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CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES

BY _____

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 11 IN THE UNITED STATES DISTRICT COURT
 12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 CV 07-01899 GPS (Arlx)

<p>14 CALIFORNIA COASTAL COMMISSION, a state agency, 15 16 Plaintiff, 17 v. 18 UNITED STATES DEPARTMENT OF THE NAVY, SECRETARY OF THE 19 NAVY DONALD C. WINTER, 20 Defendants.</p>

CASE NO.
 COMPLAINT FOR
 PRELIMINARY AND
 PERMANENT INJUNCTIVE
 RELIEF; DECLARATORY
 RELIEF AND WRIT OF
 MANDAMUS

21
 22 PLAINTIFF CALIFORNIA COASTAL COMMISSION ALLEGES AS
 23 FOLLOWS:

24 JURISDICTION AND VENUE

25 1. Jurisdiction is proper in this Court pursuant to 28 United States Code
 26 section 1331 because this case involves a civil action arising under the laws of the
 27 United States, specifically 16 United States Code section 1451 et seq., the Coastal
 28 Zone Management Act. Jurisdiction is also proper under 5 United States Code

1 section 702 because plaintiff alleges that it has been aggrieved by the actions of
2 defendants and each of them, under 28 United States Code section 1361 because
3 plaintiff seeks to compel defendants to comply with the requirements of the
4 Coastal Zone Management Act and under 28 United States Code section 2201
5 because plaintiff seeks a declaration of the rights of the parties herein as set forth
6 in full below. Venue is proper in the Central District because defendants' activity
7 complained of in this complaint is and will be occurring off the coast of Southern
8 California in the Southern California Operating Area, generally between Santa
9 Barbara and Baja California. 28. U.S.C. § 1391(e)(2).

10 DESCRIPTION OF ACTION

11 2. This case involves a dispute about whether plaintiff California Coastal
12 Commission can review defendants' activity involving the use of mid-frequency
13 sonar in training exercises for consistency with California's federally-approved
14 coastal management program pursuant to the federal Coastal Zone Management
15 Act. Defendant United States Department of the Navy proposes to undertake
16 training exercises off the coast of Southern California which involve the use of
17 mid-frequency sonar outside the coastal zone. Mid-frequency sonar can adversely
18 affect marine mammals and sea turtles. Marine mammals and sea turtles swim in
19 and out of California's coastal zone on regular and cyclical bases and thus
20 constitute natural resources of the coastal zone. The use of mid-frequency sonar
21 will affect the natural resources of the coastal zone. The Navy submitted a
22 consistency determination for the training exercises to the Commission for its
23 review. The Navy determined that its activity was consistent to the maximum
24 extent practicable with California's management program. The Commission
25 reviewed the consistency determination. The Commission found that the Navy's
26 activity would only be consistent if conditioned to protect marine mammals and
27 sea turtles from the effects of mid-frequency sonar. The Commission imposed
28 conditions to protect marine mammals and sea turtles consistent with the resource

1 protection policies of the coastal management program. The Navy rejected these
2 conditions and informed the Commission that it intends to proceed with the
3 training exercises without complying with the conditions and thus in violation of
4 the Coastal Zone Management Act.

5 PARTIES AND LEGAL FRAMEWORK

6 3. On January 1, 1977 Division 20 of the California Public Resources Code (§
7 30000 et seq.), known as the California Coastal Act of 1976 became effective
8 (Coastal Act). The Coastal Act specifies that "[t]his division shall be liberally
9 construed to accomplish its purposes and objectives." Cal. Pub. Resources Code,
10 § 30009. Pursuant to the federal Coastal Zone Management Act (16 U.S.C. §
11 1451 et seq.; CZMA), in 1978 the Secretary of Commerce approved the California
12 Coastal Management Program (CCMP) which includes the Coastal Act. The
13 Coastal Act policies are enforceable policies within the meaning of the CZMA.

