



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
1315 East-West Highway
Silver Spring, Maryland 20910

July 14, 2021

Kristen Monsell
Oceans Legal Director & Senior Attorney
Center for Biological Diversity
1212 Broadway, Ste. 800
Oakland, CA 94612

Dear Ms. Monsell:

On May 17, 2021, we received your letter with the subject line “60-Day Notice of Intent to Sue: Violations of the Endangered Species Act Regarding Navy Training in the Hawaii-Southern California Training and Testing Study Area.” This letter was also addressed to the U.S. Navy (Navy). Your letter states that the National Marine Fisheries Service (NMFS) and the Navy are in violation of various provisions of the Endangered Species Act (16 U.S.C. §§ 1531 *et seq.*) (ESA). Your letter describes what you believe to be new information relevant to the risk of vessel strikes and their effect on the survival and recovery of endangered whales. The information you identify includes the description of a recent and extremely unfortunate event involving the death of two fin whales (*Balaenoptera physalus*) due to vessel strike by the Royal Australian Navy vessel the HMAS Sydney. Your letter further identifies several studies which you assert comprise new information. Your letter claims that NMFS’ and the Navy’s duties to reinstate consultation on the impacts of Navy activities in the Hawaii-Southern California Training and Testing Study Area under section 7 of the ESA have been triggered due to the following: 1) the recent death of two fin whales killed by a Royal Australian Navy destroyer; 2) new scientific information regarding threats to marine mammal populations from vessel strike and other stressors; 3) the purported expansion of the Navy’s activities; 4) newly designated humpback whale critical habitat; and 5) meeting or exceeding the exempted take for fin whales from vessel strikes specified in the Incidental Take Statement.

As stated in 50 C.F.R. §402.16, reinitiation of formal consultation is required, and shall be requested by the Federal action agency or by NMFS, where discretionary Federal agency involvement or control over the action has been retained or is authorized by law, and one or more of the four reinitiation triggers has been met. Based on our evaluation of the recent vessel strike incident involving the HMAS Sydney, and other relevant new information, we believe that the reinitiation trigger concerning new information (*i.e.*, new information reveals effects of the agency action that may affect ESA-listed species or critical habitat in a manner or to an extent not previously considered) has been met.



NMFS' Endangered Species Act Interagency Cooperation Division has coordinated with the Navy and NMFS' Permits and Conservation Division on this matter. NMFS' Endangered Species Act Interagency Cooperation Division notified both of these action agencies for this consultation of their responsibilities under the ESA (50 C.F.R. §402.16) and requested reinitiation of formal consultation and reassessment of the 2018 Biological Opinion on U.S. Navy Hawaii-Southern California Training and Testing activities. Both the Navy and the NMFS Permits and Conservation Division have agreed to reinitiate consultation on the basis of new information. NMFS' Endangered Species Act Interagency Cooperation Division anticipates receipt of a request for reinitiation from both action agencies shortly.

We appreciate your concern regarding the status of endangered fin whales and the threat that vessel strikes represent for this species, and marine mammals in general. Should you wish to discuss this matter further, please contact Scott Farley (scott.farley@noaa.gov; 301-628-1642) from our Office of General Counsel or Cathy Tortorici (cathy.tortorici@noaa.gov; 301-427-8495) our ESA Interagency Cooperation Division Chief.

Sincerely,

Catherine Marzin
Acting Director,
Office of Protected
Resources