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TRANSPORTATION COMMITTEE**

**STATEMENT OF
VICE ADMIRAL CHARLES W. MOORE, JR.
UNITED STATES NAVY
DEPUTY CHIEF OF NAVAL OPERATIONS
FOR FLEET READINESS AND LOGISTICS
BEFORE THE
SENATE SUBCOMMITTEE ON OCEANS, FISHERIES
AND THE COAST GUARD
ON
JULY 16, 2003
CONCERNING
THE MARINE MAMMAL PROTECTION ACT**

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United States Navy Biography



Vice Admiral Charles W. Moore, Jr.
United States Navy
Deputy Chief of Naval Operations (N4)
(Fleet Readiness and Logistics)

Vice Admiral Charles W. Moore, Jr., is a 1968 graduate of the United States Naval Academy. He earned his first Masters Degree in International Relations from Salve Regina University. A designated naval aviator and surface warfare officer qualified, Vice Adm. Moore has served in a broad range of operational, staff, and command billets.

Operational tours at sea include, two combat tours during the Vietnam conflict with VA-146 flying the A-7 Corsair II on board *USS America* (CV 66) and *USS Constellation* (CV 64); Assistant Strike Operations Officer on board *USS John F. Kennedy* (CV 67); two Mediterranean deployments with VA-83 on board *USS Forrestal* (CV 59); a Mediterranean deployment on board *USS Theodore Roosevelt* (CVN 71) and the shakedown cruise of *USS Abraham Lincoln* (CVN 72) as Deputy Commander, Carrier Air Wing EIGHT.

Shore and staff assignments include, instructor duty at VA-174; staff duty with Commander, Light Attack Wing ONE; Naval War College where he earned his second Masters Degree in Strategic Policy; Deputy Director, Program Resource Appraisal Division (OP-81B), Chief of Naval Operations; and in the Joint Staff, Special Technical Operations Division, Operations Directorate. Vice Adm. Moore's first flag assignment was Deputy Director for Operations (Current Operations), Joint Staff.

Command experiences include a tour as the Commanding Officer, Strike Fighter Squadron One Three One where he led his squadron into combat during the 1986 Libyan crisis while embarked in *USS Coral Sea* (CV 43) and earned the Vice Admiral James B. Stockdale Award for inspirational leadership; and as Commander, Carrier Air Wing EIGHT on board *USS Theodore Roosevelt* (CVN 71). Vice Adm. Moore served as Commander, Carrier Group FIVE on board *USS Independence* (CV 62), prior to being assigned Commander, U.S. Naval Forces Central Command and Commander, U.S. Fifth Fleet where he led U.S. naval forces in *Operation Enduring Freedom* in Afghanistan.

Vice Adm. Moore has over 5,000 flight hours and more than 1,000 carrier arrested landings on nine different carriers. He has been awarded the Distinguished Service Medal, Defense Superior Service Medal, Legion of Merit (2 awards), Meritorious Service Medal (2 awards), Air Medal (3 Individual awards and 17 Strike/Flight awards), Navy Commendation Medal (4 awards w/Combat V), Presidential Unit Citation, Vietnamese Cross of Gallantry, Republic of Korea Order of National Security Merit Cheonsu Medal, Bahrain First Class Medal, United Arab Emirates Military Medal First Class, and various unit and campaign awards.

INTRODUCTION

Chairman Snowe, Senator Kerry and Members of the Subcommittee, thank you for the opportunity to share the Navy's views regarding the Marine Mammal Protection Act and its effects on military readiness and training of our American Sailors as they prepare for combat. I appreciate your attention to this vital and timely topic, which is of great importance to national security and the environment.

The high quality of training we provide to these Sailors is perhaps unseen, yet it is an essential element of their impressive level of combat readiness. Clearly, before our nation sends its most precious asset – its young men and women – into harms way, we must prepare them to fight, survive, and win. This demands the most realistic and comprehensive training we can provide.

In the past two months, we have seen first hand, often in real time, the tangible results of high quality training. Indeed, as in Iraq, realistic, demanding training has proven key to survival in combat time and again. For example, data from World Wars I and II indicates that aviators who survived their first five combat engagements were likely to survive the war. Similarly, realistic training greatly increases our combat effectiveness. The ratio of enemy aircraft shot down by U.S. aircraft in Vietnam improved to 13-to-1 from less than 1-to-1 after the Navy established its Fighter Weapons School, popularly known as TOPGUN. More recent data shows aircrews that receive realistic training in the delivery of precision-guided munitions have twice the hit-to-miss ratio as those who do not receive such training.

Similar training demands also exist at sea as our maritime forces prepare to meet and counter emerging threats. New ultra-quiet diesel-electric submarines armed with deadly torpedoes and cruise missiles are proliferating widely. Technologies such as these could significantly threaten our Naval Forces around the world, in place to respond to a wide array of possible contingencies. To successfully defend against such threats, our Sailors must train realistically with the latest technology, including next-generation passive and active sonars.