14 4. Plaintiff brings claims for relief. Plaintiff Commission is a state agency
15 created by the Coastal Act and has the power to sue and be sued. Cal. Pub.
16 Resources Code, §§ 30300, 30334. Plaintiff Commission is designated the state
17 coastal zone planning and management agency for any and all purposes and may
18 exercise any and all powers set forth in the CZMA. Cal. Pub. Resources Code, §
19 30330; 16 U.S.C. § 1451 et. seq. The Commission is authorized to grant or issue
20 any statement required pursuant to such federal law that an activity of any person,
21 including a federal agency, is in conformity with the provisions of the Coastal Act
22 which is part of California's federally approved CCMP. Cal. Pub. Resources
23 Code, § 30330. The Commission is the state agency charged with reviewing
24 federal agency activities for consistency with the CCMP. Cal. Pub. Resources
25 Code, § 30330; 16 U.S.C. § 1456(c)(1). As the authorized agency, the
26 Commission is aggrieved by the actions of defendants and has standing to bring
27 this action. Plaintiff has exhausted all available administrative remedies prior to
28 bringing this action.

1 5. Defendant United States Department of the Navy is a department of the
2 United States of America and a Federal agency within the meaning of 16 United
3 States Code section 1456; defendant Navy is named pursuant to 5 United States
4 Code section 702 among others. Defendant Secretary of the Navy is named here
5 in his official capacity as the head of the Department of the Navy pursuant to 5
6 United States Code section 702 among others. Each of the defendants named in
7 this complaint is sued in its capacity as an agency of the United States
8 Government bearing responsibility, in whole or in part, for the acts complained of
9 in this complaint.

10 6. The CZMA, 16 United States Code section 1456, requires that after final
11 approval of the CCMP, each federal agency activity within or outside the coastal
12 zone that affects any land or water use or natural resource of the coastal zone shall
13 be carried out in a manner which is consistent to the maximum extent practicable
14 with the enforceable polices of the CCMP. Natural resources include biological
15 resources that are found within a State's coastal zone on a regular or cyclical basis
16 and include but are not limited to mammals (marine mammals), reptiles (sea
17 turtles) and coastal resources of national significance. 15 C.F.R. § 930.11(b).
18 Coastal resources of national significance include wildlife habitat area determined
19 by a state to be of substantial biological value. 16 U.S.C. § 1453(2). Coastal
20 resources include resources described in the CCMP. 15 C.F.R. § 930.11(b).
21 "Effect on coastal use or resource" means any reasonably foreseeable effect on
22 any coastal use or resource resulting from a federal action (including a federal
23 activity). 15 C.F.R. § 930.11(g). Effects are not just environmental effects but
24 include effects on coastal uses and include both direct effects which result from
25 the activity and occur at the same time and place as the activity and indirect
26 (cumulative and secondary) effects which result from the activity and are later in
27 time or farther removed in distance but are still reasonably foreseeable. 15 C.F.R.
28 § 930.11(g). Indirect effects are effects resulting from the incremental impact of

1 the federal action when added to other past, present and reasonably foreseeable
2 actions, regardless of what person(s) undertake(s) such actions. 15 C.F.R. §
3 930.11(g). Effects on natural resources of the coastal zone include effects
4 resulting from federal activities outside the coastal zone which affect natural
5 resources of the coastal zone, including marine mammals and sea turtles which are
6 found within a State's coastal zone on a regular or cyclical basis as well as state-
7 designated areas of special biological significance.

8 7. The term "consistent to the maximum extent practicable" means "fully
9 consistent with the enforceable policies" of the CCMP "unless full consistency is
10 prohibited by existing law applicable to the Federal agency." 15 C.F.R. §
11 930.32(a)(1). Enforceable policies include laws or regulations by which a State
12 exerts control over natural resources in the coastal zone and which are
13 incorporated in the management program. 15 C.F.R. § 930.11(h). Whenever
14 legally permissible, federal agencies "shall consider the enforceable policies of
15 management programs as requirements to be adhered to in addition to existing
16 Federal agency statutory mandates." 15 C.F.R. § 930.11(h). If a federal agency
17 asserts that full consistency with a management program is prohibited, it is
18 required to describe to the state agency in writing the statutory provisions,
19 legislative history or other legal authority which limits the federal agency's
20 discretion to be fully consistent. 15 C.F.R. § 930.11(h).

