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Sinseru yan Minagåhet,

Office of the Speaker • Tina Rose Muña Barnes
Committee on Public Accountability, Human Resources & the Guam Buildup

35th Guam Legislature
I Mina'trentai Singko na Liheslaturan Guåhan

Guam Congress Building | 163 Chalan Santo Papa | Hagatna, GU 96910
T: (671) 477-2520/1
speaker@guamlegislature.org

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Gumai pribilehu yan konfedensia este siha na mensåhi. Solo espesiåtmente para hågu ma entensioña pat ma aturisa para unrisibi. Sen prubidu kumu ti un ma aturisa para manribisa, na'setbe, pat mandespåtcha. Yanggen lachi rinisibu-mu nu este na mensåhi , put fabot ago' guatu gi I numa'huyong gi as speaker@guamlegislature.org yan despues destrosa todu siha I kopian mensåhi. Si Yu'os ma'åse'.

DEPARTMENT OF THE NAVY
JOINT REGION MARIANAS
PSC 455 BOX 211
FPO AP 96540-1000

5860
Ser J00/0937
December 30, 2020

35GL-20-2575
Speaker Tina Rose Muña Barnes

DEC 31 2020
Time 1:40 ( )AM (✓)PM
Received By:

The Honorable Tina Rose Muna-Barnes
Speaker, 35th Guam Legislature
I Mina'Trentai Singko Na Liheslaturan Guåhan
163 W. Chalan Santo Papa
Hagåtña, Guam 96910

Dear Madam Speaker,

I would like to acknowledge the Guam Legislature's interest in U.S. Navy training and testing activities in and around Guam, in particular through the 35th Guam Legislature's Resolution 365-35. However, since the U.S. Navy did not get an opportunity to provide details and information to Legislators prior to passage of the Resolution, I am writing to provide information and clarification on the extensive mitigation measures currently used by the U.S. Navy to protect marine mammals and the environment. I assure you, the U.S. Navy takes our responsibilities as stewards of the environment seriously. In fact, the U.S. Navy already undertakes most of the measures called for in Resolution 365-35. With respect to the other recommendations called for in the Resolution, they either do not account for the best available science or are not practical given other safety and resource limitations. The attached enclosure provides specific information for measures in the Resolution to aid Legislators in future work.

The U.S. Navy must ensure our Sailors and Marines are manned, trained, and equipped in a manner capable of winning wars, deterring aggression and protecting the United States, including Guam and the Northern Mariana Islands. This mission is achieved in part by conducting training and testing within the Mariana Islands Training and Testing (MITT) Study Area. Training and testing with sonar and explosives are integral to the U.S. Navy's ability to defend our homeland. Before conducting those activities, the U.S. Navy undergoes rigorous oversight processes pursuant to multiple federal laws including the Marine Mammal Protection Act (MMPA), Coastal Zone Management Act (CZMA), and Endangered Species Act (ESA). These processes are consistently applied throughout the United States and ensure that the environment and people of Guam and the CNMI are afforded the same protections as those of any jurisdiction of the United States, including California and Hawaii.

During these processes, the U.S. Navy consults with territorial agencies including but not limited to the Guam Coastal Management Office, Department of Agriculture Division of Aquatic and Wildlife Resources, Guam Environmental Protection Agency. Additionally, the U.S. Navy must take into consideration input from the public. Federal oversight of U.S. Navy activities is conducted by many federal agencies, including the U.S. Environmental Protection Agency (USEPA), the U.S. National Marine Fisheries Service (NMFS), and the U.S. Fish and Wildlife Service (USFWS). These processes ensure our activities do not jeopardize the existence of threatened and endangered species and that the U.S. Navy applies mitigations which limit any

impacts to marine mammals to the least practical adverse impact. These processes have led to the development of mitigations and protective measures specifically designed to avoid and/or minimize the type of impacts to all marine resources, including marine mammals, that concerned the Legislature as expressed in the Resolution. Additionally, the most recent processes have led the U.S. Navy to implement new seasonal and geographic mitigations to protect marine mammals engaged in important biological functions based on best available science.

