

January 12, 2017

To: Reta Laford, Responsible Official
Pacific Northwest Electronic Warfare Range
Olympic National Forest, Pacific Ranger District
US Forest Service
1835 Black Lake Blvd. SW
Olympia, Washington 98512

Subject: OBJECTION, Pacific Northwest Electronic Warfare Range

Project Name: Pacific Northwest Electronic Warfare Range

Responsible Official's Name and Title: Reta LaFord, Superintendent, and/or Dean Millett,
District Ranger

Name of Affected National Forest: Olympic National Forest

Ranger District: Pacific Ranger District

Dear Ms. Laford and Mr. Millett,

The West Coast Action Alliance and the Olympic Forest Coalition write to formally object to the Draft Notice of Decision/Finding of No Significant Impact (ND/FONSI, November 29, 2016) for the special use permit (SUP) application from the U.S. Navy proposing to use National Forest System (NFS) roads for training exercises on the Pacific Ranger District in connection with aircraft activities conducting electronic warfare (EW) training. Our organizations strongly object to the decision by the Forest Service to grant a five-year special use permit to the US Navy to conduct electronic warfare in the Olympic National Forest for the project named "Pacific Northwest Electronic Warfare Range" for 260 days per year, 8-16 hours per day, including weekends.

We respectfully request that you waive the rules and extend the objection period by 30 days due to mitigating circumstance. First is the fact that the public has been asked to respond to four major comment periods over the holidays: one for the Navy's 1400-page Growler EIS, another for the Forest Service special use permit on the mobile emitters, and two DEIS' on marbled murrelets from the State of Washington Department of Natural Resources (dismissing jet noise as a threat to this federally-listed species). Thousands of pages of technical information are more than most people can manage to read, understand and reasonably comment on in such a constrained time frame. Secondly, the quadruple-comment requirements over the holiday period is another hardship for the public. Last autumn the Forest Service was asked via emails to Greg

Wahl, to not hold this comment period over the holidays; that request was ignored without justification.

Page 22 of the Decision Notice states, "objections must be submitted within 45 days following the publication of the legal notice in... *The Peninsula Daily News* (Port Angeles, Washington)." That 45-day period ends Friday, January 13. However, the first time any legal notice was published in *The Peninsula Daily News* for any proposed decision by the U.S. Forest Service relating to granting the Navy a special use permit for the Electronic Warfare Range, was on November 29, 2016. District Ranger Dean Millett publicly admitted he hadn't placed notices previously in the PDN, Port Townsend Leader, or Forks Forum, and the Forest Service withdrew its Draft Decision Notice in autumn 2014. To add to the unfairness of this situation, the affected public was precluded from commenting on the Navy's Environmental Assessment because no legal notices were placed in the newspaper of record for the north Olympic Peninsula. Therefore, the Forest Service must not now preclude any concerned member of the public from objecting on the official record.

Additionally, documents and public statements containing substantive and significant new information have been released and made public since 2014, including documents referenced in the ND/FONSI. Members of the public have standing to object to the ND/FONSI based upon new information.

2014 Basis for Standing

The West Coast Action Alliance formed in 2014 as a response to the Forest Service's intemperate decision and the Navy's exceptionally poor public process. Members of the West Coast Action Alliance commented in 2014, the Forest Service included a comment letter from this organization in its database, and therefore, the Alliance has standing to object on this basis. The Olympic Forest Coalition has been in existence since 1989. The Olympic Forest Coalition submitted comments on this special use permit in October, 2014, during an open comment period, and has standing to raise objections. This letter also comprises the individual comments of Karen Sullivan, who also commented in 2014, and has standing. The West Coast Action Alliance and the Olympic Forest Coalition submit these objections based upon standing from earlier comments, and upon new information.

Request for Meeting

Pursuant to our rights (36 CFR § 218.11), we formally request a meeting to hear the Forest Service's response to our organizations' objections.

The lead objectors for our two organizations, and contact information are as follows:

Ms. Karen Sullivan
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Port Townsend, WA 98368
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Ms. Connie Gallant, President of the Board
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Objections, Reasons for Objection, Suggested Resolution

The following comments will explain in detail our objections, reasons for the objection, and suggested resolution. Documents referenced in our objections include the US Forest Service ND/FONSI; the Navy Electronic Warfare Range EA (Navy EA), and cited statutes, codes, case law, guidance, public comments of officials identified in the text, among others.

1. The Forest Service must follow its own, not Navy, NEPA implementation regulations in analyzing impacts and alternatives:

The Forest Service is making a decision based on an Environmental Assessment (EA) written by the Navy, but the National Environmental Policy Act (NEPA) implementation regulations used by Pentagon agencies are not the same as those for Department of Agriculture agencies. Therefore, the Forest Service cannot legally make a decision on an EA under agency specific regulations that apply to another agency, about a controversial matter regarding management of its own public lands, as specified in the National Forest Management Act. The Navy used 32 CFR § 775 for both discussions of impacts and review. The Forest Service must use 36 CFR § 220 and FSH § 1909.15 for discussion of impacts and review. These agencies have different NEPA requirements because they have different, non-overlapping missions and different management responsibilities, as set forth by the US Congress in United States Code and other documents that tier from them. Because of this, the Navy's Finding of No Significant Impact cannot be accepted as assurance of "no significant impacts" by another agency whose responsibilities are not the same as the Navy's. The present EA is an example of such a situation, and it cannot fulfill the USFS requirement to analyze impacts of a proposed action, and alternatives. **The solution is for the US Forest Service to conduct a full environmental impact statement and NEPA process following 36 CFR § 220 and FSH § 1909.15 implementation regulations that correspond with its mission.**

2. Impacts on endangered species and human environment grossly underestimated and improperly segmented in its Notice of Decision and Finding of No Significant Impact:

The draft ND/FONSI is based upon an improper segmentation originated in the special use permit application and EA submitted by US Navy and compounded by US Forest Service decisions: The special use permit and associated EA was limited in scope to the impacts of the emitters only, and not the associated noise, overflights and other impacts associated with the jets and ship-to-land targeting practice that are an integral part of the training exercises, and that will

take place within the jurisdiction of the US Forest Service. The ND/FONSI is flawed and the public is unable to determine the real impacts to endangered species and the human environment.

The 2014 Navy EA, and therefore the Forest Service, considered only impacts related to the mobile emitters, and not the functionally related training activities such as the jet overflights, ship to surface targeting, and related noise and other cumulative impacts. When the public raised this concern at a meeting, Ranger Dean Millett said, “That (jet impacts) is outside of my decision space.” This is illogical.

To determine whether a single project is improperly segmented into multiple parts, courts have applied a four-part test that asks whether "the proposed segment (1) has logical termini; (2) has substantial independent utility; (3) does not foreclose the opportunity to consider alternatives; and (4) does not irretrievably commit federal funds for closely related projects." *Save Barton Creek*, 950 F.2d at 1140 (citing *Piedmont Heights*, 637 F.2d at 439; applied in *O'Reilly v. US Army Corp of Eng*, 447 F3d 225(5th Cir. 2007)).