21 8. A state agency such as the Commission may issue a conditional
22 concurrence setting forth the conditions which must be satisfied in order to bring
23 an activity into consistency. 15 C.F.R. § 930.4(a)(1). If the federal agency
24 determines the conditions are unacceptable, the State's conditional concurrence is
25 treated as an objection. 15 C.F.R. § 930.4 (a)(2) and (3). If the federal agency
26 decides to proceed with the activity over the State's objection and is unwilling to
27 mediate the matter, the State's recourse is to sue. 15 C.F.R. § 930.116.

28 9. California's CCMP includes enforceable policies for protection of marine

1 resources, including but not limited to marine mammals and sea turtles and areas
2 of special biological significance. The Coastal Act (part of the CCMP) provides
3 that "[m]arine resources shall be maintained, enhanced, and where feasible,
4 restored. Special protection shall be given to areas and species of special
5 biological or economic significance. Uses of the marine environment shall be
6 carried out in a manner that will sustain the biological productivity of coastal
7 waters and that will maintain healthy populations of all species of marine
8 organisms for long-term commercial, recreational, scientific and educational
9 purposes." Cal. Pub. Resources Code, § 30230. The Coastal Act provides that the
10 biological productivity and quality of coastal waters appropriate to maintain
11 optimum populations of marine organisms shall be maintained. Cal. Pub.
12 Resources Code, § 30231. The Act further provides that environmentally sensitive
13 habitat areas shall be protected against any significant disruption of habitat values.
14 Cal. Pub. Resources Code, § 30240.

15 FIRST CLAIM FOR RELIEF

16 PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF

17 10. The Commission incorporates by reference the allegations of paragraphs
18 1 through 9 as if set forth in full at this point.

19 11. On October 25, 2006 the Navy submitted to the Commission its
20 consistency determination for the Composite Training Unit Exercises
21 (COMPTUEX) and Joint Task Force Exercises (JTFEX). The Navy proposed to
22 conduct seven COMPTUEXs and seven JTFEXs (a total of fourteen exercises)
23 over a two year period commencing in January 2007. The exercises will include
24 the use of mid-frequency sonar outside the coastal zone.

25 12. The Commission considered the Navy's consistency determination at two
26 public hearings, one in December 2006 and again on January 10, 2007. The
27 Commission conditionally concurred with the consistency determination, finding
28 that only as conditioned would the activity be consistent (both fully and to the

1 maximum extent practicable) with enforceable policies of the CCMP, specifically
2 sections 30230, 30231 and 30240 of the Coastal Act. Cal. Pub. Resources Code,
3 §§ 30230, 30231 and 30240. The Commission imposed fourteen conditions,
4 twelve of which were intended to protect marine mammals, sea turtles and areas of
5 special biological significance from the effects of mid-frequency sonar. The
6 Commission found that many of the species affected by mid-frequency sonar
7 spend some portions of their life cycles within coastal waters including marine
8 mammals and sea turtles that swim in and out of the coastal zone. The
9 Commission's conditions required the Navy to: implement safety zones out to the
10 distance at which the sonar has attenuated to 154 dB (a lower frequency threshold
11 than the Navy proposed); include two dedicated trained observers at all times
12 during the use of sonar; provide adequate training for the monitors; include
13 Passive Acoustic Monitoring and use it to enforce the safety zone; perform aerial
14 monitoring; avoid where possible effects on gray whales, the National Marine
15 Sanctuaries, areas with high concentrations of marine mammals and complex,
16 steep seabed topography; implement additional measures for night and low
17 visibility conditions; and implement pre-exercise monitoring one-half hour before
18 sonar use.

19 13. On February 12, 2007 the Navy wrote to the Commission and advised that
20 it was unable to agree to the twelve conditions regarding the use of mid-frequency
21 sonar as set forth in the Commission's conditional concurrence. The Navy
22 informed the Commission that it would treat the Commission's conditional
23 concurrence as an objection with regard to those twelve conditions and that it
24 intends to proceed with the activity as outlined in the consistency determination.