The potential impacts on endangered and threatened species from the U.S. Navy's training and testing activities have been thoroughly analyzed by U.S. Navy biologists and rigorously scrutinized by experts from both NMFS and USFWS. An extensive suite of protective measures designed to specifically help the U.S. Navy avoid or minimize any impacts on protected species are discussed in Chapter 5 of the MITT Final Supplemental Environmental Impact Statement/Overseas Environmental Impact Statement (SEIS/OEIS), the MITT Final SEIS/OEIS Record of Decision (ROD) July 29, 2020, the NMFS Biological Opinion July 10, 2020, and the NMFS Letter of Authorization (LOA) July 31, 2020 through July 30, 2027. All of these documents are available at www.mitt-eis.com.

The U.S. Navy has and will continue to implement procedural mitigations when conducting testing and training activities in the Marianas, as we do worldwide. Procedural mitigations include measures such as ensuring vessels maneuver to maintain a 500 yard distance from whales and a 200 yard distance from other marine mammals; that vessels training with active sonar utilize trained lookouts and either power down or shut down sonar transmissions if marine mammals are observed within certain distances from the ship; and that mitigation zones are observed when training with explosives so that a training event will be delayed or relocated if a marine mammal is spotted within the zone.

The U.S. Navy recognizes that we need to learn more about beaked whales in the Marianas and why they may strand. In addition to the over $9 million dollars that U.S. Navy has spent to perform studies to help us better understand the marine resources in the Mariana Islands, the U.S. Navy, along with NMFS, has agreed to fund additional research and monitoring initiatives designed to help advance the understanding of beaked whales and strandings in the Mariana Islands. Ongoing efforts include: 1) a 2021 Mariana Islands survey to help document beaked whale occurrence, abundance, and distribution in the Mariana Islands; 2) funding additional stranding response and necropsy analyses for the Pacific Islands region; and 3) funding research to improve the analysis of single and mass stranding events.

The U.S. Navy also recognizes that there are certain areas and seasons when marine mammals may be engaged in important behaviors, such as calving, and that additional protections are warranted for these places at certain times of the year. Since the MITT ROD was signed, the U.S. Navy has already established three new geographic mitigation areas that will allow for either the avoidance or minimization of potential impacts from surface ship hull mounted sonar and explosives to all marine mammals and sea turtles in Agat Bay (year round) and for all marine mammals and sea turtles including calving humpback whales off the coast of Saipan (December 1 through April 30 for surface ship hull mounted sonar and year round for

explosives). The U.S. Navy carefully evaluates the effectiveness of geographic mitigations and has been utilizing such measures when practicable in other areas where we train and test.

I hope that this information enhances the Legislature's understanding of U.S. Navy training and testing activities, and the federally mandated processes we go through to preserve and protect the environment. Please reach out to my staff at any time to obtain current pertinent information, technical or otherwise, that may help inform the Guam Legislature's important work. Thank you for considering this clarifying information and I look forward to greater transparent discussions in the future.

Sincerely,

J. V. MENONI
Rear Admiral, U.S. Navy
Commander

CC:
Honorable Lourdes A. Leon Guerrero, Governor of Guam
U.S. Navy Office of Legislative Affairs

Enclosure: U.S. Navy Comments to Guam Legislature Resolution 365-35 (LS)

U.S. Navy Comments to
Guam Legislature Resolution 365-35 (LS)

Resolved: "calls upon the U.S. Navy to, as the U.S. Navy has agreed to do in the Hawaii-Southern California Training and Testing Study Area, avoid approaching marine mammals head-on and shall maneuver to maintain 500 yard (457 meter) mitigation zone for observed whales and a 200 yard (183 meter) mitigation zone for all other observed marine mammals (except bow-riding dolphins),"

Navy Comment: The Navy has already committed to this procedural mitigation through the MITT environmental planning process.

