

Exclusive: Emails Reveal Navy's Intent to Break Law, Threatening Endangered Wildlife

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When it comes to getting its way with war-gaming in the Pacific Northwest, nobody is better at the concept of "distributed lethality" than the US Navy. In 2015, the [Navy introduced this concept](#) "that promised to add more fire power to all manner of Navy vessels and operate them in a way that would spread thin enemy defenses." The Navy seems determined to move forward with planned military activities like increasing jet dogfighting, electromagnetic warfare training and other actions, regardless of how many animals it kills. Internal emails show how the Navy has been working to manipulate the US Fish and Wildlife Service (FWS) biologists into bending the law, then proceeded to break the law, whilst the consultations between the two entities are ongoing.

An anonymous Navy source leaked several [internal emails](#) to Truthout that reveal how the Navy is trying to redefine "harm" to wildlife, in a way that would allow the Navy a potentially far greater rate of "takes" to marbled murrelets and other endangered and/or threatened species. A "take" is [defined](#) by the Endangered Species Act as to "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect" any threatened or endangered species. Marbled murrelets are secretive diving seabirds that nest in old-growth forests, which makes them vulnerable to both jet noise and sonar.

The [emails show](#) that while the Navy is aware that exceeding authorized levels of harm to species is illegal, it is nevertheless going to great lengths to move forward with its actions -- regardless of their toll on wildlife.

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The emails, [from August and September 2015](#), reveal in detail how Navy personnel from the Pacific Northwest to the Pentagon pressured an apparently overwhelmed and cash-strapped FWS to complete its biological opinion (BO) in

ways that would benefit the Navy. A BO is a legal document from the FWS that is required in order for the Navy to obtain the permits it needs under the Endangered Species Act, while conducting exercises and war games. As of publication of this article, the BO, covering marbled murrelets, northern spotted owls, bull trout and other species, is not complete.

A [series of email threads](#) outlines the Navy's concern about the FWS not adhering to Navy deadlines, and its intent to influence an overdue draft BO for the final environmental impact statement on its Northwest Training and Testing Range, which covers an area spanning from Northern California to southeast Alaska. "We also discussed how we might help FWS in completing their BO," read an email from August 2015, showing how the Navy aimed to cross the line and influence the permitting process for their own activities, "and most specifically agreed to help them write the Proposed Action part of the BO."

The emails show the Navy's impatience with an anticipated delay in the process required for it to be permitted to pursue training that would most certainly result in deaths of large numbers of animals, including endangered and threatened species. In November 2015, after the emails, the Navy received a permit from the National Oceanic and Atmospheric Administration for take of whales, dolphins, porpoises, seals and sea lions. The total number of takes for marine mammals only in Pacific Northwest waters, not including the Gulf of Alaska, is more than 1.2 million. For the Gulf of Alaska: 2.1 million, and for Hawaii-Southern California: 9.4 million.

Going to Any Lengths

While specific examples from the internal emails themselves will be detailed below, what is clear overall is the extent to which the Navy is willing to pressure the FWS to stretch the law -- and to actually violate federal law itself.

Navy personnel even proposed writing portions of the biological opinion for the FWS, which clearly subverts the purpose of having the FWS oversee plans to protect endangered species from naval activities.

[One email](#) expressed concern over whether the Navy's ongoing activities not covered in the expiring BO could continue, including "pierside sonar ... and various NAVSEA [Naval Sea Systems Command] testing activities. We are conducting these activities without coverage ..."

The communications show that the Navy was pushing for the release of the final environmental impact statement without the completion of the consultation with the FWS required by law. The Navy advocated that the statement be released via a waiver from the deputy assistant secretary of the Navy, hence giving itself permission to do what it wants to do.

Other actions that were either questionable or illegal included:

- attempting to have the FWS separate harassment and animal behavior changes from the definition of "harm";
- exerting influence over how the FWS analyzes acoustical information;
- using a non-peer-reviewed Navy student thesis to evaluate marbled murrelet thresholds for sonar (meaning how much damage sonar has on the bird, impacting hearing and its ability to navigate and recover from damage caused by the sounds);
- an outright refusal to take FWS-requested mitigation measures for marbled murrelets;
- a discussion on the intimidation factor of high-level direct calls from the Pentagon to FWS field staff who were working on the BO.

Knowingly Breaking the Law

Karen Sullivan, former assistant regional director at the US Fish and Wildlife Service's Division of External Affairs and a retired endangered species biologist, said the Navy's emails reveal what she believes are blatant attempts to circumvent laws and procedures required in order for the Navy to obtain the "take" permits needed for its testing and training.

