

**A Fax Transmission
is being sent to:**

FAX NUMBER: 301-713-3374

Attn: Cheryl A. Magill

Cheryl A. Magill

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Date: 04/03/2001

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cheryl@manyrooms.net,stoplfas@onelist.com, 11:35 PM 4/2/01 -0700, Request to Extend Comment

To: cheryl@manyrooms.net, stoplfas@onelist.com
From: "Cheryl A Magill" <synergist.ca@netzero.net>
Subject: Request to Extend Comment Period and Petition for Hearing
cc:
Bcc:
Attached: A:\REFERENCES for congress.doc;

Donna Wiiting, Chief;
Marine Mammal Conservation Division;
Office of Protected Resources;
National Marine Fisheries Service;
1315 East-West Highway;
Silver Spring, MD 20910-3226

Sent via fax number which is 301-713-0376.

Dear Chief Wieting,

The Navy is preparing to deploy a low frequency active sonar system that seriously **threatens** the marine environment, including endangered whales and other species. Documentation regarding this system has been challenged by the general public on radio, on television, in newspapers, **periodicals** and magazines. Workshops and forums have convened to study and voice objection to the Navy's continuance of LFA Sonar research. The general public's awareness and **concern** regarding the use of this technology has been heightened on an increasing basis as more and more condemning evidence about whale strandings becomes available.

As you know, Chief Wieting, incidents of massive strandings have been directly coincidental **with** Navy sonar operations. To illustrate this point, since your own office posted notice in the Federal Register about **the** limited 40 days which you intend to allow for the public's response to the **FEIS** in anticipation of your ruling, there has subsequently been published by **NOAA/NMFS** further information about the largest mass stranding of multiple cetacean species to ever occur in relation to an acoustic incident. So while your office has said that this **FEIS** is business as usual and the clock is ticking, another faction simultaneously says,

"Oh, and by the way, we're continuing to investigate why all the **Cuvier's** Beaked Whales have disappeared in the Bahamas in direct coincidence with the deaths of several cetaceans which stranded with eyes bleeding from traumatic acoustic impact."

Chief Wieting, please know that the Stop LFAS Worldwide Network does not consider the **FEIS** for the Navy's **SURTASS** LFA Sonar to be "business as usual." No doubt, you've noticed that this document exceeds the size of two metropolitan phone books. And there are three supplemental reports also! Your office has made public the intent to rule on this immense project of far-reaching geo-political & environmental impacts in the short span of only 40 days. This confusing & massive communication exchange between government and citizens deserves some better treatment than to throw confusing documentation of vast implication at people who hardly have a chance to share & compare observations.

We feel that documentation presented on LFAS is deliberately opportunistic & deceptive in it's representation of research done to research the impact of this mobile technology. The documents

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appear to have hundreds of omissions, which can **only** be identified by **shuffling** through a mirage of cross-references. The time **the** Navy took to prepare & compile this cryptic deciphering project and the money it had at it's disposal goes on for nearly half a decade in the making, The time *required* to adequately comment on and to explore what's being presented simply must exceed 40 days to let people begin to unravel this woven "fabrication." We are suggesting that the comment period be at least **90 days**.

While **NMFS** may feel that it can disregard the practical applications of a proposed system, **(Comment 1)** and while it may feel that a postage stamp size correction is **sufficient** notice to the **public** to amend a document which stands several inches thick with much of **it's** print size at **50%** or **less** of the original document size (which certainly leaves me squinting and questioning the document's compliance with the Americans with Disabilities **Act** as the size of the print seems to be but one of many impediments to being **able** to read and comprehend this immensely entangled presentation.) Many of the **NMFS** comments in the Federal Register may be interpreted as a testimony to the arrogance inherent in an out-of-control beaurocracy. **It** does not escape our attention that at a time when more is known by your department about the challenge these extreme acoustics present to the environment, the response to that challenge is one of lowering the standard of care. Raising acoustic threshold levels is simply one manner by which **NMFS** has begun to do less, care less and act with bias in process of weighing-in the arguments opposing extreme acoustic testing.

The timing of this notice of the proposed **SURTASS LFA** Sonar ruling runs in **tandem** to the delayed analysis of multiple sonar-induced cetacean deaths which occurred while we were Suing you last year. If you recall, we no more than filed suit against you in Federal Court for **SURTASS LFA** Sonar and soon afterwards, whales with bleeding eyes came washing up on Bahamas Shores. I hope you haven't failed to catch the significance of the fact that we don't exactly see eye to eye on this. For that matter, it may be further stated that we don't exactly hear ear to ear on it either. When the Navy says they want to incorporate some sort of shore monitoring for this project, you say, well that's essentially the same thing as the **DEIS**. What? There's no mention of this contrivance in the **DEIS**. Or who funds it or oversees it or monitors the monitors or reports to whom and how often and by what proposed means. **Isn't** the need for increased hydrophonic testing monitors tantamount to an admission that the mitigation measures initially proposed in the **DEIS** were upon further consideration found to be inadequate?

Whatever happened to "score one for our side?"

Please note the significance of this alteration. I say, score one for us! The Navy admits we **were** right and they were wrong about noise levels intruding into shoreline habitats. **But** they don't seem too quick to take this elevator all the way to the top floor. I think the Navy still wants to have a **flawed** scientific premise revert to their advantage. They want it all their way and so they **concoct** some imagined relief system of hydrophones for a danger they've yet to fully study, analyze or realize .

Additionally, a contributing member of the Stop **LFAS** Worldwide Network was encouraging me to submit these remarks, which I am entirely happy to do:

- Additional considerations posed by creation of **OBIAs**.
1. The agency's web site http://mpa.gov/mpaservices/atlas/atlas_inv.html depicting Marine Protected Areas includes mapped displays because persons usually cannot do this in their heads

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from sparse coordinates. **The** same problem is present with **OBIAs** which **could easily** be included on **this** web site. Further such a display is necessary to depict Marine Protected Areas, if any, which are not included in **OBIAs**.

