

P. Michael Payne, Chief
Permits, Conservation and Education Division
Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910-3225

October 25, 2006

Re: Federal Register Notice I.D. 062206A; Vol. 71, No. 188; September 28, 2006.
Proposed incidental take permit for the expansions of Low Frequency Active Sonar

Please include the following comments into the record of the permit process:

Dear Mr. Payne,

I am writing on behalf of Seaflow and our constituents. We ask that the National Marine Fisheries Service deny the US Navy request for a global incidental take permit for the expansion of the operating range of the Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) Sonar system.

We are opposed to the continued deployment and expansion of this program based on the following reasons:

We believe that, consistent with the August 26, 2003, ruling of the 9th District Court by Judge Laporte that global deployment of SURTASS LFA would violate the Marine Mammal Protection Act (MMPA), the Endangered Species Act (ESA) and the National Environmental Policy Act (NEPA) by putting countless marine animals at risk. In her ruling Judge Laporte stated that “There is little margin for error without threatening their survival...Absent an injunction, the marine environment that supports the existence of these species will be irreparably harmed.” These conditions have not changed since the ruling, and the US Navy has provided no evidence that the SURTASS LFA system is harmless to the marine environment.

We also believe that issuing a global “incidental take permit” is reckless and capricious, and does not reflect the intent of the MMPA Incidental Take Authorization or Letter of Authorization (LOI). The intent of the Letter of Authorization to allow certain actions that would result in the “incidental taking” of marine mammals during maritime operations “provided NMFS found the takings would be of small numbers and have no more than a negligible impact on those marine mammal species not listed as depleted under the MMPA, and not having an unmitigable adverse impact on subsistence harvests of these species.”

In its request, the US Navy seeks a blanket exemption to do harm to all marine animals in 80% of the world oceans with only minor mitigation measures taken. As such, a LOI granted the US Navy would not meet the “negligible impact” condition and would surely violate the “unmitigable adverse impact” constraints indicated in the MMPA LOI process.

In 2003, the US Navy was provided a limited area within which to deploy SURTASS LFA. While it has been required to report on mitigation measures taken to prevent or minimize marine mammal takes in the immediate operating area, it has not been required to perform systematic population studies on marine mammals or examinations of stranding incidents and health trends in the operating range. Given both the extents of the current range, as well as the far reach of the SURTASS LFA signals, the health of animals “taken” in this area alone would be difficult to assess.

Even if the Navy had been required to take these data in the existing operation range, given the short operation period of less than three years, it would be difficult to determine any coherent trends in the natural history, biology and behavior of marine mammal populations subjected to the SURTASS LFA noise. Expanding the SURTASS program into 80% of the oceans would make the task of monitoring the impacts impossible.

It is also clear that while the Navy is required to abide by provisions of the MMPA, ESA and NEPA, there are many other animals in the ocean that are not identified in these laws that make up the marine habitat. While these countless individual animals may not be identified as “endangered” or “at risk,” nonetheless they will be subject to the noise and the damage to the environment caused by the noise. We have no idea what the consequences of this will be.

For example, we know that many elasmobranchs use sound to locate prey. We have recently found out that some of these creatures (great white sharks) migrate over thousands of miles (Le Boeuf, Davis et. al *Nature* Jan. 06). While there are no systematic studies that have examined how the sharks navigate, it is not unlikely that these animals rely on sound cues to guide them through the ocean. Polluting the entire ocean with loud, periodic, repetitive noise could easily compromise the migration patterns of these sharks. In the same context, it is not unlikely that the same noise pollution would disrupt the acoustical navigation cues of other highly migratory species such as tuna.

While there are many other reasons why the US Navy’s proposal to pollute 80% the world oceans with tactical military noise is unwise and reckless, we believe that the reasons provided in this letter are under the purview of the National Marine Fisheries Service and substantiate why the US Navy should be denied its request for a LOI.

Sincerely,

Michael Stocker
Science Advisor
Seaflow