The Forest Service cannot ignore the impacts from jets flying overhead that granting this permit will initiate. If the emitters were to be stationed and operated without related flights, then the EA may be considered adequate on this single point, and by extension, the ND/FONSI. However, the emitters will not be operated without flight and sea-to-land training exercises as evidenced by the US Fish and Wildlife Service’s Biological Opinion and the Navy Draft EIS on the Growler jet expansion on Whidbey Island, that will utilize the emitters in their training. The emitters have no independent utility without the receiving ship or aircraft utilizing their signals in training exercises. There is no purpose for the emitters to be operated without these directly related activities, and it is illogical, unreasonable, in violation of law, and in bad faith to present the permit application and related environmental analyses based upon less than half of the actual training activity. For illustrative purposes – allowing the permit to proceed on only one portion of the actual activities (mobile emitters without the jets) would be as illogical as treating a pregnancy during the gestation, and not preparing for the delivery of a baby. The outcome in both instances is quite clear and irrevocable – there will be overflights because the emitters must be emitting to something for training purposes; therefore, there will be a “baby.” If, however, the Navy, and by extension the Forest Service, are proposing that the emitters will actually be operated for their own sake without directly related training activities, then a pregnancy is not an accurate metaphor. A more apt one in that case would be using a condom and other birth control methods to try and get pregnant. The result would be the same – a failure of the goal. Both the desired training exercises, and the pregnancy, would be unsuccessful.

The decision to segment the scope of the special use permit application and associated EA, and all decisions that flowed from that impermissible action, including the US Forest Service draft ND/FONSI, are irretrievably flawed. The US Forest Service, rather than denying the application until the US Navy brought its special use permit application and EA into compliance with the law, continued the improper segmentation in its own actions by considering the application and publishing the draft ND/FONSI.

The rules for an objection require specificity. The Navy’s EA vastly underestimated the flight increases that were reasonably foreseeable based on the multi-year length of federal planning and

funding cycles. The Navy claimed there would only be a 10 percent increase in flights, but in an internal Navy email obtained from the Forest Service by Freedom of Information Act, the Northwest Testing and Training Range Manager stated,

“Estimated increase in flights (sorties) is 10.9% (note: It appears over time we rounded to the lower estimate of 10% and dropped the .9%...probably should have been 11%). So in summary, we are estimating a ~10% increase in sorties and a 38.6% increase in training events for the OLY/W-237 with the establishment of the EW Range improvements.”

Further, the mobile emitters will spend far more time on forest roads with previously undisclosed flight increases this large—this is new information, and the Forest Service’s legal requirement to conduct scientific research to assess potential impacts, and a public process to allow us to understand them, is required with changes this major.

Because the Navy has piecemealed the addition and activities of Growlers at Naval Air Station Whidbey Island (NASWI) into five separate NEPA processes—a 2005 EA (57 jets); 2010 EIS (reaffirming the 57 that replaced Prowlers); 2012 EA (26 jets including 5 from a reserve unit); 2014 EA (electronic warfare activity); and the current 2016-2017 DEIS (36 jets)—it was impossible for the public to learn what the actual flight increases would be before the Forest Service’s 2014 comment period closed. **A congressionally-approved Program of Record Selected Acquisition Report (SAR)¹ shows a total of 153-160 Growlers approved by Congress (135 up through 2012, 15 more since, with delivery of two per month.) Chief of Naval Operations Admiral Greenert is quoted in Dec of 2015 as saying that the Navy still believe its planned purchase of 153 Growlers was sufficient, but more work was underway to assess the needs of other military services, as well as the possible use for cyber missions.² A Navy representative at a recent open house confirmed that there will be a total of 160 Growlers, not the 118 the public has been led for years to believe.** This means another NEPA process for an additional 42 is likely coming, making six public processes for a federal activity that is functionally and geographically connected. Since 2010, the number of Growler flights at OLF Coupeville alone went from 3,200 per year to a proposed 35,500 in 2017. That’s more than a 1,000 percent increase, yet the Navy says “no significant impacts.” Their planning and funding cycles begin years in advance of implementation, so no member of the public with any common sense believes that the Navy did not know well in advance that so many Growlers would be coming to NASWI. To separate the impacts (such as jet noise and mobile emitters on the ground) for the sake of avoiding cumulative effects analysis is unlawful, and a decision by the Forest Service to grant the permit based on such deception would also violate the public trust.

The abovementioned email came from the Forest Service, yet the increase was not publicly disclosed. Further, instead of a 10 percent increase in flight operations there was actually a 368 percent increase at OLF-Coupeville, compared to what was predicted in the Navy’s 2005 EA, plus a 479 percent increase in nighttime operations, which accounted for 84 percent of all

¹ <https://www.defense.gov/News/News-Releases/News-Release-View/Article/703529/departments-of-defense-selected-acquisition-reports-sars>

² Reuters. “Cyber missions could fuel Boeing EA-18G orders: U.S. Navy chief,” September 3, 2015. <http://www.reuters.com/article/us-usa-navy-boeing-idUSKCN0R32I320150903>

operations.³ Numbers mentioned in the Growler EIS now indicate a 47 percent overall increase in overall flights at NASWI, to 130,000. 79,000 of those will be Growler flights, with many at low altitudes. Where does this figure into the ten-percent increase that the Forest Service has based its decision on? Why would the Forest Service accept the outdated and highly inaccurate estimates in this EA when new information available to the public suggests that impacts are far greater than what was portrayed in the 2014 EA?

It is within the discretion of a federal agency to determine that an EIS is warranted before final decision. The US Forest Service's impermissible decisions and actions include: a) considering the special use permit with an impermissible scope segmented to avoid the disclosure of potential impacts from functionally related training activities; b) utilizing the US Navy's flawed EA incorporating an improper segmentation as a basis for make a permitting decision, given that flaw; c) failing to exercise its discretion and conduct a full environmental impact statement on all potential impacts from all directly related activities, to uphold the law and its obligations while assisting the US Navy to cure the defects in its application; and d) publishing the draft ND/FONSI incorporating a violation of the law. The US Forest service actions resulted in an unreasonable decision to review only the harm from the emitters, and not the cumulative impacts associated with the directly related training exercises, including overflights. The US Forest Service conclusion that there is no significant harm, and the related analysis, is irredeemably flawed and must be withdrawn.

Solution: We request that a full, independent environmental impact statement be conducted with proper scope and cumulative impacts analyzed, including full disclosure of all Navy endangered species population surveys and reports, human health impacts, that the same be made available to the public, with adequate and extended consultation periods for review of that data in accordance with NEPA requirements.

