

Environmental Group Loses Challenge to Protect Whales

By Fiona Smith
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SAN FRANCISCO - Even the largest animal on earth is no match for the massive container ships that ply California's coasts moving goods through the state's ports. Neither is an environmental group that sued to force the U.S. Coast Guard to better protect the imperiled blue whales from being struck and killed by ships.

The Center for Biological Diversity lost its case Monday when U.S. District Judge Maxine Chesney in San Francisco rejected its argument that the Coast Guard's duty to regulate ship traffic required it to consider the Endangered Species Act.

The center argued in the suit that the Coast Guard is required to consult with National Marine Fisheries Service scientists to ensure that the actions it takes to regulate ship traffic don't jeopardize the blue whale and other protected whales in the area.

Chesney, instead, granted the Coast Guard its motion for summary judgment, writing that its ongoing regulation of shipping traffic doesn't in and of itself trigger Endangered Species Act requirements.

The suit was filed after three blue whales were struck and killed by ships in 2007 off the Southern California coast. Andrea Treece, an attorney for the environmental group, said that the high death toll is far above the level of non-natural whale deaths that scientists say blue whale populations can suffer without risking extinction.

"The blue whale can't afford to lose individuals to ship strikes," Treece said.

The center has not yet decided whether to appeal the decision, she said.

The Coast Guard would not comment on the court decision, but Stephanie Young, a spokeswoman in Los Angeles, said protecting marine animals is part of the Coast Guard's mission. The agency takes concrete steps to save whales such as aerial monitoring, warning mariners when whales are present and asking them to reduce vessel speed after whales are spotted, Young said.

The whales were hit in the Santa Barbara Channel, a shipping lane set by the Coast Guard that leads to the ports of Los Angeles and Long Beach, which combined constitute the nation's busiest port traffic. The channel crosses the whales' migratory path and provides a rich feeding ground for whales and other marine mammals.

The suit also challenged the Coast Guard's oversight of shipping channels leading into San Diego and ports in the San Francisco Bay Area. Chesney threw those claims out ruling that the center had not adequately laid out the allegations in its notice of intent to sue the Coast Guard. Chesney suggested other legal alternatives for the center, writing that it could petition the Coast Guard to begin a new rulemaking process and, if the guard denied such a petition, challenge the denial in court. Chesney also suggested the center sue individual ship owners responsible for striking whales.

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