Resolved: "calls upon the Navy, as the Navy has agreed to do in the Hawaii-Southern California Training and Testing Study Area, in areas identified by the Government of Guam as habitat for beaked whales and other cetaceans, to not use active sonar, torpedo countermeasures such as the Aselsan HIZIR, or conduct other training that take, or inadvertently harm whales, dolphins, and other marine mammals, such as the use of In-Water Explosives for training and testing activities, and shall require that all surface vessels use extreme caution and proceed at a safe speed so they can take proper and effective action to avoid a collision with any sighted object or disturbance, and can be stopped within a distance appropriate to prevailing circumstances and condition, and be it further..."

Navy Comment: The restrictions in the Hawaii-Southern California Testing and Training (HSTT) Study Area mentioned in this provision were part of the short-term settlement agreement in 2015-2018 to resolve a lawsuit. That agreement was not comprehensively supported by the best available science likely to reduce impacts on marine mammals species or stocks and their habitat, or practicable to implement from a military readiness standpoint over the longer term in the HSTT Study Area. Accordingly, as required by statute, in 2018 NMFS analyzed the Navy's activities in HSTT as set forth in its application under MMPA to include impacts, proposed mitigation, and additional potential mitigation pursuant to the *least practicable adverse impact* standard to determine the appropriate mitigation to include in regulations that are now in place for training and testing in Hawaii and Southern California.

NMFS is the federal regulatory agency required to authorize incidental take under the MMPA and as part of that process the Navy evaluates areas for operational and biological effectiveness as explained in the Appendix I for MITT Final SEIS/OEIS.

Resolved: "calls upon the U.S. Navy, prior to conducting any active sonar activity, or using torpedo counter measures such as the Aselsan HIZIR or in-water explosives, or carrying out other trainings that take, or inadvertently harm whales, dolphins and other marine mammals, to conduct passive sonar as a means of detecting the presence of marine mammals and to commit to not carry out any active sonar or conduct other training that inadvertently harms whales, dolphins, and other marine mammals during said marine mammal presence,.."

Navy Comment: The Navy employs passive acoustic monitoring to supplement visual monitoring *when practicable to do so* such as when Navy assets that have passive acoustic monitoring capabilities are already participating in the activity. These are the same mitigations required in the HSTT Study Area.

Chapter 5 of the MITT Final SEIS describes why more passive acoustic monitoring cannot be implemented: "Significant manpower and logistical constraints make constructing and maintaining additional passive acoustic monitoring systems for each training and testing activity under the Proposed Action impractical. For example, the Navy does not have available manpower or resources to allocate additional aircraft for the purpose of deploying, monitoring, and retrieving passive acoustic monitoring equipment during a bombing exercise. All platforms participating in explosive bombing exercises (e.g., firing aircraft, safety aircraft) must focus on situational awareness of the activity area and continuous coordination between multiple training components for safety and mission success. Therefore, it is impractical for participating platforms to divert their attention to non-mission essential tasks, such as deploying sonobuoys and monitoring for acoustic detections during the event. Diverting platforms with passive acoustic monitoring capabilities to monitor training and testing events would impact their ability to meet their mission requirements and would reduce the service life of those systems."