As we prepare today for the next conflict and look to the future, we should be concerned about the growing challenges in our ability to ensure our forces receive the necessary training with the weapon and sensor systems they will employ in combat. Training and testing on our ranges and at sea is increasingly constrained by encroachment that reduces the number of training days, detracts from training realism, causes temporary or permanent loss of range access, and drives up costs.

Encroachment issues have increased significantly over the past three decades. Training areas that were originally located in isolated areas are today surrounded by recreational facilities and urban sprawl. They are constrained by state and federal environmental laws and regulations and cumbersome permitting processes which negatively impact our ability to train.

NAVY'S ENVIRONMENTAL STEWARDSHIP

The Navy continues its commitment to good stewardship of the environment. Indeed, our culture reflects this, as the men and women manning our fleet were raised in a generation with a keen awareness of environmental issues. The Navy environmental budget request for FY-2004 totals \$1.0 billion. This funding supports environmental compliance and conservation, pollution prevention, environmental research, the development of new technologies, and environmental cleanup at Active and Reserve bases. It is precisely as a result of this stewardship that military lands present favorable habitats for plants and wildlife, including many protected species. Ironically, our successful stewardship programs have helped increase the number of protected species on our ranges, which has resulted in less training capacity in some instances.

Sustaining military readiness today has become increasingly difficult because, over time, a number of factors, including urban sprawl, regulations, litigation, and our own accommodations to demands from courts, regulatory agencies and special interest groups have cumulatively diminished the Navy's ability to effectively train and test systems. Among the greatest threats to proper military training are laws that include ambiguous provisions and cumbersome process requirements that result in unintended negative consequences, which inhibit realistic, timely, and comprehensive training. These laws, and the court decisions which have applied them, may result in curtailing the Navy's ability to train without harm to the environment. As such we believe that military readiness requirements and environmental protection are out of balance.

The Administration's Readiness and Range Preservation Initiative (RRPI) proposes modest amendments to several environmental laws, including the Marine Mammal Protection Act (MMPA), which will help restore the balance, meeting our national security needs, and maintaining good stewardship of the environment. I ask for your help to address the challenges of most concern to the Navy under the MMPA.

THE CURRENT QUIET DIESEL SUBMARINE THREAT

As we enter the 21st century, the global submarine threat is becoming increasingly more diverse, regional, and challenging. Published naval strategies and current operations of potential adversaries have demonstrated that the submarine is a centerpiece of their respective navies. Diesel submarines are deemed a cost-effective platform for the delivery of several types of weapons, including torpedoes, anti-ship cruise missiles, anti-ship mines, and nuclear weapons. In addition to the United States, Australia, Canada, and the United Kingdom, 41 other countries, including potential adversary nations such as North Korea and Iran, have modern quiet submarines and many are investing heavily in submarine technology. Of the 380 submarines owned by these 41 countries, more than 300 are quiet diesel submarines.

Submarine quieting technology continues to proliferate, making submarines, operating in their quietest mode, difficult to detect even with the most capable passive sonar. The inability to detect a hostile submarine at long-range – in other words, at a sufficient “stand-off” distance before it can launch a missile or a torpedo – is a critical vulnerability that puts ships and our Sailors at risk. The threat of a quiet diesel submarine, in certain circumstances, could deny access to vital operational areas to U.S. or coalition naval forces.

Because of these threats, Navy identified the requirement to detect hostile submarines before they are close enough to use their weapons. This capability is particularly critical where there exists a concentration of forces at sea, as recently occurred in the Sea of Japan for exercise Foal

Eagle, or as is planned in support of Operational and Contingency Plans in the vicinity of Northeast Asia. When it becomes necessary to place carrier battle groups or amphibious task forces in harms way, these valuable national assets, their supporting ships and their crews have to transit constricted bodies of water or straits. These limited areas provide the perfect opportunity for quiet diesel submarines to stalk our ships. A pre-positioned diesel submarine, conducting a quiet patrol on battery power, is extremely difficult to detect with passive sonar. The most promising system to counter this threat to Navy and national security is the Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) sonar system. To be effective, SURTASS LFA must be tested and evaluated for integration into the Fleet. It is not effective to be kept “on the shelf” in the event our forces need to use it in a real contingency.

MARINE MAMMAL PROTECTION ACT

For several years, Navy and leaders in the scientific and regulatory communities that predicted that certain ambiguities in the MMPA would likely lead to court ordered injunctions blocking critical at-sea training and testing. We are concerned that these ambiguities may negatively impact on Navy’s ability to conduct training and testing exercises.

In November 2002, a federal district judge in San Francisco presiding over a case brought by environmental groups alleging violation of the MMPA, National Environmental Policy Act (NEPA), and the Endangered Species Act (ESA) issued a court order that strictly limits employment of SURTASS LFA. This advanced system is designed to detect and track the growing number of quiet diesel submarines possessed by nations, which could threaten our vital national security. The court issued a preliminary injunction restricting Navy’s deployment of SURTASS LFA in the western Pacific. Navy now finds the deployment and operation of one of our most important national security assets constrained by a Federal court as a result of litigation brought by environmental groups. Future testing and employment of SURTASS LFA is in jeopardy. The MMPA was originally enacted to protect whales from commercial exploitation and to prevent dolphins and other marine mammals from accidental death or injury during commercial fishing operations. It did not address military readiness concerns.