2. Graphical illustration of **the** physical reach of **anthropogenic** sounds cannot be visualized from sparse **DeciBels** data. Such data **is logarithmic** and requires a **gis type** of display depicting the minimum safe distance of the emitting vessel from an **OBIa** perimeter at different sound pressures. Difficulties of human translation of numerical data into **geographical visual** data are the reason **that** aircraft, vessels, radar tracking facilities, sonar facilities and aircraft and missile **control**

facilities all use visual displays and that is the reason **the agency** should mount a web **site** affording the public a similar grasp of the issues presented by the **LOA**.

3. Since **OBIAs** are created because of **the** necessity of **Activity Based Thresholds** to adequately protect marine animals, perforce, sound levels must be monitored from within the protected areas. **Monitor** alerting levels must be set lower than the loudest natural sound **expectable** in the **protected** area. This way the increase in **the** particular sound level can be followed and the vessel tracking facility advised that the vessel must change course and/or reduce sound levels. The emitting vessel cannot perform the monitoring function because of anomalies and because indications of animal distress or worse are Impact Based Thresholds which undermine the protection of **OBIAs** which are **Activity Based Thresholds**. Thus the only scientifically valid method of Potential Biological Removal compliance are **Activity Based Thresholds** monitored from within the protected zones.

We are in an era where the increased use of acoustic technology is weighing upon the minds and burdens the consciousness of the people whose interests which the **NMFS** is supposed to represent. And you are getting so many acoustic applications now that even those of us who have tried to track them can't keep ahead of the game. There's a lot of high-tech power-money involved in **these** projects which are years in **the** making before the **public** can even discover its own responses. The Navy sat on those responses for over a year. With their budget and a year's time, they had their hands on the public's response for quite a lengthy period. Apparently, they had a chance to change a few things about the **DEIS** based on those comments. This is complicated information with **lots** of changes like the threshold change levels and the invented habitat hydrophone-proctoring Why not give us more time to look over **the** latest publication? It is **full** of information which the Navy received from us over a year ago but which we've not previously seen.

Studies have shown that whales exposed to sonar often flee the sound. This is increasingly evident through information collected subsequent to the Navy's initial gathering of documentation for SURTASS LFA Sonar. The acoustic analyses which are discussed so much as **I've** been able to read thus far in the **FEIS** all apparently fail to describe the torturous influences of sonar-induced trauma which have occurred in multiple circumstances around the world. Responders have attempted to update the Navy's assumptions by pointing out these additional sonar deaths to cetacean, and there's always some lame manipulative excuse as to why the Navy doesn't feel it has to address other incidents as having any relationship to LFA Sonar.

Well, how is this for a motivation? What about the fact that people are getting pretty steamed at watching this **NMFS** approved butchery and slaughter appearing on NBC nightly news? For various broadcasts as they appeared on the local and national news, see

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<http://www.geocities.com/shootdaqy/rooms/outlinec.htm> where some streaming video has been placed.

Because of the number of **acoustic** tests which have gone through your office with a rubber-stamp method being employed at every **opportunity** with **little** expressed concern about the **well** being of the marine life and **little** concern over the issues being raised by the public, we are **asking for a hearing**. People like Gene **Nita** who continued to "supervise" conducted tests **even after** the **whales display adverse affects** to this sound are only one reason why a hearing should be deemed appropriate. Another reason to hold a hearing is because your **agency** has been approving low **frequency** active sonar tests in the **Mid-Atlantic** for Peter **Tyack &** his acoustic hit squad without **having** the professional diligence to site the frequencies to be used in those specific tests which coincidentally once again fall under the governance of **Gene Nita**.

None of us knew that while we were responding to the **DEIS** for **SURTASS LFA**, the ONR would fund and thereby act as behind the scenes sponsors for future low frequency active sonar testing by **hiding** behind the apron strings of academic research institutions. **More** shocking is the fact that your agency has cooperated in such ventures dedicated to the deception of the **American** public and the greater global community. The fact that you will try to pigeon-hole each of these incidents and **to deny** their interrelated relevancy is the exact reason why **there** must be a **hearing**.

You mention the Navy's outreach meetings and yet the Navy failed to respond to my comments in the **DEIS** regarding those outreach meetings. Rather, a generic comment referring to the hearings and having little correlation to the important point I was making was given in reply. John Mayer didn't have the time and date figured **out** for an outreach meeting even though it was **only** days away. **I** had to call Washington **&** ask for notification which he dii not have when **I** called. Later that day he faxed me notification that the outreach meeting for San Pedro would be less than a week away. **I** have that fax. **It** is handwritten **&** something contrived at the spur of the moment. This delay in notification **continues** to be treated lightly by your office and by the Navy, but **the** truth is that they did a poor job of planning in advance. The Navy did not address these issues **and** you did not address these issues which is sufficient cause for reconsideration and a petition of hearing. The disregard for the community's interest is an affront on both a national and international level. inasmuch as the Navy has repeatedly wagged it's own tail about the fact that **it** did have people in funny looking white suits stand around for hours, I'd like to know how **this** is deemed to constitute a public outreach when they duck and hid from us until we called them out?

Some outreach meeting! When I asked Joe Johnson specific questions, he said I made him nervous and he would prefer to receive any questions I had by **email**. Why did I drive 400 miles one way and 400 miles back again to receive such obstreperous insult? **Isn't** it deceptive **to** invite people to travel so far and then refuse to talk to them? And then to act like you did us all some big favor and actually met a NEPA requirement is a fine example of smoke and mirrors.