25 14. Also on February 12, 2007 the Navy posted on its Internet web-site two
26 documents - an environmental assessment and a finding of no significant impact -
27 for the training exercises. The Navy did not provide these documents or the
28 environmental information on which they are based to the Commission in

1 connection with the consistency determination for the training exercises. The
2 environmental assessment contains information indicating that the use of mid-
3 frequency sonar will have effects, including potential adverse effects, on marine
4 mammals. The environmental assessment states that the mid-frequency sonar will
5 result in Level B Harassment to a number of species including whales, dolphins
6 and porpoises. With regard to several endangered species including the blue
7 whale, fin whale, humpback whale, sei whale and sperm whale, the environment
8 assessment states that the Navy finds that the training events may have effects on
9 those species and a final determination of effect will be discussed through an
10 Endangered Species Act section 7 process. Section 7 is a process involving
11 consultation between the National Marine Fisheries Service (NMFS) and a federal
12 agency and can result in NMFS issuing permits for the "take" of an endangered
13 species in which a species is harassed, harmed, killed or otherwise adversely
14 affected by an activity.

15 15. The use of mid-frequency sonar will have reasonably foreseeable effects
16 on coastal uses and resources. The actions of the Navy and the Secretary of the
17 Navy will lead to serious impacts on California's coastal resources, including but
18 not limited to adverse impacts on marine mammals such as whales, dolphins and
19 porpoises as well as sea turtles which are found in California's coastal zone on a
20 regular as well as cyclical basis. The Navy's action in proceeding with the
21 training exercises over the objection of the Commission and without complying
22 with the twelve conditions will be inconsistent with the CCMP. The Navy's
23 activity will not be consistent to the maximum extent practicable with the CCMP.
24 The Navy has failed to demonstrate that it cannot meet the twelve conditions. The
25 Navy has not argued, nor has it demonstrated, that full consistency is prohibited by
26 existing federal laws applicable to the Navy which limit the Navy's discretion to
27 be fully consistent with the enforceable policies of the CCMP. The Navy is not
28 excused from conducting the training exercises in a manner that is fully consistent

1 with the enforceable policies of the CCMP. The Navy's own environmental
2 information demonstrates that reasonably foreseeable effects can occur to the
3 natural resources of California's coastal zone.

4 16. Unless the Navy and the Secretary are enjoined from proceeding with the
5 training exercises without complying with the twelve conditions required by the
6 Commission in its conditional concurrence in the Navy's consistency
7 determination, the Commission will be irreparably harmed in that the police power
8 jurisdiction granted to the Commission by the State Legislature will be directly
9 undermined, and the Commission's ability to carry out the goals, objectives and
10 enforceable policies of the Coastal Act and the CCMP will be seriously impaired.
11 Unless defendants are enjoined to comply with the CZMA and the CCMP, the
12 Commission's authority under the CZMA and the CCMP will be rendered
13 ineffective. As the agency responsible for protection of the public's rights in
14 precious coastal resources including but not limited to marine mammals and sea
15 turtles, the Commission will suffer further irreparable harm in that defendants'
16 activity will permanently and irrevocably harm the public's rights to have the
17 Commission insure that defendants' activity is consistent with the CCMP.
18 Moreover, the Navy's training exercises including the use of mid-frequency sonar
19 can reasonably be expected to affect California's coastal water uses and natural
20 resources. Unless defendants are commanded to comply with the CZMA,
21 defendants' activity will affect California's coastal water uses and natural
22 resources without being fully consistent with the CCMP, in violation of the
23 CZMA.

24 17. The Commission has requested orally and in writing that defendants
25 comply with the CCMP and the CZMA. The Commission has attempted to
26 resolve its differences with the Navy and has not been able to do so. Defendants
27 have stated in writing that they plan to proceed with the training exercises over the
28 Commission's objection. The Commission has no adequate remedy at law for the

1 harm being done by defendants in that only the exercise of the Court's equitable
2 powers can command defendants to comply with CZMA and the CCMP. The
3 Commission has no adequate remedy at law in that only the exercise of the Court's
4 equitable powers can 1) enjoin defendants from proceeding with their activity
5 unless and until they comply with the CZMA and the CCMP and 2) enjoin
6 defendants to comply with the twelve conditions identified by the Commission as
7 necessary to bring defendants' activity into compliance with the CZMA and the
8 CCMP. 5 U.S.C. § 702.

9 SECOND CLAIM FOR RELIEF

10 DECLARATORY RELIEF

11 18. The Commission incorporates the allegations of paragraphs 1 through 17
12 as if set forth in full at this point.