Sullivan worked for the FWS for 15 years, is an expert in the bureaucratic procedures the Navy is supposed to be following and is now part of the West Coast Action Alliance, one of two large multistate and international citizen groups that have tasked themselves with watchdogging the Navy, due to what they believe are ongoing violations of the law, blatant acts of disrespect toward human and environmental health and bellicose behavior toward members of the public who speak out. Her group has logged multiple instances of naval personnel carrying out online verbal attacks on residents who make complaints about extreme noise levels near their homes that are generated by naval aircraft.

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"In my experience working for the US FWS, it was unusual and very inappropriate for an Interior Department-level political appointee or his staff to call a field biologist, and even more so for a political appointee or their staff from another agency to do that from Washington, DC, because it bypassed the normal chain of command where more politically astute senior-level FWS employees in either DC or the Regional Office could vet such requests," Sullivan told Truthout, in reference to what was revealed in the emails. "It was also intimidating to field staff to have to deal directly with Washington, DC, big shots. So, to have this Pentagon-level staffer calling the field biologist is bad right off the bat. Not only

that, it appears she even had the deputy assistant secretary of the Navy on one call with a field biologist."

[Emails from John Mosher](#), the US Pacific Fleet Northwest environmental program manager, confirm that the FWS was concerned about the safety of the marbled murrelet, and that the Navy carried on with its "games" regardless.

In one of the emails, [Mosher clearly admits](#), "We are conducting these activities without coverage, so I assume they could continue, but we need to come to legal consensus."

This is a frank admission of breaking the law.

Activities not covered (that is, not permitted by law) included pierside sonar: According to the [Navy's Northwest Training and Testing activities](#), use of pierside sonar is going from an unknown number of instances to 22 events per year, and is likely happening already. Another "not covered" activity is the Transit Protection System, in which large numbers of pilings (heavy posts hammered into the seafloor to support infrastructure like piers and buildings atop the water) are being driven (pile-driving noise can carry 18 miles underwater), and NAVSEA Testing, which includes the use of explosives.

"There's been no coverage on endangered and threatened species the FWS manages, on all of that activity, for who knows how long -- unless some extraordinary and legally questionable measures were taken," Sullivan said. "This email was written in August and it's been eight months since then, with what coverage of incidental takes? What numbers limit them? How has the Navy been reporting them?"

An email from Susan Levitt of the Naval Surface Warfare Command also [admits](#), "... we have consensus that NAVSEA risks remain the same until the new permits are in hand." This is another stark admission that the Navy was proceeding without proper permits.

The email chain reveals how Mosher explores the possibility of a former assistant secretary of the Navy, Donald Schregardus, letting him publish the final EIS without state and federal consultations completed, which, according to Sullivan, "is a phenomenal departure from Navy policy." But that's exactly what the Navy did, in early October 2015.

"They never put out a final EIS without the required consultations until this one, and another recent one at Boardman Range in Oregon," Sullivan explained. "The fact that the Navy wanted assurances in advance from FWS that their activities would not cause 'jeopardy,' or imminent threat of extinction, to any species, which could stop the project, is underhanded and may be illegal."

[Mosher goes on to suggest](#) that the Navy itself should move forward with helping write the biological opinion.

"This would completely remove any neutrality from the consultation," Sullivan said. "By writing the environmental baseline as Mosher suggests, the Navy would also get to control the results of the entire evaluation."

Blatant Disregard for Endangered Species

[Naval emails reveal](#) how the Navy asked the FWS to use 42-year-old information from a US Department of Defense study called "[The Tolerance of Birds to Airblast](#)."

Considering the fact that there is much more recent and accurate data available about the impacts of noise on wild seabirds than the 1974 study on domestic chickens, ducks and geese, this is further evidence that the Navy is not doing everything it can to make sure it minimizes impacts to wildlife where it carries out its exercises.

[Another email from this thread](#) suggests that the Navy was even performing the mathematical calculations it wanted the FWS to use.

The internal communications reveal several areas of disagreement between the Navy and FWS, including the impacts of airblast on albatrosses (all 22 species of which are either endangered or of "concern," as well as the question of what constitutes temporary versus permanent harm to certain birds.

"In the absence of better data, the FWS usually tries to err on the safe side with a species, but the Navy pushed them to do otherwise," Sullivan said of [this portion of the email thread](#). "What follows is an attempt by the Navy to force the FWS to eliminate temporary hearing loss from assessed impacts, which would be illegal. You can't separate that or behavior changes from the definition of harm."

The emails [also reveal](#) that the Pentagon's Danielle Buonantony, a marine resources specialist for the Pentagon's chief of naval operations, attempted to inform a FWS biologist about what constitutes an injury -- in a species that she knows very little about. [Buonantony wrote](#): "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."

