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-----Original Message-----

From: Balla-Holden, Andrea N CIV COMPACFLT, N465ABH

Sent: Thursday, September 10, 2015 9:48 PM

To: Buonantony, Danielle M CIV OPNAV, N45; Schroeder, Dawn E CIV OPNAV, N45; Ebert, Mary K CIV OPNAV, N45; Mosher, John G CIV COMPACFLT, N465JM; Kler, Kimberly H CIV NAVFAC NW, OP3E21; Kunz, Cindi A CIV NAVFAC NW, OP3E22; Gluch, Nora CIV NAVSEA 04, 04RE; Levitt, Susan G CIV NSWCCD Code 10; Paulk, Jennifer CIV ATR, 5.2.2.F; Paraskevas, Nicholas M. CIV NAVAIR AIR-1.6; Jenkins, Keith K CIV SPAWARSYSCEN-PACIFIC, 71510; Kotecki, Sarah E CIV SPAWARSYSCEN-PACIFIC, 56470; Bowman, Victoria NMMP (victoria.bowman@nmmpfoundation.org); Malik, Joan M CDR COMPACFLT, N465JMM; Serbanos, Tina M CIV NAVSEA, SEA 00L; Dellapina, Krista CAPT OPNAV, N4; Kurek, Matthew B CDR,OPNAV N4

Subject: USFWS Call Recap 9/9/15 regarding marbled murrelet criteria

All,

At Danielle's request and on her behalf, I am providing an update to the discussions with USFWS that took place on Wed 9/9/15 regarding the marbled murrelet criteria.

The meeting started off with an introduction by Tanya Summers, the new acting division manager. She provided an introduction to herself and thanked the Navy for agreeing with them on the explosive (barotrauma) criteria, (she was probably not aware that while Navy and USFWS came to the same number, we arrived there via different means). She then stated that they could not agree with the auditory injury criteria for explosives nor the criteria for sonar. Over the course of the discussion they said they wanted instead to use the criteria from the Phase I-Keyport EIS consultation. They repeatedly said they were uncomfortable with the rushed nature of the criteria development and that the criteria are not conservative enough to reduce the risk to their agency. We explained that we followed the exact process outlined in the 2 Marbled Murrelet Science Panels that they requested and Navy funded. We also explained that since they accepted one aspect of the explosive criteria, the old sonar criteria could not be used because the criteria for sonar should be higher than that used for explosives (one should be injured from explosives long before you could conceivably be injured from sonar).

We discussed at length and in detail the specific issues that made them uncomfortable with the Navy's proposed criteria. A few key points surfaced and are described below.

1) They have a fundamental lack of understanding of acoustics. They also stated that they don't have an avian audiologist on staff and doubt the Navy does either. We do however, have numerous acoustic experts on staff and bioacoustics experts who specialize in animal hearing and we explained this. We also provided them with a brief tutorial on Sonar 101 and how it is not an impulsive (explosive like) sound. At one point they asked us to analyze effects using a methodology that they disagreed with before the Science Panels. The person asking for the full reversal of analysis was not part of the Science Panels so there is a disconnect in their office about what their agency has asked for and agreed to in the past.

2) We have a difference of opinion on Permanent Threshold Shift (PTS) vs Temporary Threshold shift (TTS). Navy position is that PTS is permanent as a result of hair cell loss and would cause a loss in hearing at certain frequencies. This would be considered injury. In contrast, TTS is auditory fatigue and would not result in hair cell loss and thus is temporary and non-injurious. USFWS maintains that TTS is hair cell loss and thus is injury.

3) They are not separating harassment from harm. Rather all harassment is considered harm. We explained that the Navy's proposed criteria would allow for them to separate harassment from harm. This is biologically significant from an animal's perspective, as well as significant from a public perception stand point (behavioral harassments should not be quantified as harm).

4) There is a physics constant called "impedance" and they disagree with that value. If they change to the actual physics constant (as Navy suggests) then their criteria change from phase I to phase II jumps up almost 30 dB. This causes them concern that it's too great a change and that the Navy is "not being conservative enough" in our proposal. However, criteria does not "conserve a species" it only allows for an evaluation of effects.

5) We briefly discussed mitigation measures and they wanted CPF to put in writing (as part of our proposed action) that we would monitor for the marbled murrelet as part of the inland waters UNDET activities. We discussed how we've historically monitored for all seabirds (ESA-listed and not ESA-listed), but didn't discuss much further. We addressed the albatross (offshore seabird) only in that we couldn't really discuss mitigations because the range to effects for explosives have not been finalized because the criteria is not finalized.

6) They did say that they are under pressure from leadership to get this consultation completed. They let us know that they have one more biologist working on it who will write the albatross section.

7) They asked if we could limit our action to 5 years and we said no.

8) Despite all of the above, they asked the Navy to calculate the distance to the Navy's proposed thresholds. However, today we received an email stating the following from USFWS: "We just had an internal FWS meeting to discuss the overall consultation, information needs, and fish and bird thresholds. The FWS is still reviewing the Navy's comments on the murrelet thresholds and waiting for additional information from the Navy (Sarah's thesis). Because the Navy has stated that it takes time to calculate the distances to the thresholds, please hold off on calculating any distances to the Navy's proposed murrelet thresholds for sonar. We will be setting up a time for a conference call soon." The Navy is trying to obtain a copy of the thesis referenced, but it is being held tightly under USGS (?) control at the moment.