3. *Surface ship involvement was not disclosed:* No mention is found in the Electronic Warfare Range EA of ship surface electronic warfare training events with the mobile emitters. However, an email obtained by Freedom of Information Act request from the Forest Service, from November 14, 2014,⁴ says there will be 275 events with ships per year. Since ships could be more than a hundred miles offshore when detecting and responding to emitter signals, it is not impossible that owing to the curvature of the earth, electromagnetic radiation traveling in a straight line from the ship to the emitter could come close enough to the ocean's surface to strike vessels, birds or marine life at the surface in that vicinity. Beyond the effects of jet noise, pollution and other impacts that were not addressed in this EA, surface ship involvement, which was never mentioned at all, clearly expands the scope of the project and requires a new public process. **The solution would be to acknowledge that the EA did not address the full scope of impacts and to withdraw Forest Service approval pending production of a new EA or EIS.**

³ Mann, David S. Letter. *NAS Whidbey, Central Whidbey Outlying Field (OLF Coupeville)* June 11, 2013. <http://westcoastactionalliance.org/wp-content/uploads/2015/05/Gendler-and-Mann-NEPA-request-June-2013.pdf>

⁴ US Navy. Email *Response to questions regarding EW Range.* http://westcoastactionalliance.org/wp-content/uploads/2016/07/176_Email-Navy-to-Forest-Service-Response-to-questions-regarding-EW-Range.pdf

4. Flying training missions on weekends is not mentioned in the Growler DEIS, yet the Forest Service's Draft Permit says on page 11 that the Navy will be allowed to fly on weekends so long as it does not interfere with "...opening day and associated opening weekend of Washington State's Big Game Hunting Season for use of rifle/guns." Why would the Forest Service grant an exemption for one user group only? This will only anger the public once they learn of the preferential treatment of one user group over all others. No communities have had the opportunity to evaluate weekend noise impacts. Weekends are peak times for local economies, and to have that quiet obliterated by jet noise from a rapidly expanding mega-base is a threat to local economies and public health. People come here throughout all 4 seasons to relax and recreate in peaceful, unspoiled surroundings. To extend such a courtesy to the big game hunting industry without consulting with municipalities and other economically viable (and vulnerable) tourism and recreation entities, is unwise, irresponsible, and does nothing to rebuild trust between the Forest Service and the public. Since a significant exemption is being granted for one interest group, the same consideration must be given for other constituents that use the forest and adjacent park year-round. **This new activity, which was not previously known to anyone, must be fully considered along with all the other new information, in a new public process.**

5. Navy map omitted features: The Forest Service did not address the fact that the map used on both the cover of the Electronic Warfare Range Environmental Assessment and on inside pages that shows locations of the proposed mobile emitter sites, appears to have erased Olympic National Park boundaries, most major rivers, and even Lake Quinault. This map makes it look like the Navy will be operating in the middle of nowhere. When compared to another map that shows these erased features, it becomes clear how close to Park boundaries the emitters will be, and that Lake Quinault, which is adjacent to private residential and Indian reservation lands, is almost surrounded by emitter sites. It makes no sense to not merely fail to disclose but to deliberately erase detail like this under a statute (NEPA) among whose purposes are better-informed decisions. It is also illegal.

18 U.S. Code § 1515 defines "misleading conduct" in part, as: (D) with intent to mislead, knowingly submitting or inviting reliance on a sample, specimen, map, photograph, boundary mark, or other object that is misleading in a material respect.

The Forest Service made no objection to this violation despite being apprised by the public; therefore, granting the permit would be complicity. **The solution, therefore, would be to rescind the pending permit, don't adopt the Navy's EA, and conduct an EIS on this highly controversial issue, that does not obscure details or foreclose the public's ability to participate**

6. Navy failed to substantiate its need for national forest lands. The Navy already has adequate and underutilized training sites available to its pilots. It currently conducts electronic warfare testing and training on at least 4 bases in Washington, Oregon, Idaho, and Nevada, but said in its 2014 EA that it needs the Olympic National Forest and Olympic Military Operating Areas, because it would save \$4.5 million per year in fuel costs from not flying the 400 miles to Mountain Home, Idaho. This in turn would save 45 minutes of flying time each way that

Whidbey-based Navy personnel could spend with their families. The EA mentioned no other reasons for moving training to the Olympic Peninsula.

However, in just one example, the 244 percent increase in aerial combat maneuvers (dogfighting) from 160 to 550 hours, which is described in the 2015 Northwest Training and Testing Final EIS (“tiered” in the Navy EA, and the US Forest Service ND/FONSI), is likely to burn so much jet fuel due to the high use of afterburners that are part of dogfighting, it would trivialize the \$4.5-million-dollar savings projected in the 2014 EA. If a Growler burns 1,304 gallons per hour, 550 flight hours without afterburners would use 717,200 gallons. But this is dogfighting with multiple Growler jets, so with afterburners it could be ten times that amount. The amount of fuel used for this activity alone could exceed 7 million gallons. If 79,000 annual Growler flights are being planned, the rationale for such comparatively tiny savings in the face of such vast increases in flights and use of fuel does not rise to the level of a justifiable reason for permanently encroaching on the quiet soundscapes and clean environments of the Olympic Peninsula, nor does it properly disclose cumulative impacts.

A 1988 Master Agreement between the Department of Defense and the US Department of Agriculture clearly states in the preface, under section C: “...training activities on National Forest System lands will be authorized **when compatible with other uses and in conformity with applicable forest plans, provided the Department of Defense determines and substantiates that lands under its administration are unsuitable or unavailable.**” The Department of Defense has never substantiated that its own lands were unsuitable or unavailable for the training exercises, as the EA’s stated reasons clearly show. There is no mention of this in the EA. In fact, Navy representative John Mosher was videotaped at a public meeting saying “scheduling problems” at other ranges were a major reason for moving operations to the Olympic Peninsula. Unfortunately, Government Accountability Office (GAO) reports have shown for more than a decade that the Department of Defense’s utilization of the millions of acres of lands it already owns is inefficient. So, failing to state all reasons, which should have included scheduling, in the 2014 EA invalidates it and with it the Forest Service’s rationale for the ND/FONSI. Further, the Navy has failed to respond to GAO’s requests for making more efficient use of its existing ranges. Therefore, the Navy has not proven that DoD lands are unavailable or unsuitable, and the 1988 Master Agreement is being violated. Nowhere does federal law justify overriding the public interest for the totally incompatible functions and purposes that conversion of national forest lands to an electronic warfare range present to Olympic National Forest and its spillover effects on neighboring Olympic National Park. The Navy has not demonstrated that such great “need” cannot be met by using existing facilities already under its control. If it’s a scheduling problem, then the Department of Defense needs to do a better job of managing its existing warfare ranges, which would have much less impact on the environment and was not considered as an alternative.

7. A “hard look” was not taken: The National Environmental Policy Act (NEPA), in 42 U.S.C. § 4321 *et seq.*, dictates that federal agencies must take a “hard look” at the environmental consequences of a proposed action, and that the requisite environmental analysis “must be

appropriate to the action in question.” (*Metcalf v. Daley*, 214 F.3d 1135, 1151 (9th Cir. 2000))⁵ For the reasons stated above, the EA and the ND/FONSI are inadequate to the task of properly evaluating cumulative impacts to endangered species or the human environment. For example, the Electronic Warfare EA does not examine the effects of jet noise that will be the foreseeable next step after the issuance of a permit by the Forest Service. Therefore, this EA and the Forest Service’s pending adoption of it do not constitute a “hard look” at cumulative impacts. **The solution is to rescind the ND/FONSI, the permit, and cancel pending approval of the Navy EA until the full scope of impacts is examined in a proper public process.**

8. Inadequate notification: The areas impacted by this decision did not receive adequate public notification. The Navy failed to notify affected Olympic Peninsula communities of the existence of the EA. Its brief 15-day comment period with no notification of affected communities on the North Olympic peninsula was an egregious breach of the public process. The Forest Service also failed to place adequate notifications in the newspaper of record, for its own public process. This compounded the breach of public process requirements of NEPA, and of public trust. Forest Service District Ranger and Responsible Official Dean Millett publicly admitted that he had chosen not to place any notices in publications that serve communities on the northern and western Olympic Peninsula. The one exception: Millett did place a single sheet of paper in the window of the Forks, Washington post office. Forks is a three-hour drive from some of the affected communities. The public has brought this up again and again, only to be ignored. It is not for Mr. Millett to decide which impacts are serious and worthy of public notification and which ones are not, as he obviously must realize now. Why then, did the Forest Service not rectify this mistake right away? Placing tiny ads only in Seattle-area newspapers and one weekly ad in Aberdeen, as was the full extent of public newspaper notification for this EA, violates the letter, spirit, and intent of the National Environmental Policy Act (NEPA.)