Resolved: "recognizing that many whale species demonstrate a seasonal abundance, and a special variability around Guam, calls upon the Navy during these times and in these areas determined by the Government of Guam as those in which marine mammals can be expected, to minimize or eliminate sonar, using torpedo counter measures such as the Aselsan HIZIR, or conduct other than trainings that take, or inadvertently harm whales, dolphins, and other marine mammals such as the use of in water explosives for training/testing and shall require all surface vessels use extreme caution and proceed at safe speed so they can take proper and effective action to avoid a collision with any sighted object or disturbance, and can be stopped within a distance appropriate to the prevailing circumstances and conditions…"

Navy Comment: U.S Navy vessels are required to operate in accordance with applicable navigation rules including inland Navigation Rules (33 C.F.R. 83) and the international Regulations for Preventing Collisions at Sea (72 COLREGs). Applicable navigation requirements include, but are not limited to, Rule 5 (Look-out)[1] and Rule 6 (safe speed).[2] These rules require that vessels at all times proceed at a safe speed so that proper and effective action can be taken to avoid collision and so that they can be stopped within a distance appropriate to the prevailing circumstances and conditions. Therefore, these requirements remain part of Navy standard operating procedures.

The Navy has implemented new mitigation areas for marine mammals and sea turtles off Guam within the MITT Study Area for surface ship hull mounted sonar and explosives at Agat Bay Nearshore Geographic Mitigation Area.

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[1] "Every vessel shall at all times maintain a proper look-out by sight and hearing as well as by all available means appropriate in the prevailing circumstances and conditions so as to make a full appraisal of the situation and of the risk of collision."

[2] "Every vessel shall at all times proceed at a safe speed so that she can take proper and effective action to avoid collision and be stopped within a distance appropriate to the prevailing circumstances and conditions..."

Resolved: "calls upon the U.S. Navy to, if there are injuries or deaths to marine mammals, provide all information as declared necessary by the Government of Guam so that the Government of Guam is adequately equipped to review the actions that may have led to the injuries or deaths and further, depending on Government of Guam's findings, to work closely with the Government of Guam to adjust the boundaries of habitat areas of beaked whales and other cetaceans so that they are more accurately delimited.

Navy Comment: The federal government's Marine Mammal Health and Stranding Response Program coordinates emergency responses to sick, injured, distressed, or dead marine mammals. The 1992 Amendments to the MMPA formalized this program and designated NOAA Fisheries' Office of Protected Resources as the lead agency to coordinate related activities with a network of stranding response volunteers.

The Navy has certain requirements regarding reporting of stranding information under its MMPA authorization from NMFS. The Navy undertakes these requirements in the same manner as conducted in HSTT Study Area.

As to the state of the beaked whale population in relation to Navy activities in this vicinity, NMFS explains in their Final rule (at 85 Fed Reg. 46406-07, July 31, 2020), issued before the Navy's MITT LOA was authorized, why further geographic mitigations are not specifically identified for beaked whales. "Beaked whales have also been found to respond to naval sonar, in certain circumstances, in a manner that can lead to stranding and in a few cases, globally, beaked whale strandings have been causally associated with active sonar operation. However, as discussed in the Stranding section of the Potential Effects of Specified Activities on Marine Mammals and Their Habitat section, NMFS has determined that the activities included in this 7-year rule are not reasonably likely to result in the mortality of beaked whales."

NMFS also explains the status of beaked whales in areas generally exposed to Navy training and testing, "Populations of beaked whales and other odontocetes in the Bahamas and other Navy fixed ranges that have been operating for decades appear to be stable. Photo identification studies in the Southern California Range Complex, a Navy range that is utilized for training and testing, have identified approximately 100 Cuvier's beaked whale individuals with 40 percent having been seen in one or more prior years, with re-sightings up to seven years apart (Falcone and Schorr, 2014). These results indicate long-term residency by individuals in an intensively used Navy training and testing area, which may also suggest a lack of long-term consequences as a result of exposure to Navy training and testing activities. More than eight years of passive acoustic monitoring on the Navy's instrumented range west of San Clemente Island documented no significant changes in annual and monthly beaked whale echolocation clicks, with the exception of repeated fall declines likely driven by natural beaked whale life history functions (DiMarzio et al., 2018)." NMFS also explains that results of passive acoustic monitoring projects have shown "that regional Cuvier's beaked whale densities were higher than indicated by NMFS' broad scale visual surveys for the U.S. West Coast (Hildebrand and McDonald, 2009).