I drove down from Northern California to San Pedro to get some answers. The man refused to talk. And then he brags about his public outreach meetings. I want a hearing. I want to know why Joe Johnson refused to talk to people who "made him nervous." And while **I'm** at it, I might as **well** object to the sound of LFA sonar playing in the background from those propaganda tapes **produced** by the Discovery Channel. As soon as I walked in I saw a man **barfing** behind the curtain. He was someone who couldn't make it as far as the restroom. This person became **ill** while LFA sounds played in the background. **I** had a middle ear infection before arriving... and can't be sure why **I** felt ill (dizzy) for weeks afterwards. But I know I saw someone who was sick while LFA tones played

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in the background.

And the fact that my comments to this point are repeatedly **un** addressed shows why this just doesn't seem to get covered in Navy rhetoric or NMFS comprehension levels. Therefore, due to the insufficiencies of the paper flow regarding this point and the inadequacy of it being handled in writing I find that it must be discussed in open forum and on behalf of the **Stop LFAS Worldwide Network, I petition for a hearing.** I petition for a hearing also because the **only public** notice put out **up** to 36 hours before the San Pedro meeting was located at the Marine Acoustics web site **which** was thereupon immediately taken down. Since both Marine Acoustics and the Navy don't care to **respond** in writing to this point and since **NMFS** doesn't 'get it,' this clearly needs to be discussed as to what the standard for public notification of a meeting which involves global impact ought to be and whether the lack of foresight and planning demonstrated just prior to the San Pedro meeting was an example of the Navy failing to meet that public expectation. And a hearing would be a good place for that too.

In Comment 10 you mention monitoring requirements for the **LOA**. **By** you say there's no need for an increased comment period but what's with this **hydrophone** monitoring? Where is this specific to the **DEIS**? One minute it's same **old** - same old and then next it's "Oh by the way, the Navy wants to add **hydrophones**." Whoa! How many times do you plan to put that cart before the horse?

In Comment 11 of the Federal Register Posting, the imposed Level A and Level **B** harassment definitions are pointed out. This is a stunning alteration from the original **DEIS** which invites much speculation regarding a concocted concept of what constitutes accepted threshold shifts. To say that there is very little which has changed between the **DEIS** and the **FEIS** and to thereupon disregard the redefinition of harassment is a convoluted, cock-screwed analysis of what you mean by "**different**." The analysis of how the sound travels is "**different**" too, from the original **DEIS** and how our understanding as to the combined significance of both these points is conveyed and is gauged as to **it's** significance should not be summarily dismissed. A fair deal is a fair deal and **all** we're asking is that the dealer be fair. **In** short, you can't play Black Jack at the Roulette table and say it's the same game. Can't marine life at least get Vegas odds?

NMFS's Federal Register posting regarding the comment period is in and of itself so lengthy as to require separate study. **Clearly**, I feel inadequate to the task within the given time frame of providing you with a fax by **April 3rd**. Sadly and at considerable personal cost and burden, I am attempting to comply with the request that responses be received by this date for petition of hearing and time to be extended. However, doing so leaves me with some difficulty in trying to sound civil when I am actually angry and upset at your notice of proposed ruling. I think you really have no class if you can look at a document of the size of the **FEIS** and suggest that 40 days is adequate to respond to it.

Further time to evaluate the comparative application of statements being made by all the many contributors is **only** a reasonable expectation, especially in lieu of your continuing policy to of sticking with the misnomer of "**negligible impact**" in referring to this new sonar technology. For a **technology** to be deemed as "**negligible**" the expectation may be attached that it will not closely parallel technologies which have contributed to massive strandings of multiple species as happened in the Bahamas last year. For a technology to be deemed as "**negligible**" the full range of it's potential applications should be discussed in the open. Last year I sent you a copy of the magazine article in Scientific American about "Time Reversed Acoustics." This is an article about

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a Low Frequency Active Sonar application employed by **NATO** and the **SACLANT** research being done. Why does the method of this application appear to be omitted again by the Navy? (Admittedly, I have **only** had a chance to scan the overall **view** of the **EIS**, as this information could be hidden in the repeated series of multiple cross references which are reduced to small print in multiple volumes.)

The fact remains, and **NMFS** can dance around this all they *want* but dancing won't change our belief, that respected people in the marine biology fields are claiming that the US Navy has killed **ALL** of the **Cuvier's** Beaked Whales in the Bahamas. So you guys keep dancing around that while making ruling after ruling to say that new powerful sonars result in "**negligible**" impacts. Well, that's quite a fancy jig! And aren't you an impressive bunch decides to rule first and pick out the **details** about sonar related slaughter after the ruling is over?

And now, Chief **Wieting**, I have another little edification for you. Are you aware that the Navy sent the **FEIS** out through Bulk Rate Mail?

Weeks after people on the East Coast had received their copies, I finally received mine. I immediately noticed that the documentation was sent out with a bulk-rate postage. Weeks had gone by before I received my copy out here in California. I contacted Lanny **Sinkin**, who is located in Hawaii as you know, and told him that my copy had **arrived** via bulk rate. You can **verify** with him, but I'm pretty sure it was the next day that he phoned long distance to insist that, **as** the attorney who had brought litigation against SURTASS LFA Sonar **proliferators** such as yourselves four times; he ought to be receiving his copy in a timely manner. Bulk rate?

When reporters asked for press releases, even weeks after the SURTASS LFA **FEIS** was released, the only method of comment available was one based on speculation as to what we might see at such time as the **FEIS** finally arrived. One such article was printed in a monthly publication of "Ecobyte" Volume 4, **Issue** Number 3, March/April 2001 **ISSN 1524-5764** wherein the best information we could offer the press was to state what was "assumed" the **FEIS** might contain. So, none of the readers of that publication will have anything more than a rumored theory of what the yet to be (at time of publication) distributed document might be expected to **contain**. **As** it happens, the **FEIS** did arrive at my door just before the "Ecobyte" publication went to press and because the publisher checked back with me at that time, she was able to add as a footnote that "as of February 26th, Ms. **Magill** had received the **FEIS**." (page 23).

And less than 30 days later you were announcing intent to rule.