For the Navy to issue a Finding of No Significant Impact immediately following an EA on which it had received not a single comment from elected officials, Tribes, businesses and the general public, and then to have that followed by uncritical endorsement from the Forest Service, is an abdication of responsibility under NEPA. This violation of the public trust was exacerbated when base commander Captain Michael Nortier later used the same newspapers on the Peninsula that were avoided for purposes of publishing notices, to challenge and mock public concerns as “myths.” Many people, including elected officials, Tribes, individual citizens, businesses, and environmental organizations, were trying to address the many procedural concerns on the failure to provide proper notice and opportunity to be heard. Many people tried to address myriad substantive problems with the EA and the Forest Service’s incompetency in its initial attempts to address the public’s need for information—for example, many critical documents were not even on the Forest Service’s web site at the beginning of their comment period. Nortier’s mockery and the silent complicity of the Forest Service were the equivalent of rubbing the public’s nose in their failure to catch the tiny notices in Seattle-area papers, or find the single 8” X 11” piece of paper pasted in the window of the Forks post office. NEPA public process is not an Easter egg hunt. A federal agency must not mock the constituents it is supposed to serve. A federal agency must attempt to reduce the reservoir of public mistrust it creates when it acts irresponsibly. Why

⁵ Rowland, Thomas P., Gonzaga Law Review. *Metcalf v. Daley: The Makah Get Harpooned by NEPA*, 2001. <http://blogs.gonzaga.edu/gulawreview/files/2011/01/Rowland1.pdf>

did the Forest Service support the Navy's denial of public process by accepting their comment-free EA? **The solution is to not grant the permit and to initiate a public process that fulfills requirements of NEPA, and dignifies the participation of ordinary citizens who care very much about what their government is doing to create impacts to the environment, the economy, public health, and to threatened and endangered species.**

9. Contractors, not Navy personnel, will operate equipment: Also not mentioned in the 2014 Electronic Warfare EA, but discovered when a citizen asked a question at the November 6, 2014 public meeting in Port Angeles, was the fact that mobile emitter trucks will not be operated by Navy personnel, but by contractors. The amount, level and type of training for these contractors has never been disclosed despite public requests for it. Nor have terms of engagement between these contractors and the public been defined, in the event that national forest users encounter these mobile emitter trucks and wish to speak with their non-Navy personnel. Will these personnel be armed? What assurances can the Forest Service make to the public that these contractors are properly trained to speak with people they may encounter in ways that do not escalate? What about on site endangered species? **Solution: The Forest Service must respond to these longstanding public requests by asking the Navy to answer these and other questions about the roles and training of these contractors, whether they will be armed, what type of armament they will be carrying, and what the public can expect when encountering them.**

10. Forest Service failed to disclose important information: The Forest Service failed to disclose to the public in a timely manner⁶ that they had already granted the Navy four temporary Special Use Permits, from 2010-2015,⁷ to drive on national forest roads and conduct electromagnetic warfare testing and training feasibility exercises. The ND/FONSI fails to demonstrate that the Forest Service had verified the Navy's Finding of No Significant Impact. The public perception is that the Forest Service has rubber-stamped the Navy EA. As an example, the EA dismisses potential impacts on amphibians and reptiles with the astonishing declaration that these life forms only exist in and around marshes and meadows:

"The proposed activities do not occur on marshes or in meadows; therefore, it is highly unlikely that amphibians or reptiles would occur in the project area." (p. 3.2-6)

A similar statement dismisses the possibility of amphibians or reptiles occurring on "disturbed areas" such as roadside pullouts where mobile transmitters would operate. Why did the Forest Service not address this discrepancy? As any third-grader can attest and as the Forest Service presumably is aware, the habitat at issue is designated temperate rain forest, which means it is damp and wet during much of the year, and is prime habitat throughout for amphibians such as frogs, newts, and salamanders, far from "marshes and meadows." Furthermore, both amphibians and reptiles (e.g., snakes and lizards) often frequent cleared or "disturbed" areas. Dismissing this species group from consideration when amphibians are among the most endangered and rapidly

⁶ US Forest Service. Letter to Karen Sullivan, January 7, 2015.

<http://westcoastactionalliance.org/wp-content/uploads/2015/01/2015-FS-letter-on-permits-20150108-RO-response-Navy-EW-ltr.pdf>

⁷ US Forest Service. Temporary Special Use Permit, 2013. (Note map on page 5.)

http://westcoastactionalliance.org/wp-content/uploads/2015/02/6-2013_NAVY_Permit_ALL.pdf

disappearing species in the world is unethical as well as misleading and unlawful, because amphibians are especially sensitive to electromagnetic radiation, particularly in their larval stages, which some of the EA references discuss. Such warping of fact by the Navy, along with the uncritical acceptance of such distortions by the Forest Service, renders the EA and the process both agencies have followed suspect. **The solution would be to cancel the Forest Service's pending approval of the permit until the Navy can correct factual scientific inaccuracies to standards that Forest Service biologists can support.**

11. Public meetings or hearings "...are required when there may be substantial environmental controversy concerning the environmental effects of the proposed action, a substantial interest in holding the meeting, or a request for a meeting by another agency with jurisdiction over the action." (40 CFR 1506.6 (c)). Proper hearings under NEPA were never held in affected communities, and the legal right to register comments for the official record at public hearings was effectively denied. At the urging of Congressman Derek Kilmer, the Navy held "informational meetings" with the Forest Service attending, in 3 communities in autumn 2014, but both agencies refused to accept written or oral comments for the record despite hundreds of people wanting to make them. The Forest Service witnessed the public outrage at this denial of process. It is an independent agency under the Department of Agriculture, not the Pentagon. It has the legal mandate to manage its own lands and not allow another agency's science to replace the work of its own biologists. So why did the Forest Service accept a Finding of No Significant Impact on an EA for which no public comment was received, when it was abundantly clear that the public would have commented had they known about it? **The solution is the same: cancel the permit approval and conduct a full EIS, with adequate public participation.**

12. Forest Service failed to conduct its own research: The US Forest Service has a duty to conduct its own **independent** scientific review of the impacts of activities that it allows or condones; an agency cannot simply adopt the conclusions of another agency. See, 747 F2d 1240 *Save Our Ecosystems V. P Clark E Merrell*,⁸ excerpted below:

2. The Forest Service Must Do Research If No Adequate Data Exists.

47

We recognized in *SOCATS* (Southern Oregon Citizens Against Toxic Sprays) that an agency may be required to do independent research on the health effects of a herbicide. This is not a new requirement.