The next conference call is planned for Monday 9/14/15 (time TBD).

v/r,

Andrea

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Andrea Balla-Holden

Marine Resources Program Manager

U.S. Pacific Fleet, Environmental Readiness Division (N465ABH)

NW Detachment

360-396-0002

andrea.ballaholden@navy.mil

-----Original Message-----

From: Buonantony, Danielle M CIV OPNAV, N45

Sent: Thursday, September 03, 2015 6:58 PM

To: Schroeder, Dawn E CIV OPNAV, N45; Ebert, Mary K CIV OPNAV, N45; Mosher, John G CIV COMPACFLT, N465JM; Balla-Holden, Andrea N CIV COMPACFLT, N465ABH; Kler, Kimberly H CIV NAVFAC NW, OP3E21; Kunz, Cindi A CIV NAVFAC NW, OP3E22; Gluch, Nora CIV NAVSEA 04, 04RE; Levitt, Susan G CIV NSWCCD Code 10; Paulk, Jennifer CIV ATR, 5.2.2.F; Paraskevas, Nicholas M. CIV NAVAIR AIR-1.6; Jenkins, Keith K CIV SPAWARSYSCEN-PACIFIC, 71510; Kotecki, Sarah E CIV SPAWARSYSCEN-PACIFIC, 56470; Bowman, Victoria NMMP (victoria.bowman@nmmpfoundation.org); Malik, Joan M CDR COMPACFLT, N465JMM; Serbanos, Tina M CIV NAVSEA, SEA 00L; Dellapina, Krista CAPT OPNAV, N4; Kurek, Matthew B CDR,OPNAV N4

Subject: USFWS Call Recap

Importance: High

All,

Today we had a call with USFWS to discuss marbled murrelet criteria and thresholds. The call occurred during the tail end of the brief to Mr. Schregardus on the status of NWTT. I wanted to provide an update to everyone on the take aways from the call.

The Navy provided an updated to USFWS on our status of addressing all of their comments and verbally provided answers to many of their questions. There are three remaining issues that require resolution: 1) in air thresholds for albatross; 2) correct underwater thresholds to account for murrelet weights; and 3) impedance value to be used for PTS/TTS effects.

The SPAWAR team is working on developing a proposal for the first action item based on Damon 1974 data done by the Defense Nuclear Agency with in air explosives and birds. This will be submitted to USFWS by COB Tuesday. They are also working to incorporate data from Yelverton on fish and birds to develop a scaling function to determine the correct psi-msec values based on the murrelet's smaller weight than the ducks tested in the study. This should also be completed by COB Tuesday. The third topic we are following up with Jim Finneran and Jason Muslow for support on. We also provided some additional documentation to USFWS following the call to hopefully help decide this value based on the Navy's recommendation. We are having a follow-up meeting with USFWS on Wednesday afternoon to follow up on these three points and try to finalize the criteria and thresholds.

USFWS discussed with the Navy a couple of mitigation proposals during this meeting. They requested that the Navy consider adding the following two mitigation items to our proposed action to help reduce effects which they claim will help expedite their analysis. The mitigation items were as follows:

1) Carry into NWTT the marbled murrelet monitoring the Navy currently does in the inland waters for UNDETS under NWTRC. However, add the requirement that instead of generic observers and shutting down in the presence of any bird that we use certified marbled murrelet observers that have taken USFWS's training class.

We indicated that we didn't think it would be feasible to have certified observers. We also asked for clarification on how it would expedite the analysis if we added this mitigation measure. They wouldn't have to do as much analysis on the overlap since the monitoring would help preclude most take. They weren't willing to say that adding this mitigation measure would put us in a no jeopardy situation. They felt it was too pre-decisional since they don't know have the criteria or zones of effect. We indicated that we would consider this but that we preferred to to the analysis without any mitigation, make their determination of take, and then show (quantitatively) how any mitigation measure they propose actually reduces this take. We felt it was more transparent to the public and would show a clear nexus between any mitigation and reduction of impacts.

2) In the offshore area, any activities that we use marine mammal observers to ensure a mitigation zone is clear to also have them look for an ensure the zone is clear of albatross.

We clarified that we don't use MMOs but our Navy personnel that are lookouts receive training in sighting/identifying marine mammals. We told them that not all activities have marine mammal observers because some activities are events in which an object is fired several 10s of km away from a ship and it isn't practical for them to observe that far. We indicated for some activities that have air support that the pilots sometimes serve as lookouts to clear a target area, but that clearing an area for marine mammals would be different than albatross because the much smaller size of albatross. We indicated that we'd take these mitigation measures back to the group for discussion.

USFWS indicated they would like an answer to whether we are willing to include these mitigation proposals in our proposed action or not within the next week or so. Just wanted to pass along all of this information for everyone's awareness. We are hoping to wrap things up by Wednesday with USFWS on marbled murrelet criteria.

v/r

Danielle Buonantony

Marine Resources Specialist

Chief of Naval Operations

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