More particularly, NMFS explains (at 85 Fed Reg. 46406-07, July 31, 2020) the status of species specifically within the MITT Study Area: "These beaked whale species are not listed as endangered or threatened species under the ESA, and there are no known biologically important areas identified for these species in the MITT Study Area. There have been no stock(s) specified for beaked whales found in the MITT Study Area and Transit Corridor, and there are no associated Stock Assessment Reports for the species. There is also no information on trends for these species within the MITT Study Area. All of the beaked whales species discussed in this section will benefit from the procedural mitigation measures described earlier in the Mitigation Measures section."

Ultimately, based on the best available science, NMFS concludes negligible impact from Navy training and testing to beaked whales[3]. Despite negligible impact on beaked whales from the Navy's training and testing activities, the Navy has committed to the following requirements:

1. Co-fund (with NMFS' Pacific Island Fisheries Science Center) the Pacific Marine Assessment Program for Protected Species (PACMAPPS) Mariana Islands large vessel visual and acoustic survey in spring-summer 2021 to help document marine mammal (including beaked whale) occurrence, abundance, and distribution in the Mariana Islands. This effort will include deployments of a towed array as well as floating passive acoustic buoys.

2. Fund stranding researchers for detailed necropsy support for select stranded marine mammals in Hawaii and the Mariana Islands. Specifically, the Navy committed to continue to fund additional stranding response/necropsy analyses for the Pacific Islands region. From 2018 to the present, the Navy has funded the University of Hawaii to conduct stranding investigations in the MITT and HSTT Study Areas. Included in this effort is an enduring space lease agreement between the University of Hawaii and Marine Corps Base Hawaii for NMFS and University of Hawaii stranding experts to use USMC facilities in Hawaii as a dedicated stranding laboratory. The lease agreement is sponsored by NOAAs Pacific Island Regional Office and supported by the Navy. The Navy also committed to co-fund and organize a workshop to improve the understanding of beaked whale occurrence and potential effects from Navy activities in the Mariana Islands.

3. Fund research on a framework to improve the analysis of single and mass stranding events, including the development of more advanced statistical methods to better characterize the uncertainty associated with data parameters. As of November 2020, the Navy is exploring whether additional funding is available for the Center for Naval Analyses to research improvements to statistical analysis.

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[3]"No mortality or Level A harassment is anticipated or authorized. This low magnitude and low to moderate severity of harassment effects is not expected to result in impacts on individual reproduction or survival, let alone have impacts on annual rates of recruitment or survival and, therefore, the total take will not adversely affect this species through impacts on annual rates of recruitment or survival. For these reasons, we [NMFS] have determined, in consideration of all of the effects of the Navy's activities combined, that the authorized take will have a negligible impact on these four beaked whale species." (85 Fed Reg. 46406-07, July 31, 2020)

4. Increase analysis for any future beaked whale stranding in the Mariana Islands to include detailed Navy review of available records of sonar use. In the previous authorization (2015–2020), reports included time and location of a stranding. Under current requirements, the Navy will provide NMFS with detailed record reviews regarding unit/command level sonar use and timeframe.

5. Monitor beaked whale occurrence within select portions of the MITT Study Area starting in 2022, so as to not duplicate efforts from PACMAPPS (in item (1) above). Include Cuvier's beaked whales as a priority species for analysis under a 2020–2023 Navy research-funded program entitled Marine Species Monitoring for Potential Consequences of Disturbance (MSM4PCOD). MSM4PCOD will explore how Navy funded monitoring priorities can be adjusted to provide the best scientific information supporting Population Consequence of Disturbance analysis. The Navy (Living Marine Resources Program) has already funded this program for Fiscal Years 2018–2022.

More information on all the Navy's marine monitoring and publications from that research can be found at https://www.navymarinespeciesmonitoring.us/