48

In *Foundation for North American Wild Sheep v. U.S. Dept. of Agriculture*, 681 F.2d 1172(9th Cir.1982),⁹ this court held an EIS inadequate because it failed to address the effect on bighorn sheep of opening a road when those effects were uncertain. We said, "the very purpose of NEPA's requirement that an EIS be prepared for all actions that may significantly affect the environment is to obviate the need for such speculation by insuring that available data is gathered and analyzed prior to the implementation of the

⁸ 747 F2d 1240 *Save Our Ecosystems V. P Clark E Merrell* <http://openjurist.org/747/f2d/1240>

⁹ *Foundation for North American Wild Sheep v. U.S. Dept. of Agriculture*, 681 F.2d 1172(9th Cir.1982). <http://openjurist.org/681/f2d/1172>

proposed action." 681 F.2d at 1179. Similarly, in *Warm Springs Dam Task Force v. Gribble*, 621 F.2d 1017 (9th Cir.1980),¹⁰ we held that an agency cured the defect in its EIS by commissioning a study about the effects of a newly discovered fault system on that dam. 621 F.2d at 1025-26. Other courts have imposed similar requirements on agencies. See, e.g., *Rankin v. Coleman*, 394 F.Supp. 647, 658 (highway project enjoined for inadequate EIS on effects and alternatives; alternatives must be "affirmatively studied"), mod. 401 F.Supp. 664 (E.D.N.C.1975); *Montgomery v. Ellis*, 364 F.Supp. 517, 528 (N.D.Ala.1973) ("NEPA requires each agency to undertake research needed adequately to expose environmental harms and, hence, to appraise available alternatives") (project enjoined pending preparation of an adequate EIS); *Brooks v. Volpe*,¹¹ 350 F.Supp. 269, 279 ("NEPA requires each agency to indicate the research needed to adequately expose environmental harms"), supplemented, 350 F.Supp. 287 (W.D.Wash.1972), aff'd, 487 F.2d 1344 (9th Cir.1973); *Environmental Defense Fund v. Hardin*, 325 F.Supp. 1401, 1403 (D.D.C.1971) (interpreting section 102(2)(A) as making "the completion of an adequate research program a prerequisite to agency action The Act envisions that program formulation will be directed by research results rather than that research programs will be designed to substantiate programs already decided upon").

49

Furthermore, in *SOCATS* and in *Warm Springs* we recognized that such a duty also flowed from the worst case analysis regulation:

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"If the information relevant to adverse impacts is essential to a reasoned choice among alternatives and is not known and the overall costs of obtaining it are not exorbitant, the agency shall include the information in the environmental impact statement. (*End of excerpt from Van Strum: 11/28/14 "Addendum to my comment # 42759-584-2039," filed on 10/31/14*)¹²

The Forest Service must deny the special use permit until the flaws can be corrected, among, the Forest Service must conduct a full, independent EIS on the cumulative impacts to endangered species and the human environment of the training exercises.

13. Cumulative impacts: Although the requirement to consider cumulative impacts did not appear in the original NEPA statute in 1970, the President's Council on Environmental Quality (CEQ) issued NEPA regulations in 1973 that were substantially revised in 1978, and clearly stated a requirement to consider cumulative impacts for all projects undergoing NEPA analysis. CEQ provided the following definition of cumulative impacts in §1508.7:

¹⁰ *Warm Springs Dam Task Force v. Gribble*, [621 F.2d 1017](http://openjurist.org/621/f2d/1017) (9th Cir.1980).
<http://openjurist.org/621/f2d/1017>

¹¹ *Brooks v. Volpe*, (9th Cir.1973). <http://openjurist.org/487/f2d/1344>

¹² *Van Strum*, Carol, Comment letters, October 31 and November 28, 2014.

<http://westcoastactionalliance.org/wp-content/uploads/2015/06/cvs-comments-mobile-EMF-in-National-forests.doc>

The impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

A study of 25 opinions issued by the Ninth Circuit Court of Appeals for the period 1995-2004¹³ revealed that cumulative impacts litigation was increasing, and that challengers won their claims of inadequate analysis in 60 percent of the cases averaged among agencies, with the Forest Service losing 69 percent of their cases. In recent years, the success rate for challenges has risen to 72 percent.

A reasonably foreseeable analysis¹⁴ should be focused on whether (1) the proposed action is sufficiently likely to occur, rather than those that are merely possible, and (2) whether the effect can be meaningfully evaluated. Although this still leaves discretion for agencies to determine whether a proposed action should be considered in a NEPA analysis, courts have interpreted this to mean that the agency “need not speculate about all conceivable impacts” but must consider all impacts that a person of ordinary prudence would take into account in making a decision of whether the proposed action is sufficiently likely to occur.” **In making these evaluations, agencies must make “good faith” effort in determining whether a proposed action should be included in a cumulative impact analysis. The Navy failed to do this in their EA,** and in fact dismissed multiple impacts that courts in the past have found reasonably foreseeable. Reasonably foreseeable events and the effects they cause, although still uncertain, must be probable, rather than possible. Despite this higher standard, too many probable impacts have been completely unaddressed in the NEPA process, and in particular, in the Navy’s EA, and by extension, the US Forest Service ND/FONSI.

In order to take the hard look required by NEPA, agencies are required to assess impacts and effects that include: “ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, **whether direct, indirect, or cumulative.**” 40 C.F.R. § 1508.8.

NEPA defines “cumulative impact” as: the impact on the environment which results from the incremental impact of the action **when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions.** Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

¹³ Smith, Michael D, and the Department of Environmental and Natural Resource Sciences, Humboldt State University. *Recent Trends in Cumulative Impact Case Law*, Undated. <http://westcoastactionalliance.org/wp-content/uploads/2015/05/trends-in-cumulative-impact-case-law.pdf>

¹⁴ Veenendaal, Elijah. *Avoiding Improper Segmentation and Accounting for Cumulative Impacts During Deployment of a Broadband Infrastructure*, July 2012. <http://westcoastactionalliance.org/wp-content/uploads/2015/05/E.-Veenendaal-NEPA-Segmentation.pdf>

A comment letter from Olympic Park Associates¹⁵ states, “Aircraft aerial maneuvers and their resulting horrific noise on the western half of the Olympic Peninsula would have an overwhelming impact on citizens living in the area, citizens recreating in the area, and the over 3 million yearly visitors to the area. A National Park Service (NPS) report issued in July of this year showed that in 2013, 3,085,340 visitors to Olympic National Park spent \$245,894,100 in communities near the park. That spending supported 2,993 jobs in the local area. The Navy’s EA insufficiently addresses the impacts of the proposed Navy warfare training and its effects on residents, visitors, wildlife, or Navy personnel on the Olympic Peninsula. ... OPA cannot find an analyses of the aircraft noise that will actually be created by these training exercises in the Navy EA.”