The [email thread reveals](#) Buonantony's clear concerns about public perception of the Navy's impacts on wildlife, and how she and the Navy went to great lengths to show that "behavioral harassments" of animals, despite the fact that they often

cause harm and are included in the legal definition of harm, "should not be quantified as harm."

"This is an attempt to apply standards from the Marine Mammal Protection Act to the Endangered Species Act," Sullivan said of Buonantony's actions. "It cannot be legally done."

Buonantony also informed her Navy colleagues that the Navy turned down the measures for mitigation suggested by the FWS.

One of the suggestions was to have federal wildlife agencies train the Navy's lookouts, but this too was refused.

"The Navy's methodology for its lookouts is consistent with 17th century standards," said Sullivan, who is also a sailor. "They won't even tow hydrophones to listen for marine mammals in advance of commencing bombing exercises."

Ongoing Naval Refusal to Protect an Endangered Species

The marbled murrelet is listed as a threatened species [by the US FWS](#) in Washington, Oregon and California, but is considered globally endangered by the International Union for Conservation of Nature ([IUCN red listed](#)).

The Navy has been debating noise impacts to the bird with the FWS since at least 2011, when the FWS published a Navy-backed study titled, "[Environmental Science Panel for Marbled Murrelet Underwater Noise Injury Threshold](#)."

In the [summary of the report](#), the FWS stated:

- There is a dearth of information on sound impacts on seabirds.
- We must give benefit of the doubt to the species, apply best available information, and make legally defensible decisions.
- Given the declining status of murrelets it is important to avoid reductions in productivity (i.e., injury).
- The USFWS cannot afford type II errors (i.e., concluding there is no effect when there really is an effect).

This science panel, composed of seven Navy employees and contractors, four academics, one FWS biologist and two National Marine Fisheries Service biologists, had convened "to develop recommended interim criteria for evaluating onset of injury to the marbled murrelet from underwater sounds resulting from pile driving."

The panel concluded that budgerigars (a species of parrot) and sea lions were acceptable surrogate species for establishing surface and underwater injury standards for marbled murrelets.

In a 2013 presentation to Washington State Department of Transportation biologists and consultants, when discussing budgerigars as an example, the same FWS biologist said about survey protocols, "If monitoring is required, follow USFWS protocol and utilize certified observers."

This means that if the Navy were to follow these protocols, they too would need to follow the same FWS protocol and have certified wildlife observers during their activities.

It could be assumed that the FWS again expected the Navy to follow these safety protocols and said as much to the Navy when the Navy requested mitigation measures, because one of the same Navy employees who was on that 2011 science panel contributed to these 2015 emails. Yet, in the emails, Navy personnel declared that using FWS-certified observers would not be possible.

"This makes no sense, if interim standards had been actually agreed upon, but it does make sense if the Navy is uncomfortable with having FWS-trained observers aboard who might notice that perhaps the standards for measuring onset of injury are inadequate," Sullivan said of this seeming contradiction. "The major reason cited by the Navy for not allowing civilians aboard their ships is national security, but it is common knowledge that civilians are allowed aboard in other capacities, such as fitness instructors. The FWS no doubt offered to train Navy personnel, too, so the Navy's refusal makes no sense except as tacit acknowledgement that harm at greater levels than predicted may be possible."

Sullivan said that if an evaluation of harm to a species rules out standard definitions of harm, encourages use of data more than 40 years old and prohibits the presence of adequately trained observers, then it neither gives the benefit of the doubt to the species nor uses the best available information -- and thus does not contribute to legally defensible solutions.

Interestingly, and not coincidentally, the [first person listed for the Navy representatives](#) on the 2011 science panel for the report on the underwater noise injury threshold is Danielle Buonantony, the Pentagon staffer who put the deputy secretary of the Navy on a phone call with a FWS field biologist.

Throughout the emails, the Navy displays a consistent trend toward disregarding harm its actions might cause to an endangered species. For example, the Navy's Andrea Balla-Holden [wrote](#): "They [FWS] asked if we could limit our action to 5 years and we said no."

Meanwhile, a [slideshow by a FWS biologist](#) shows the nuances of measuring hearing in various seabirds, especially marbled murrelets.

The slideshow reveals substantial concern within the FWS over how the Navy is conducting pile-driving all over Washington State's Puget Sound and up and down the Strait of Juan de Fuca.

Concerns about harm to birds and other marine life abound, particularly because the 5,300 pilings the Navy has been driving and continues to drive all throughout Washington's inland waters are all split up into dozens of small environmental assessments that do not require biological opinions.

Truthout has previously reported on potentially unlawful actions the Navy has taken, regarding its war games and training exercises, its secret conduction of electromagnetic warfare training on Washington roads, and its own documents, which revealed the aim to use US citizens as pawns in Navy SEAL war games operations.