This seems logical, as those types of sonobuoys emit sonar that is omni-directional on the horizontal plane, expanding the range of impact and potential overlap with nearby cetaceans. Based on the potential magnitude of takes of SRKWs, the difficulty of distinguishing SRKWs from other orca ecotypes (such as Transients and Offshores), and the currently far-too-lax standards for canceling an exercise in the presence of cetaceans (usually only when within 200 yards), **we urge NMFS to require the Navy to update its mitigation measures so the Navy must postpone or cancel any exercises when spotters detect any killer whales within 1,000 yards (i.e., 0.5 nautical miles) of the exercise.**

Despite the apparent attempt to be representative and comprehensive, Tables 19-31 fail to include the potential effects of ASW2 mid-frequency sonar on marine mammals. This type of sonobuoy is expected to be used during antisubmarine exercises. According to the document, such systems only operate above 200dB (and appear to be omnidirectional), making them much louder, more potentially damaging, and with a much greater range than the MF1 and MF5 systems that are currently profiled. Combined, there are 590 planned deployments of ASW2 expected annually during the proposed training and testing activities. Although it appears that such tests will only occur 12 or more nautical miles offshore, the distribution of Southern Resident orcas and many other cetaceans still have considerable potential overlap with that zone. We therefore believe that **NMFS must require the Navy to provide a table showing the ranges to temporary and permanent threshold shifts for the ASW2 sonar bin and clarifying the predicted effects on marine mammals before approving the use of such sonar/activities.**

In addition, we are concerned that this is the third consecutive authorization period during which the Navy may be approved for such testing and training exercises and that these or similar activities are likely to continue for decades. Because SRKWs are so long-lived, and the estimated percentage of take for the population is so high (68%), the effects of take will be compounded over time and may have cumulative effects, such as behavioral abandonment of key foraging areas and adverse, long-term effects on hearing and echolocation. Over the next seven years, the estimated incidental take for SRKW Temporary Threshold Shifts (TTS) is at least 14. This total would add to the cumulative levels of take experienced by SRKWs over the past decade of similar training activities. Leading scientific authorities have cautioned that in situations like this, managers should apply “distinct and different marine mammal exposure criteria that consider potential long-term hearing loss produced by cumulative exposure over years, decades, or lifetimes.”¹ NMFS has also asserted as recently as 2018² that repeated TTS

¹ Southall, B. L., J. J. Finneran, C. Reichmuth, P. E. Nachtigall, D. R. Ketten, A. E. Bowles, W. T. Ellison, D. P. Nowacek, and P. L. Tyack. 2019. Marine Mammal Noise Exposure Criteria: Updated Scientific Recommendations for Residual Hearing Effects. *Aquatic Mammals* 45(2):125-232.

² 83 FR 28824.

exposures can lead to long-term hearing loss^{3,4}, which can affect the survival and fitness of cetaceans that are heavily reliant on hearing for communication, feeding and avoidance of ship strikes. Furthermore, NMFS² has suggested that longer-term considerations that weigh the impact of noise exposure over a lifetime of exposure (e.g., 29 CFR Part 1926 over 40 years) are needed for marine mammals. To mitigate such long-term effects, we again **urge that the Navy be required to cease active sonar exercises if any orcas are sighted within 1,000 yards, rather than the proposed 200- or 100-yard shut-down mitigation zones.** This minimum distance aligns with Washington State law which requires most vessels slow down to 7 knots when within 0.5 nautical miles of Southern Resident orcas in order to mitigate noise impacts and disturbance.

Finally, as mitigation for active sonar training and testing activities in Puget Sound, **NMFS should require the Navy to consult regional real-time whale alert systems rather than relying solely on human observers on Navy vessels and communications with NMFS.** There are additional, often superior sources of such near real-time information at the state and local level, including the Whale Report Alert System used by Washington State Ferries and many other maritime professionals.

Without bold and immediate actions, the SRKW may become functionally extinct before the end of the century. We urge NMFS to recognize that the repeated exposure of more than half of the SRKW population annually to incidental take does not equate to “negligible harm” in any year—let alone over the course of decades. The population of Southern Resident orcas has suffered additional declines even since the population count used in the Navy’s Environmental Impact Statement calculations, resulting in the take estimates to now represent at least 70% of the current population.

We strongly urge NMFS to revise its proposed rule by changing the determination of negligible impact and then working with the Navy to incorporate improved monitoring and mitigation measures, in order to significantly reduce the number of Southern Resident orcas authorized for incidental take.

Thank you for your consideration of these concerns. Washington looks forward to our continued partnership with NMFS and the Navy on these and many other critical issues.


³ Kastak, D., J. Mulsow, A. Ghoul, and C. Reichmuth. 2008. Noise-induced permanent threshold shift in a harbor seal. *Journal of the Acoustical Society of America* 123:2986.

⁴ Reichmuth, C. 2009. Effects of Noise and Tonal Stimuli on Hearing in Pinnipeds. [Report on Grant N000140610295](#).

Jolie Harrison
July 16, 2020
Page 4

Sincerely,





Kelly Susewind, Director
Washington Department of Fish and Wildlife






Laura Blackmore, Director
Puget Sound Partnership






Kaleen Cottingham, Director
Recreation and Conservation Office





Hilary Franz, Commissioner of Public Lands
Washington Department of Natural Resources





Erik Neatherlin, Executive Coordinator
Governor's Salmon Recovery Office