In addition to problems previously listed, evaluations of impacts on the following are required but were not addressed in the Navy’s Electronic Warfare Range EA:

- Socioeconomic impacts to communities from increased jet noise and air pollution;
- Cultural factors, including traditional uses of land;
- Analysis of the effects of electromagnetic radiation and loud sounds on migrating shorebirds, geese, ducks, and other non-listed birds (a billion birds use the migratory flyway along the Washington coast, but the EA fails to address cumulative impacts from noise, electromagnetic radiation, or disturbance;)
- Analysis of other sites as alternatives to the Olympic MOA (Military Operating Area,) including private lands—required as per the 1988 Master Agreement.¹⁶
- Cost analysis for jet fuel savings as claimed in EA;
- Analysis of increased fire danger posed by jet and drone crashes, sparks from vehicle transmitters or operators’ cigarettes, or misdirected electromagnetic beams from either the transmitters or from jets, hitting tinder-dry vegetation;
- Analysis of chronic exposure to electromagnetic radiation;
- Analysis of interference with civilian emergency response frequencies: A supporting document referenced in the EA admits the potential for “loss of life and political ramifications” due to interference with communications frequencies. Although the EA did not address this, the Navy responded to questions about it at public meetings by saying the FCC will prevent such interference from happening.

NEPA requires federal agencies to prepare an EIS to thoroughly assess the environmental impacts of "major federal actions that could significantly affect the human environment." Other branches of the Armed Services are looking to train on the Olympic Peninsula; what are the Forest Service’s plans to integrate the cumulative impacts of all this military activity? **The solution is: Given the magnitude of impacts from having as many as 153-160 electronic**

¹⁵ Olympic Park Associates. Comment letter, October 2014.

<http://westcoastactionalliance.org/documents/comment-letters>

¹⁶ Department of Defense and US Department of Agriculture. *Master Agreement Concerning the Use of National Forest System Lands for Military Activity*. September 30, 1988.

<http://westcoastactionalliance.org/wp-content/uploads/2015/01/1988-MOU-USDA-DoD.pdf>

attack “Growler” jets that burn between 1304¹⁷ and 12,000 gallons per hour (depending on whether afterburners are used) in flight across the Olympic Peninsula¹⁸ and other land and water bodies within reach of Naval Air Station Whidbey Island for 260 days per year, and given that the Navy only analyzed impacts it deemed were “truly meaningful” in its EA and that the Forest Service failed to follow up with their own independent scientific investigations, it seems that only an EIS that fully and adequately analyzes all impacts of all jets and mobile emitters in all areas, along with mitigation measures, would meet full NEPA compliance. Further, the alternatives that must be considered under NEPA are those that would “avoid or minimize” adverse environmental effects. *No reasonable alternatives were proposed for conducting the testing and training program on existing DoD lands already in use for this purpose.*

In addition, 40 CFR § 1504.1 provides under section 309 of the Clean Air Act (42 U.S.C. 7609), that the Administrator of the Environmental Protection Agency is directed to review and comment publicly on the environmental impacts of federal activities, including actions for which environmental impact statements are prepared. Since the NEPA documentation was through an EA rather than an EIS, and since the current number of Growler jets stationed at Naval Air Station Whidbey Island and the proposed potential number of jets represent not all of the aircraft that have been added at NAS Whidbey in recent years, and since only 36 of these jets are being evaluated in the most recent EIS, then it makes sense that an air quality review be conducted by EPA.

In EPA’s report titled “Consideration Of Cumulative Impacts In EPA Review of NEPA Documents,”¹⁹ cumulative impacts that result in significant impacts can be the basis for adverse ratings. EPA will consider cumulative impacts when determining the rating for the environmental impacts of the proposed project. Ratings should be based on the overall environmental impact of the proposed project or action, which includes cumulative impacts. When the NEPA document does not contain sufficient information, the determination of potential, total project impacts may be based on other documents, information, or on-site surveys. In these situations, the reviewer should identify the source of information that is the basis for EPA comments including those related to cumulative impact analysis.

¹⁷ Department of Defense. *Selective Acquisition Report. CO2 Emissions from an EA-18G Growler*. https://docs.google.com/spreadsheets/d/1wsLDJmTWqAHLkS9L5F3D-Y_Abx2lNNDkw4sjpmwpC2Y/edit#gid=0

¹⁸ The Growler’s GE F-414 engines at full power develop 44,000 pounds of thrust (22,000 x 2 engines) in afterburner (AB) and 28,800 pounds of thrust in the basic engine. “A rule of thumb for bypass of turbofan engines is that an afterburner nets about a 50% increase in thrust with about a 500% increase in fuel consumption.” Personal communication, Patrick Noonan, former Navy F4 and test pilot; also https://en.m.wikipedia.org/wiki/Boeing_EA-18G_Growler

¹⁹ US EPA. *Consideration Of Cumulative Impacts In EPA Review of NEPA Documents*, EPA 315-R-99-002/May 1999. <http://westcoastactionalliance.org/wp-content/uploads/2015/05/EPA-cumulative-impacts.pdf>

Also not addressed are cumulative impacts to air, water and soil quality from jet engine emissions and dumping of jet fuel and chaff that granting of this special use permit may trigger. The latest estimate for the number of EA-18G Growler jets to be stationed at Naval Air Station Whidbey Island has changed somewhat, but many more types of aircraft that participate in the training are also being housed there, and contribute to air pollution.

With regard to air quality, 40 CFR § 1504.1 – Purpose, states:

(b) Under section 309 of the Clean Air Act (42 U.S.C. § 7609), the Administrator of the Environmental Protection Agency is directed to review and comment publicly on the environmental impacts of federal activities, including actions for which environmental impact statements are prepared.

If after this review the Administrator determines that the matter is “unsatisfactory from the standpoint of public health or welfare or environmental quality,” section 309 directs that the matter be referred to the Council. The Navy EA addressed emissions only from the mobile emitters and associated “construction activities,” and not the cumulative impacts of 153-60 Growler jets.

Page 3.4-3 of the Electronic Warfare Range EA states, “The Olympic Peninsula and the north-central Washington portions of the Study Area generally have good air quality, as indicated by the lack of nonattainment areas in the region. The Olympic Peninsula and the north-central Washington portions of the study area are not located in a nonattainment or maintenance area.” In the section called Determination of Significance (p. 3.4-2), the EA discusses whether emissions from the mobile emitters could impact ambient air quality and concludes that the emitters won’t cause a change in nonattainment status. **Another way to interpret this may be, “We didn’t look at the jets, but even if we did, the air out here is very clean, so there’s a lot of room for filling it up before air quality warnings are triggered.”** The Navy’s Growler EIS confirms that National Ambient Air Quality Standards may be violated.

The City of Port Townsend’s water supply,²⁰ as a typical example for the Olympic Peninsula, is surface water, from the Big Quilcene and Little Quilcene Rivers in the northeast corner of the Olympic National Forest, which has served the community for 87 years. Port Townsend’s water is stored in Lord’s Lake and City Lake Reservoirs. As with all surface water sources, the Washington Department of Health rates the City’s water source as highly susceptible to contamination. The fact that Growler jets burn 1300+ gallons of jet fuel per hour and ten times that amount when using afterburners, and the fact that an active-duty Navy pilot confirmed that fuel dumping happens about once a month,²¹ contamination of water supplies is a concern. Eyewitness accounts of fuel dumping over Smith and Minor Islands (a national wildlife refuge) have been reported in the media, and jets often fly very low over residential communities and foothills where these water supplies are, while transiting to and from training. The jet propellant that is used by the Growlers is refined kerosene that contains a mixture of volatile organic compounds (VOCs), some of which are known carcinogens as well as being liver, kidney and immune system toxins. The post-combustion exhaust from jet engines contains equally

²⁰ City of Port Townsend. *Annual Drinking Water Report, 2014*. (System ID# 69000R) <https://weblink.cityofpt.us/WebLink/0/edoc/114905/05-May%202015.pdf>

²¹ Personal communication.

carcinogenic pollutants of air, water and soil that are capable of acute and chronic toxicity to animals as well as plant and aquatic life.