The Navy has spent, according to estimates I received from the sources I have, roughly **450** million dollars on this project. With the exception of a handful of environmental groups who have people in paid positions, the work generated by the people responding to the **FEIS** was free. Oh, I think **AWI** might have paid for someone to do some artwork of an American Flag draped over a dead whale. But for the most part, it's all contributed for free. Now while I can repeatedly point out that the US Navy has broken many trusts and covenants by investing in a system which due to it's lethal potential might never make it past the gates of environmental scrutiny; their carelessness towards cash pales compared to your own if you're willing to let all this valuable contribution from the volunteer researchers get trampled in the dirt by your haste. That's a 450 million equivalency you're pushing through the time clock. While the US Navy analyzed their data since the Hawaii testing for nearly 3 years, our analysis time has been restricted to quick spins and zero budget. On average, since the last test in Hawaii, the Navy has had time to fiddle with *one* page per day as

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the FEIS page count is about 1270. The environmentalists, conservationists, scientists and concerned contributors who have submitted comments have worked freely and with great comparative efficiency. The result is you want to push those contributions aside in favor of a speedy ruling for the slow pokes that spent all that money. All the more reason to have a hearing and to further ask the GAO to review the Navy's spending pattern. From what I can make-out - the Ph.D.s involved have slammed the LFA system as damaging to marine life at great distances on both short term and long term impact. But of course, I haven't had much time to read the entire documentation.

In fact, when it first arrived I just kept staring at the thing from across the room. This is an immense volume of paperwork! And again, since it weighs so much, I continue to question if the thing meets ADA publishing requirements. I know that may sound like I'm being sarcastic, but I do take these reports along with me to show to people. This is not an easy document to lug around.

I take the Controversial; and please notice that is CONTROVERSIAL with a CAPITAL C - I take the Controversial documentation with me to show people so they can see for themselves how thick it is. I ask if they remember the butterfly ballot in Florida and how people were confused by the fact that there were simply two columns for candidates on a single page. Then I show them that this document contains two volumes. I pull out my magnifying glass and ask them if they can read all of the print. Most people admit that the magnifying glass helps for a large portion of the report, And then I ask them to weigh it and to measure it. The text, minus the three supplemental reports, is 3.25 inches thick. At eleven inches per page, the length of the total document 1,164 ft.. (Not quite a quarter of a mile.) No wonder the Navy charged the public 450 million dollars to produce and distribute it! And judging from the the number of contributors, and presumed recipients of the final release -it could qualify as a contender for future Best Seller lists. I have not tallied the total number of contributors. I haven't had a chance. But I know this much, one member of the Stop LFAS Worldwide Network is tallying up the number of omitted responses and they are in the hundreds. She tells me that you can detect them through the numbering systems. Hundreds of omissions? Why would anything be omitted? I don't at this point have a specific list of exactly which numbers are missing. Again, this is the need for more time!

By the way, I have written an article about the Navy's failure to address transatmospheric life forms in the DEIS. Of course, the article was published after the submission date for the DEIS comment period so, like all other developments subsequent to that date it's been obscured from the EIS evaluation process. And since 34 days ago when the FEIS arrived, there's been insufficient opportunity to see if there might be some address of transatmospheric life forms in the 32 sections of the FEIS. Where are the transatmospheric life forms addressed - I mean, besides Cormorants? (You'd think a bunch of ornithologists would at least mention the nesting shorebirds and their acoustically scrambled eggs?) The article can be seen on line at <http://www.rense.com/ufo6/rodstran.htm> and refers to several life forms, with emphasis to a new life form which is being observed, studied and identified by researchers.

One thing I've never been able to really identify in any of the NMFS/Navy documentation is what happens to those animals who leave the water due to an adverse influence? For instance, in an area like Pt. Ano Nuevo where the elephant seals have taken over the shoreline, and actually inhabit an island farmhouse, local farmers know to use care in approaching the animal. But if animal behavior changes and these critters come on shore in an area they'd wouldn't normally be attracted to but have done so because they're trying to avoid acoustic disturbances; then is this an impact on counties and communities? Wouldn't the public comment periods therefore apply with

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specific notification to counties and coastal communities? **It** seems to me that I see the Navy and NMFS doing a lot of constructive notification without seeing much specific notification. For instance, in California there are rules governing the response periods inherent on impacts within a community. **I'm** talking about when the sea otters and **pinnipeds** come to shore in order to escape the noise as the sea lions apparently did with Pier 39 in San Francisco (with behaviors which disrupted commerce and which were not displayed until ATOC arrived); and as **the** sea otters **did** when they began eating mud clams in Elk Horn Slough, an area which again was sheltered from the ATOC transmissions on Pioneer Sea Mount. The local business people ended up footing the bill for these aberrant changes in animal behavior. Of course, **I'm** talking about what likely happens when these animals are driven out of the water by the acoustic harassment occurring. **Is** there a legal obligation to engage affected counties and communities with specific notice and to allow for related comment periods? And who would be responsible for damages, should any occur?

Which reminds me, did the Navy ever comment on the economic impact of SURTASS LFAS? **It** would seem to me that they'd want to mention all the many industries which are ready to develop this technology on either side of the Atlantic. You would think that the multiplicity of acoustic **influences** in any given area where a post-cold-war submarine might to materialize would be felt in combination with each other. So this is a marketplace in the making. For instance, the Navy would have us believe that the Low Frequency **Active** Sonar sound sources used by other countries and by such geo-political combinations such as NATO would not combine **with** SURTASS LFA Sonar.

They **will** point to mitigation measures. (**Now** adding monitoring hydrophones to the list in an admission of the fact that the mitigating measures do not work!) **But** what about mitigation?

LWAD 000-I didn't stop it's testing when extreme acoustic conditions had previously been introduced to the water. The acoustic testing for LWAD 000-I was conducted in piggy-back fashion on top of the previous transmissions. I understand **from** the technician I spoke with that LWAD 000-I employed great care and that only minimal sound was used. Hah! They tested while whales were stranding. So much for mitigation! (And please refrain from suggesting that I might be confusing LWAD 000-I with LFA which **I've** noticed that your office likes to do so as to **reduce** perceived aptitude of the **respondee**.)