13 19. An actual controversy exists between the Commission and defendants in
14 that the Commission contends that defendants' activity involving the use of mid-
15 frequency sonar outside the coastal zone is a federal activity affecting the natural
16 resources of the coastal zone, is subject to consistency review by the Commission
17 and is required to be fully consistent with the enforceable policies of the CCMP
18 including California Public Resources Code sections 30230, 30231 and 30240.
19 Defendants disagree and contend that the part of their activity involving the use of
20 mid-frequency sonar is not subject to consistency review by the Commission and
21 will not affect the coastal zone.

22 20. A declaration of the rights of the parties and of the proper interpretation
23 of the relationship between the CZMA, the CCMP and defendants' activity is
24 appropriate for the determination of this case pursuant to 28 United States Code
25 section 2201.

26 21. The Commission is entitled to a declaration that defendants' activity
27 involving the use of mid-frequency sonar outside the coastal zone in connection
28 with the COMPTUEX and JTFEX is a federal activity affecting the natural

1 resources of the coastal zone, is subject to consistency review by the Commission
2 and is required to be fully consistent with the enforceable policies of the CCMP
3 including California Public Resources Code sections 30230, 30231 and 30240.
4 The Commission is further entitled to a declaration that defendants' activity is not
5 consistent to the maximum extent practicable with the enforceable policies of the
6 CCMP.

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THIRD CLAIM FOR RELIEF

WRIT OF MANDAMUS

22. The Commission incorporates the allegations of paragraphs 1 through 21
as if set forth in full at this point.

23. Defendants and each of them have a duty under the CZMA (16 U.S.C. §
1456) to provide a consistency determination to the Commission for all of their
federal activity affecting the coastal zone, including but not limited to the use of
mid-frequency sonar. Defendants and each of them have a duty to insure that their
activity is fully consistent with the CCMP, including the use of mid-frequency
sonar.

24. In refusing to submit the use of mid-frequency sonar as a part of their
federal activity requiring consistency review by the Commission, defendants have
breached their duty under the CZMA. In refusing to comply with the twelve
conditions imposed by the Commission on the Navy's consistency determination,
defendants have breached their duty under the CZMA.

25. Pursuant to 28 United States Code section 1362, the Commission is
entitled to a writ of mandamus from this Court to compel defendants to perform
their duties under the CZMA.

PRAYER FOR RELIEF

Wherefore, plaintiff California Coastal Commission prays for relief and
judgment against defendants the United States Department of the Navy and
Secretary of the Navy Donald C. Winter as follows:

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ON THE FIRST CLAIM FOR RELIEF

1. For a preliminary injunction ordering defendants, and any persons acting on their behalf, to comply with the CZMA and the CCMP;

2. For a preliminary injunction enjoining defendants, and any persons acting on their behalf, from proceeding with the use of mid-frequency sonar in connection with the COMPTUEX and JTFEX unless and until they comply with the twelve conditions found by the Commission to be necessary to make defendants' activity consistent with the CZMA and the CCMP;

3. For a permanent injunction ordering defendants, and any persons acting on their behalf, to comply with the CZMA and the CCMP;

4. For a permanent injunction enjoining defendants, and any persons acting on their behalf, from proceeding with the use of mid-frequency sonar in connection with the COMPTUEX and JTFEX unless and until they comply with the twelve conditions found by the Commission to be necessary to make defendants' activity consistent with the CZMA and the CCMP;

ON THE SECOND CLAIM FOR RELIEF

5. For a declaration that defendants' activity involving the use of mid-frequency sonar outside the coastal zone in connection with the COMPTUEX and JTFEX is a federal activity affecting the natural resources of the coastal zone, is subject to consistency review by the Commission and is required to be fully consistent with the enforceable policies of the CCMP including California Public Resources Code sections 30230, 30231 and 30240;

6. For a declaration that defendants' activity is not consistent to the maximum extent practicable with the enforceable policies of the CCMP;

ON THE THIRD CLAIM FOR RELIEF

7. For a writ of mandamus directing defendants to perform their duties under the CZMA;

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ON ALL CLAIMS FOR RELIEF

- 8. For costs of suit and reasonable attorney's fees; and
- 9. For such other relief as the Court deems just and proper.

Dated: March 7, 2007

Respectfully submitted,
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