While the City and the Forest Service continue to cooperate in a joint effort to manage and protect the municipal watershed to maintain the quality of drinking water, and while analyses of contaminants such as heavy metals are conducted annually, the cumulative impacts of contaminant loads from Navy activities are unknown and have not been evaluated. Nor have all municipal and private drinking water sources in the geographic area covered by the ND/FONSI been evaluated.

The most common reason plaintiffs have used to challenge an agency's cumulative impacts analysis, and the most common reason agencies lost their cases, was that there was not an adequate analysis of all past, present and reasonably foreseeable future actions. **This challenge was present in 60 percent of the cases, and agencies lost 87 percent of these.** The second most common reason that agencies lost a case was in adequacy of the data and rationale used in the analysis (64 percent.). In both of these examples the Navy's EA is completely inadequate if not disingenuous, and the Forest Service's attempts to adopt it wholesale without independent investigation are a travesty of scientific integrity.

14. Interaction with and effects of climate change as a potential magnifier of impacts was not evaluated in the Electronic Warfare Range EA. The entire passage on climate change was nonspecific boilerplate material. The Navy's contribution to climate change and air pollution in the Pacific Northwest is already significant, but will grow far larger given that if the average jet fuel consumption rate (based on typical operations patterns) of single EA-18G Growler jet is 1304 gallons per hour (multiplied 10X when afterburners are used) and this produces 9.57 kg CO₂ per gallon, so the CO₂ produced each hour is 12,479 kg, or about 12.5 metric tons, when not using afterburners. The per capita emissions in Washington state in 2011 was 10.18 metric tons per year (including all residential, commercial and industrial activities), so one hour of flight is about 23 percent more than the **annual** CO₂ emissions of a typical Washington state citizen.²² Now that the addition of still more growlers to the fleet at Whidbey Island has been confirmed by a navy representative at an open house, the total number of Growlers will be 160. This is new information about functionally and geographically connected activities that has not been evaluated in the Forest Service's process. **With a projected lifetime of 10,000 hours of flight time per Growler, we are looking at a minimum of about 21 billion metric tons of CO₂, not counting afterburner use, which would increase that figure by orders of magnitude. This also does not count emissions from any other aircraft at NASWI, such as P-8A Poseidons, for which "full transition to NAS Whidbey will occur by 2020."** They are considered a "separate, ongoing action." The Navy is likely to become (and may already be) one of the largest air polluters, not just on the Olympic Peninsula, but in the Pacific Northwest; yet the 2014 EA did not address this, nor did the Forest Service. **Over the next 20 years we are looking at a grim picture of chronic air and noise pollution, habitat and public health degradation, species loss, and major contributions to climate change, from an area that is globally**

²² Greacen, Chris, PhD. *CO₂ Emissions from an EA-18G Growler*, informal paper. <http://westcoastactionalliance.org/wp-content/uploads/2015/06/Carbon-dioxide-emissions-from-an-EA-18G-Growler1.pdf>

renowned for its World Heritage, Biosphere Reserve and wilderness values, and its vibrant culture and tourism economy.

The December 18, 2014 updated Draft Guidance issued by the Council on Environmental Quality (CEQ), “Consideration of the Effects of Climate Change and Greenhouse Gas Emissions”²³ help resolve continuing debate over the relevance of climate change to NEPA analyses by recommending — and in some cases requiring — consideration of climate change issues by federal agencies poised to take “major actions” under the statute. Regardless of what the incoming Administration does with this guidance, it has been in effect during the time this public process was conducted. **Solution: rescind the permit, cancel adoption of the EA, and do a proper cumulative analysis of climate change and effects from greenhouse gases produced by Navy jets.**

15. Claims of “tiered” NEPA documents are inaccurate:²⁴ On page 2-8 of the Navy EA (Electronic Warfare Range EA), it says, “All of the EW (electronic warfare) training activities and locations that would be associated with the implementation of the Pacific Northwest EW Range were analyzed in the Northwest Training Range Complex (NWTRC) EIS/OEIS.²⁵ The NWTRC EIS has an October 2010 Record of Decision²⁶ that approved an alternative that included electronic warfare training activities associated with the establishment of a fixed emitter in the Pacific Beach area.”

That the 2010 NWTRC EIS did not evaluate the activities contemplated by the proposed electronic warfare range or the effects of at least 118 Growler jets is apparent from the following tables and analyses:

Table 3.2-2 in the NWTRC EIS lists the emission sources for all training activities evaluated by the NWTRC EIS. The only emission sources listed for electronic combat are from aircraft and ships or boats. There are no emission sources listed for ground based mobile emitters. Had the activities contemplated by the proposed Electronic Warfare Range been evaluated by the NWTRC EIS, the ground based mobile emitters should have been listed here as an emission source.

Table 3.3-8 in the NWTRC EIS lists by activity and training area, the stressors and hazardous materials that would be associated with the activities evaluated by the

²³ Council on Environmental Quality. *Draft Guidance on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change*, December 18, 2014.

https://www.whitehouse.gov/administration/eop/ceq/Press_Releases/December_18_2014

²⁴ Richards, Ron. Comment letter, November 28, 2014. <http://westcoastactionalliance.org/wp-content/uploads/2015/01/2014-11-28-2014-Protect-Peninsulas-Future-comment-letter.pdf>

²⁵ US Navy. *Northwest Training Range Complex (NWTRC) EIS/OEIS*, September 2010 (2 volumes.) <http://westcoastactionalliance.org/documents/navy>

²⁶ US Navy. *Northwest Training Range Complex (NWTRC) EIS/OEIS. Record of Decision*, October 2010.

http://www.navfac.navy.mil/content/dam/navfac/Environmental/PDFs/NEPA/NWTRC_ROD.pdf

NWTRC EIS. For electronic combat the only areas listed are the Darrington Area and Warning Area 237. Had the activities contemplated by the proposed electronic warfare range been evaluated by the NWTRC EIS, the Olympic MOAs should have been listed here as a training area.

Table 3.16-1 lists by Range and Training Site, the training environment and the type of training activity covered by the NWTRC EIS. For Electronic Combat the only area listed is Warning Area 237. Had the activities contemplated by the proposed electronic warfare range been evaluated by the NWTRC EIS, the Olympic MOAs should have been listed here as a training area.

Table 3.16-2 lists by warfare type the area in which it would be conducted. For electronic combat the only areas listed are Warning Area 237 and the Darrington Area. Had the activities contemplated by the proposed electronic warfare range been evaluated by the NWTRC EIS, the Olympic MOAs would should have been listed here as a training area.

That the 2014 Northwest Testing and Training (NWTT) DEIS did not evaluate the activities contemplated by the proposed electronic warfare range is apparent from the following statements:

On Page 2-3 it says, “The land resources affected by the use of the Olympic MOAs A and B will be evaluated as they are directly impacted by overflights for at-sea activities.” To emphasize the obvious, only overflights of the MOAs for training at sea was contemplated in the NWTT EIS. No mention is made of impacts on the Olympic MOAs from Electronic Combat training there.