NOAA has LFA technology on it's research ship. And "facilitators of the surrogate" such as **WHOI** have similar technology on the research ships they own and lease. So you've already justified the application of **LFAS** by your own practice. What a nice "warm **puppy**" sales, job was done on your organization! **All** the more reason to petition for a hearing, as **I** so do on behalf of the Stop **LFAS** Worldwide Network regarding this Controversy. (That's Controversy with Capital G!)

I want to bring your attention to an article written by Lanny Sinkin which highlights the ONR funding of LFA research which your **office** approved without even specifying frequency. You evaluated these documents at the same time while you were still being sued about LFA last year in Federal Court. The fact that you succeeded in tip-toeing around the issue once or even twice doesn't mean it won't come back to haunt you. Hence the petition for a hearing.

Actually, come to think of it, since the Navy bailed-out of their December hearing date with the California Coastal Commission, I would expect to get more than one hearing before the band stops playing. Why has **NMFS** failed to consider the Navy's lack of compliance with The Coastal Zone Management Act as an issue in preparing to rule?

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One strategy of the LFA **proliferists** who want to impose this radical acoustic anarchy on **the** historically quiet condition of our oceans; one strategy used is that they will pigeon-hole technologies and pretend they don't relate to one another. Please don't insult the public any further than you already have by acting as if these acoustic impacts do not combine. The arrogant posture of saying that this **respondee** or that respondee has clearly confused one program with another is an indulgent assertion. Please **acknowledge** the noise threshold levels do not exist in isolation to one another. The water is one medium. And this stuff even makes it onto shore.

People on shore do suffer with noise. The classic example of noise coming out of the water and driving a community crazy was found in Sausalito, California. **This** is common knowledge to the area and the incident was known as the Sausalito Hum. **It** made the national news again and again. Snapping shrimp caused the hum. But sound does reach the shore quite naturally. Hums which specifically are related to active sonar experimentation have been observed among residents of Victoria, British Columbia and their responses for several of the members began during survey mapping in the summer of 1996 in the **Haro** Strait They all lived along the shoreline that directly paralleled the testing area. This information has been published on my web site at <http://www.angelfire.com/ca/fishattorney/haro.htm> and also was submitted to Marine Acoustics Incorporated in response to the proposed NPAL/ATOC application. I direct your attention to page D-16 and D-17 where **Mr. Bernard McCarron** introduces himself as the founder of the James Bay Low Frequency Radiation Sickness Association and further introduces another member' of the **Association**, **Mr. Aubrey Cooke**. You will see on page D-16 that **Mr. Cooke** describes his physical condition which he believes to be the result of acoustic radiation exposure along the Juan de Fuca Strait. I believe the people of this area are very much in earnest. I have been sent information **from** individuals living there which shows they hired very expensive acoustical companies to try to detect sound sources in the area. Too, I was impressed with the manner these people came together without having any previous knowledge of each other but motivated **solely** by a disturbing background noise that prompted them to place ads in the local paper and to make announcements on the radio. **At** last I heard, there were 17 members of the James Bay Low Frequency Radiation Sickness Association. They sent their comments to Marine Acoustics which was publishing information about LFAS. The fact that people in other countries can't keep track of all the proposed & potentially damaging low frequency transmission applications and proposed rulings doesn't surprise me. But the fact that the information wasn't directed to the **place** it was intended when it went through Marine Acoustics offices strikes me as another example of how people can't respond in writing to this 3 year system of communication protocols and etiquettes. I propose that all the **ATOC/NPAL** entries which refer to LFAS were intended by their originators for your ultimate attention. According to Dr. Peter **Worster**, the ATOC-NPAL comments were forwarded to Joe Johnson. But what of that? The comment period was done. Were these types of contributions which were directed within departments and within projects ever redirected to your attention?

This is why a hearing is required. You're missing half the story about the human experience of people responding to LFAS and understanding what the death of our oceans by sonic blasting means to us. And how people and animals have already suffered!

Too, according to recent news articles, the people of Vieques have health conditions related to acoustic damage. They not only have airport noise and some bombs going off in the background, but they are also located directly south of an acoustic test site - a "littoral site."

I bring to your attention the information offered by Marty Campbell of St. Croix who hurried out of

cheryl@manyrooms.net,stoplfas@onelist.com,11:35 PM 4/2/01 -0700, Request to Extend Comment

the water and who later wrote to Joe Johnson asking if they can expect more of the same from **LFAS**? I hope that those responses were in the **FEIS**. There hasn't been sufficient time for me to verify their presence among the documents presented.

Too, LFAS and the presence of other **high** intensity acoustics represents a threat to **divers** and those who routinely engage in water activities in proposed testing **areas**. While a Navy diver was injured during testing, Diver, Jay R. **Murray** also made **comments** on the **DEIS**. Of course, I have not had an opportunity to investigate how thoroughly the Navy responded to his **specific** and detailed comments. We all simply need more time! I will look at the comments to see if it is possible to see adequate communication from the Navy in response to **these** important diving issues.

But the Navy seems to dismiss everyone. No one's situation matters to them... or so it seems. Look at their comments to me about the swimmers who got into the water in Hawaii in **1998**! Could the US Navy treat people with greater contempt? I know of at least two swimmers who attended the LFA barn-storming functions (despite of / not because of inadequate notification.) These people stepped forward to exchange what they'd gone through with the Navy. One with a background in teaching nursing at Yale University. She managed to introduce herself both in person at the Stake Holder's presentation and again wrote to the Navy in response to the **DEIS**. **Did** the Navy seriously consider her comments? I further understand that only a misleading portion of documents concerning Chris Reid's exposure experience was introduced at the end of one volume of the **FEIS**. And the only reason they even included this is because we hung them out to dry for their failure to do so on the first go-round. (I haven't had time to read that section in much detail yet either!) **But** the Navy dismissed this as not worthy of their consideration?