As a result of the preliminary injunction issued by the federal district court, we have not been allowed to test and train with LFA in all of the waters in which it will need to be employed. The final hearing on the merits of this suit was held on June 30th. The court has yet to issue its decision; nevertheless, the judge, speaking from the bench, expressed the same concerns over the provisions of the MMPA that she identified during the hearing on the preliminary injunction.

In meeting its obligations under current environmental laws for deploying SURTASS LFA, the Navy undertook a comprehensive and exhaustive environmental planning and associated scientific research effort. Working cooperatively with the National Marine Fisheries Service (NMFS) – one of the two Federal regulatory agencies tasked with protection and preservation of marine mammals – the Navy completed an Environmental Impact Statement (EIS), developed mitigation measures for protecting the environment, and obtained all required authorizations pursuant to the MMPA and ESA. The scientific research and EIS involved extensive participation by independent scientists from a large number of laboratories and academic organizations. The Navy also undertook a wide-ranging effort to involve the public in the EIS process through public meetings and extensive outreach. Based on this effort, NMFS developed mitigation measures to reduce potential affects on marine mammals and, in light of those

measures, concluded that the planned SURTASS LFA operations would have negligible impacts on marine mammals.

Despite this effort, a Federal court issued an order constricting the limits of operation and precluding testing of a key system needed to address a clear, present, and future national security threat. Notably, there is no evidence of any negative impact on marine mammals in the single ocean area in which we are currently testing SURTASS LFA.

Despite plaintiffs' failure to produce scientific evidence contradicting the independent scientific research that the LFA system could be operated with negligible harm to marine mammals, the court opined that Navy testing and training must be restricted. In reaching this conclusion, the court noted that under the definition of harassment, the phrase "potential to disturb" hinged on the word "potential" and extended to individual animals. Quoting from the judge's opinion, "In fact, by focusing on potential harassment, the statute appears to consider *all* the animals in a population to be harassed if there is the potential for the act to disturb the behavior patterns of the most sensitive individual in the group." (Emphasis added.) Interpreting the law this broadly could require authorization (permits) for harassment of potentially hundreds, if not thousands, of marine mammals based on the benign behavioral responses of one or two of the most sensitive animals.

EIS Outreach
-Notice of Intent published in 1996
-3 public scoping meetings
-8 public outreach meetings
-3 public hearings on the Draft EIS (DEIS)
-DEIS distributed to federal, state and local government agencies, citizen groups and organizations, and 17 public libraries
-Over 1,000 public comments received on DEIS
-Record of Decision signed in June 2002

Highlighting how difficult it would be to apply the MMPA to worldwide military readiness activities under such a broad interpretation of harassment, the court pointed out that a separate provision of the MMPA limits permits for harassment to no more than a "small number" of marine mammals. Overturning the regulatory agency's decades-old interpretation of the MMPA, the court also said that the "small number" of animals affected cannot be defined in terms of whether there would be negligible impact on the species, but rather is an absolute number that must be determined to be "small." The court's opinion underscores shortcomings in the MMPA that apply to any world-wide military readiness activity, or any grouping of military training activities that might be submitted for an overall review of impact on the environment.

SURTASS LFA is a critical part of anti-submarine warfare (ASW). The Chief of Naval Operations has stated that ASW is an essential and core capability of the Navy. Testing and training with LFA is essential to our future success. By way of comparison, during the Cold War we made every effort to search, detect, and track Soviet nuclear submarines. In so doing, we learned their habits, went to school on their operational procedures, and worked hard to stay ahead of them. Today the nature of the submarine threat has changed. The challenge is different. Nevertheless, the court-issued restriction on testing and training with LFA has severely limited our ability to prepare for this challenge. This court opinion also highlights the challenges posed by the current language of the MMPA.

To address these issues, I ask for your consideration of the narrowly focused amendments to the MMPA's harassment definition and incidental take provisions proposed in the FY04 National Defense Authorization Act, which has now been transmitted by the President to Congress.

SUMMARY

We face numerous challenges and adversaries that threaten our way of life. The President has directed us to "be ready" to face this challenge. To fulfill this directive, we must conduct comprehensive and realistic combat training – providing our Sailors with the experience and proficiency to carry out their missions. This requires appropriate use of our training ranges and operating areas and testing weapon systems. The Navy has demonstrated stewardship of our natural resources. We will continue to promote the health of lands entrusted to our care. We recognize our responsibility to the nation in both of these areas and seek your assistance in balancing these two requirements.

I thank this Committee for your continued strong support of our Navy and ask for your favorable consideration of the MMPA provision contained in the DOD RRPI legislation. Passage of the RRPI provision will help the Naval services sustain military readiness today and in the future.