What would happen when if someone's child was in the water? **And** what happens if a demographic group in a coastal community complains of similar hearing problems or **sounds** such as happened in Victoria, B.C.? Will the Navy deem these people to be unworthy of their **concern**?

Has the Navy given an explanation as to how many comments or complaints **they've** had from people who were in the water? It occurs to me that documentation may have been generated before the response comment period began. And what justification does the Navy have for disregarding all aspects of this discussion about the acoustic influences to humans and coastal communities?

According to the people I talked with a few weeks ago during a live interview on Station KKUP, they were not injured while they were in the water. And they know several others who were not injured in the **LFA** radiated waters. But, interestingly, they said that some people on the shore were made ill. That coincides with what I've heard people from Hawaii saying. They got sick standing on the shore. But what level of care or concern did the Navy illustrate in an attempt to discover **people's** responses?

The amazing fact is that the Navy ignored an opportunity to ask.

In conclusion to this request by the Stop Low Frequency Worldwide Network that you extend the comment period and respond to our petition for a hearing, I am attaching an addendum to my request which is prepared by the Ocean Mammal Institute and is forwarded with their encouragement & permission. Please see five pages attached which outline "Why the Navy's Conclusions about the Safety of LFAS are Scientifically Flawed."

cheryl@manyrooms.net,stoplfas@onelist.com,11:35 PM 4/2/01 -0700,Request to Extend Comment

Thank you.

Sincerely,


Cheryl A. Magill

Coordinator

Stop LFAS Worldwide Network

1556 Halford Avenue, #322

Santa Clara, CA 95051

April 3, 2001

Why the Navy's Conclusions about the Safety of LFAS are Scientifically Flawed

The scientific reasoning behind the Navy's conclusions in their Environmental Impact Statement (EIS) that Low Frequency Active Sonar (LFAS) is safe are **scientifically flawed** for several reasons:

- The Navy's Scientific Research program never tested the full source level of LFAS on **marine mammals**. In the *Hawaii Quicklook*, written by the marine mammal scientists who conducted the testing, they **say on page 5**, "This research did not use the full source level of LFA." **On page 6 they say**, The playback protocol used in this Phase III research was specifically designed to expose animals to LFA sounds at levels that are **not harmful**." **In the Executive Summary on page vi they say**, "...it **will be difficult to extrapolate from these results to predict responses** at higher exposure levels."

The Navy has not followed the advice of their own hired scientists and has inappropriately extrapolated to conclude that LFAS is safe to deploy **at levels of at least 5,000 times more acoustic intensity and 70 times more pressure than test levels**.

- Even at the lower LFAS test levels a number of negative effects were documented including inshore gray whales changing their migration route, blue and fin whales decreasing their vocalization by 50 and 30% respectively, humpback whales leaving the test area, humpback whales changing the length of their song and three abandoned cetacean calves appearing in the test area in Hawaii during **and right after testing**. According to the precautionary principle, these observations should have been heeded as warning signs. Instead they were ignored or dismissed as biologically insignificant.
- Published accounts of whale strandings correlated with Naval maneuvers (*Nature* 1991 and 1998) suggest that beaked whales are especially vulnerable to high intensity sonar. However, beaked whales were not included in LFAS testing. In **fact** every recorded multi species stranding involving beaked whales has been correlated with Naval maneuvers nearby.
- LFAS was tested at low levels on only four species of whales for about one month each. Consequently, we know virtually nothing about what impact the higher, deployment level sonar **will have on marine life and humans over the long term**.
- The Navy's research has **focused on LFAS damaging hearing in cetaceans**. However, evidence now indicates that the damage from high intensity sonar is due mainly to resonance phenomena in the whales' cranial air spaces that tear apart delicate **tissues around their brains and ears**. **Necropsies show that this is what caused the death of the whales in the Bahamas stranding in March 2000**. The Navy has known the resonance frequency of airspaces in Cuvier's beaked whales since 1998.
- The **Navy ignores widely accepted research showing that whales change their behavior and show avoidance at about 115-120 dB**. (*Marine Mammals and Noise*, 1995) **In fact, they have consistently attempted to increase the scientifically**

accepted level at which whales change their behavior in response to noise without research to substantiate the increase.

Alternative Technology

According to the Navy, LFAS will be used to detect enemy submarines. We **now know that the Navy has developed passive sonar systems that can detect** silent submarines and not harm marine life.

This was noted in a statement of RAOM Malcolm I Fages, U.S. Navy Director, Submarine Warfare Division Office of the Chief Of Naval Operations (N87) and **RADM J. P. Davis**, U.S. Navy Program Executive Office for Submarines before the House Armed Services Committee Military Procurement Subcommittee on Submarine Force Structure and Modernization 27 June 2000:

Admiral Fages said in direct testimony that the Navy now has the ability to detect quiet submarines in littoral waters using passive listening systems, at considerable distances.

“Surveillance Towed **Array** Sensor System (SURTASS) Twin **Line** operations in 1998 and 1999 demonstrated the ability to detect advanced diesel submarines at substantial ranges in the littoral environment where contact was previously thought to be “unobtainable” by the operational commander... This use of COTS equipment has also resulted in substantially reduced costs with no reduction in fielded capability. Development of the new Advanced Deployable System (ADS) will provide a rapidly deployable acoustic array installed on the ocean floor that provides littoral undersea wide-area surveillance and real time cueing. **ADS** development is moving along smoothly with potential for accelerated capability development.”

From an environmental standpoint, there is no conflict: by using the safe, passive detection systems, and shutting down the acoustically hazardous LFAS system, the Navy can fulfill its mission for national security and be stewards of the seas.

While stopping the deployment of LFAS will protect marine life, it will not address harmful impacts from conventional Navy sonar as witnessed in the whale stranding and deaths in the Bahamas in March, 2000. However, it would be environmentally and fiscally sound to halt production of acoustically hazardous and tactically questionable LFAS.

Specific References

1. The scientific literature consistently states that whales move away from sounds at 115-120 dB:
 - Richardson, W.J., Greene, C.R., Malme, C.I. and Thomson O.H., (1995) *Marine Mammals and Noise*. Academic Press.
2. Sperm whales stopped **vocalizing in response to a seismic vessel hundreds of kilometers** away:
 - Bowles, A.E , **Smultea, M.**, Wursig, B., DeMaster, **P.** and **Ptaka, D.** (1994)

Abundance of marine mammals exposed to transmissions from Heard Island Feasibility Test. *Journal of the Acoustical Society of America* **96**; 2469-2484.

3. Studied reactions of humpback whales in response to explosions and drilling off Newfoundland. Their data revealed only small changes in residency, movements and general behavior. However, two humpback whales trapped in fishing gear after the explosions were found to have severely damaged ear structures similar to blast injury in humans. They noted that the whales showed no dramatic behavioral reaction to these harmful sounds and cautioned that whales' visible short-term reactions to loud sounds may not be a valid measure of the degree of impact of the sound on them:

- Lien, J., Todd S., Stevick, P., Marques, F. and Ketten, O. (1993) The reaction of humpback whales to explosives; Orientation, movements and behavior. 126th Meeting of the Acoustical Society of America. *Journal of the Acoustical Society of America* 94: 1849.

4. Bowhead whales react to a received level of 115 dB. Noted behavioral changes in bowhead whales more than 8 km from seismic vessels with received noise levels of 142-156 dB:

- Ljungblad, O.K., Wursig, B., Swartz, S.L. and Keene, J.M. (1988) Observations on the behavioral responses of bowhead whales (*Balacena mysticetus*) to active geophysical vessels in the Alaskan Beaufort Sea. *Arctic* 41: 183-194.

5. Several studies show that grey whales begin to avoid sounds at exposure levels of 110 dB and more than 80% of the whales showed avoidance to sounds at 130 dB. Ninety percent of the whales avoided airgun pulses at 180 dB. Typically whales slowed down and moved around the sound source. At times they moved into the shallow surf zone to avoid the noise, respiration rates increased and there were indications that mother-calf pairs were more sensitive to the noise than other whales:

- Malme, C.I., Miles, P.R., Clark, C.W., Tyack, P. and Bird, J.E.. (1983) *Investigations of the potential effects of underwater noise from petroleum industry activities on migrating gray whale behavior. BBN Report 5366*, Report from Bolt Beranek & Newman inc., Cambridge, MA for US Minerals Management Service, Anchorage, AK, NTIS PB86-174174.
- Malme, C.I., Miles, P.R., Clark, C.W., Tyack, P. and Bird, J.E.. (1983) *Investigations of the potential effects of underwater noise from petroleum industry activities on migrating gray whale behavior/Phase II: January 1984 migration. BBN Report 5851*, Report from BBN Laboratories Inc., Cambridge, MA for US Minerals Management Service, Anchorage, AK, NTIS PB86-218385.
- Malme, C.I., Miles, Wursig, B., Bird, J.E. and Tyack, P. (1986) *Behavioral responses of gray whales to industrial noise: Feeding observations and predictive modeling. BBN Report 6265*, Report from BBN Laboratories Inc., Cambridge, MA for US National Oceanic and Atmospheric Administration and US Minerals Management Service, Anchorage, AK.
- Malme, C.I., Miles, Wursig, B., Bird, J.E. and Tyack, P. (1988) Observations of feeding gray whale responses to controlled industrial noise exposure. In: Sackinger, W.M. et al. (Eds) *Port and Ocean Engineering Under Arctic*

Conditions. *Volume* li. University of Alaska, Fairbanks, AK, Geophys. Inst.

- Malme, C.L Miles, P.R., Miller, G.W., Richardson, W.J., Roseneau, D.G., Thomson, K.H., and Green, C.R., (1989) *Analysis and ranking of acoustic disturbance potential of petroleum industry activities and other sources of noise in the environment of marine mammals in Alaska*. BBN Report 6945, OCS Study MMS 98-0006, Report from BBN Systems & Technological Corporation, Cambridge, MA, for US Minerals Management Service, Anchorage, AK, NTIS PB90-188673.

6. Humpback whales showed avoidance when sonar was played back to them:

- Maybaum, H.L., (1989) Effects of 3.3 kHz sonar system on humpback whales, *Megaptera novaeangliae*, in Hawaiian waters. *Eos* 71:92.

7. After WWII the Norwegians used sonar to hunt whales because they found the sonar frightened especially baleen whales and caused a predictable flight response making them easier to catch:

- Mitchell, E. Blaylock, G. and Kozicki, V.M., (1981) *Modifiers of effort in whaling operations: with a survey of anecdotal sources on searching tactics and the use of asdic in the chase*. Center for Environmental Education Monograph Series, Center for Environmental Education, Inc., 1925 K Street NW, Washington, DC.

8. Loud underwater sounds also, of course, affect fish and other marine life. Studies show harmful effects of even moderate noise on hearing in fish and the viability of fish eggs exposed to noisy environments was significantly reduced:

- Myrberg, A.A. (1990) The effects of Man-Made Noise on the Behavior of Marine Animals. *Environment International* 16: 575-586.

9. While cetaceans show avoidance behavior to sounds starting around 115 dB, more intense sounds can cause physiological damage. Noise can mask biologically important signals. This article suggests that if baleen whales show low auditory thresholds for low frequency sounds, then sound levels of 195-210 dB might result in immediate damage to their auditory organs:

- Richardson, W.J., Green, C.R., Malme, Cl., Thompson, D. H., Moore, S.E. and Wurwig, B. (1991) *Effects of noise on marine mammals*. Report prepared by LGL Ecological Research Associates Inc., TX, for US Minerals Management Service, Atlantic OCS Region, Herndon, VA, MMS Study 90-0093, NTIS PB 91-168914, 462 pp.

10. In their chapter "Underwater Noise Pollution and its Significance for Whales and Dolphins", Jonathan Gordon and Anna Moscrop state that shock waves caused by intense underwater sound sources can cause direct tissue damage. Animals with air filled lungs and swim bladders are especially vulnerable because of the large difference in impedance between air in the lungs and their body tissues or sea water. Submerged animals exposed to explosions at short range showed hemorrhage in the lungs and ulceration of the gastro-intestinal tract.

- Simmonds, M.P. and Hutchinson, J.D. (1996) *The Conservation of Whales and Dolphins*. John Wiley & Sons.

11. Sperm whales became silent, stopped their activities and scattered in response to

military sonar signals:

- Watkins, W.A., Moore, K.E., and **Tyack, P. (1985) Sperm whale acoustic behaviors in the Southeast Caribbean. *Cetology* 19: 1-5.**

12. From *Sounding the Depths* by Michael Jasney, page 38, "The **National Environmental Policy Act demands that the Navy 'rigorously explore and objectively evaluate all reasonable alternatives'**-a duty that lies, in the words of the **regulators**, at 'the heart' of the entire assessment process. In this light, mere proclamations of national security do not suffice. It is necessary to establish that LFA, which **was** initially designed to face the deep-sea Soviet threat, actually meets the needs of the post-Cold War world. Doubts persist over the program's utility, and not merely among conservationists, but in such neutral quarters **as** the General Accounting Office and *Jane's Defense Weekly*. **At least** one military contractor has recommended that the Navy stick to passive sonar even in combat, since active sonar could serve **as** a beacon, attracting enemy fire. And indeed a less intrusive, passive sonar program that would deal expressly with the coastal threat - Advanced Deployable Systems - is **ready** for testing. Even as the Navy pushes forward on LFA, with NATO at its heels, the potential of this program (or others) to **serve** as the more 'reasonable alternative' contemplated by Congress has not, to our knowledge, been addressed. Under the circumstances, NRDC has opposed, and continues to oppose, the deployment of LFA."

- **Jasney, M. (1999) *Sounding the Depths; Supertankers, Sonar and the Rise of Undersea Noise*. Natural Resources Defense Council. Los Angeles; CA.**

13. Alexandros **Frantzis** linked a stranding of Cuvier's beaked whales in the Mediterranean to military low frequency active (LFA) sonar trials the day before. Cuvier's beaked whales rarely strand. A **Bioacoustics** Panel investigated this stranding and it is clear that the NATO vessel transmitting the LFA sonar came within **10 km** of the beach where the whales stranded. The panel concluded these **whales** were exposed to LFA sonar at 150-160 **dB**.

- **Frantzis, A. (1998) Does acoustic testing strand whales? *Nature* 39229.**

14. Noted the association between three other strandings of whales (including two pygmy sperm whales, a bottle-nosed whale and eighteen beaked whales) in the Canary Islands in **1985, 1988 and 1989** and the times at which naval fleets had been visibly operating in the area close to stranding sites:

- **Simmonds, M.P. and Lopez-Jurado, L.F. (1991) Whales and the Military. *Nature* 351:448.**

15. In their **annual report to Congress (Jan.31, 1998)** the **Marine Mammal Commission** stated, "If the LFA system *were* made available for worldwide use as proposed, **all** species and populations of marine mammals including those listed as endangered and threatened under the Endangered Species Act possibly could be affected."

This report continues to explain that the possible effects **on** marine mammals could include:

- death from trauma
- hearing loss
- disruption of feeding, **nursing, sensing and communication**
- abandonment of traditional feeding and **breeding habitats**
- stress (making **animals more vulnerable to disease and predation**)
- changes in **distribution and abundance of important marine mammal prey species**

- subsequent decreases in marine mammal survival and productivity

16. The Navy has funded much of the research done in large universities in the U.S. on the effects of sound on marine mammals. In 1995 *Marine Mammal Science* (published by the Society for Marine Mammalogy) published scientific correspondence entitled, "Marine Mammal Science, The US Navy and Academic Freedom." This correspondence discusses the reluctance of US marine mammal scientists to criticize two previous US Navy acoustic projects, Shipshock and ATOC. The authors state that, "Almost all prominent US marine mammal scientists with expertise in acoustics were involved in ATOC." (ATOC was transmitted at about 190 dB, LFAS will be transmitted at 235 dB). The authors go on to say, "the current structure of marine mammal science in the US, where Navy and other defense related agencies fund a large proportion of medium-large projects (especially those involving underwater acoustics) effectively restricts academic freedom. . . it is disturbing when any agency with a principal mandate unrelated to science funds a large proportion of the research in any field."

- Whitehead, H. and Weilgart, L. (1995) Marine mammal science, the US Navy and academic freedom. *Marine Mammal Science* 11: 260-263.

17. In a report submitted to National Marine Fisheries Service in March, 1998 on the impact of engine noise on the Hawaiian humpback whale, researchers at the Ocean Mammal Institute found that whales swim 2 to 3 times faster away from engines of 120 dB than they do around quieter engines. Research by the Ocean Mammal Institute also shows that the presence of a boat up to ½ mile away significantly changes the behavior of humpback whales.

18. Ken Balcomb, a marine mammal scientist doing research in the Bahamas, sent a letter to the LFAS Program Manager in February, 2001 stating that in the year following the Bahamas stranding, March 2001, he has not seen any of the photo-identified beaked whales he normally saw in the area. In fact, he has seen only two beaked whales since March and they were individuals he had never seen before. He believes they were new to the area. He concludes, "it is probable that all Cuvier's beaked whales in the region when the naval exercise commenced were killed by the sonar."

- Letter dated February 23, 2001 to Mr. J.S. Johnson