On Page 3.6-18 it says, “The training activities involving aircraft in the Olympic MOAs evaluated in this EIS/OEIS are similar to the training evaluated in the NWTRC EIS.” With electronic combat training in the Olympic MOAs not having been evaluated in the NWTRC EIS, this sentence demonstrates it was not evaluated in the NWTT EIS, either.

The Forest Service must not accept the assertion that the Navy EA is adequate because of the tiered EIS’; not accept tiered EIS’ unless they are actually tiered.

Solution: the US Forest Service must adopt a finding that the tiered EIS’ do not cover the actions relevant to the special use permit application, do not accept the Navy EA based upon documents as “tiered” because of the omissions stated above among others, and require a full EIS that evaluates the impacts actually contemplated by the special use permit.

16. Definitions are unclear: What constitutes an “event” or an “activity” is never specifically defined in the Electronic Warfare Range EA or in documents it is supposedly tiered off. As such, it is not possible to make a reasonable decision on, or determine the true environmental impacts of, the Navy’s proposed actions. We know that the EA-18G Growlers typically operate in groups of two or three. An “event” involving Growlers would therefore potentially involve multiple aircraft flights, and perhaps more. Section 3.4.3.2.5.2 of the 2014 Northwest Testing and

Training (NWTT) DEIS discusses a Civilian Port Defense activity, listed as only one “activity,” that lasts several days and would include multiple helicopter flights every day. At page 3.4-286, a Submarine Commander Course involving three surface ships and a submarine using mid-frequency sonar “over the span of the multiple day event is discussed.” Therefore, what the environmental documents refer to as one “event” are in fact probably multiple events involving multiple assets and perhaps lasting multiple days.

Solution: The US Forest Service must withdraw the ND/FONSI and rescind the adoption of the Navy EA until clear definitions of terms are included, ensuring that the definition of “event” in each activity category is clear, so that the Forest Service and the public can understand and evaluate the full scope of impacts. Since this has not been done and since the public remains uninformed about just how much activity there will be, the Forest Service should ask the Navy to provide this information in a full EIS conducted by the US Forest Service and based upon the clearer information; the public process related to these actions must be fair and adequate, and a decision be made that fulfills NEPA requirements.

17. Radiation hazard exposure evaluation inadequate: According to the Navy EA, the truck-mounted Mobile Electronic Warfare Training System emitters will park in 15 designated locations in the Olympic National Forest and on State DNR lands and surround themselves with a 100-foot radiation hazard zone marked with warning tape and special signs. Should any humans or large mammals persist inside the perimeter, operations would cease until they left. However, the Navy declined to define which type of large mammals would qualify for cessation of transmission, and have made no allowances for birds, small mammals, amphibians or reptiles. The mobile emitters will simulate “bad guys” with various frequencies while Navy EA-18G Growler jets flying overhead detect and respond. Each Growler carries an array of surveillance, jamming and attack weaponry that uses directed energy, as seen in a video from Northrop-Grumman, manufacturer of the AESA electronic array.²⁷ The Navy’s EA insists that the radiation from the emitters will not be harmful, but it failed to mention any downward-directed radiation coming from the jets. **Public questions about chronic radiation exposure to nesting birds, small mammals and amphibians, many of which could be in trees and thus directly in line with the 14-foot height of the transmitters carried on the mobile emitters, as well as to hikers, campers, photographers, boaters and other users, were dismissed without adequate scientific data, information, analysis and findings. This omission further violated the NEPA public process requirements.** The Navy EA falsely stated that amphibians would probably not be found in the selected locations for the mobile emitters; the Forest Service did not dispute it; lack of scientific vigilance also invalidated the Navy EA.

According to the EA, mobile emitters will transmit electromagnetic radiation for a total of 2,340 hours per site per year, and 7,020 hours across three sites each year (p. 2-6.) This provides a total electromagnetic radiation exposure of 35,100 hours across all 15 sites each year (2,340 hrs/site/yr x 15 sites)²⁸ which is never explicitly stated in the EA. **In sum, an undefined area**

²⁷ Northrop-Grumman. *How does an Active Electronically Scanned Array (AESA) Radar Work*, video. <https://www.youtube.com/watch?v=XIm59P5BNSQ>

30.8 m (101.1) feet west of each mobile unit site will be exposed to 4–8 GHz of electromagnetic radiation for 2,340 hours/year, with 9 hours of exposure occurring every fifth day.

Omitted from the EA but admitted in news reports was the Navy’s September 28, 2014 statement that fifteen minutes of exposure is enough time to sustain damage to soft tissue such as the eyes.²⁹

The Navy also plans to install and operate one fixed Mobile Remote Emitter Simulator (MRES) emitter at Naval Station Everett Annex Pacific Beach. This fixed emitter will be 20 m (66 ft) in height, and can transmit 64 simultaneous pulses at 2–18 GHz, pulsed or in waves, (U.S. Navy 2014, p. 3.1-2). The action-level environment, also undefined in area, will be exposed 217.5 m (713.7 ft) west of the fixed emitter (p. 3.1-4). The fixed emitter beam will be pointed in a westerly direction, into the air (p. 3.1-15). The Navy failed to clearly identify the hours of operating time expected for the fixed emitter per day and per year, although repeatedly refers to Table 2.1-1 in the EA, which describes hours of operation of mobile emitters (p. 3.2-23, 25). In sum, an undefined area 217.5 m (713.7 ft) west of the fixed MRES emitter will be exposed to 2–18 GHz of electromagnetic radiation for 2,340 hours per year.³⁰

The Navy used only one citation to verify the following statement on electromagnetic radiation emissions: “There are no conclusive direct hazards to human tissue as a result of electromagnetic radiation. Links to DNA fragmentation, leukemia and cancer due to intermittent exposure to extremely high levels of electromagnetic radiation are speculative; study data are inconsistent and insufficient at this time (Focke et al.)”³¹

According to Dr. Martin Pall, Professor Emeritus, Western Washington University School of Molecular Biosciences, “...the implication in [the Navy’s] statement is that you only have to worry about extremely high levels of exposure, and that’s simply wrong, because we know that there are thousands of studies that have shown that’s wrong, over and over and over again.”³² Pall also stated:

²⁸ Seattle Audubon. Comment letter, October 2014. <http://westcoastactionalliance.org/wp-content/uploads/2015/01/2014-10-31-2014-Seattle-Audubon.docx>

²⁹ Peninsula Daily News. *No people, large animals to be harmed in electronic warfare training, Navy says — but it has its risks*, September 28, 2014. <http://www.peninsuladailynews.com/article/20140928/NEWS/309289934>

³⁰ Seattle Audubon. Comment letter. <http://westcoastactionalliance.org/wp-content/uploads/2015/01/2014-10-31-2014-Seattle-Audubon.docx>

³¹ US Navy. *Electronic Warfare Range Environmental Assessment*. Also, Focke et al, *Mutation Research* 683:74-83, 2010. *DNA Fragmentation in human fibroblasts under extremely low frequency electromagnetic field exposure*.

³² Pall, Martin, Ph.D. On-camera interview by Olympic Peninsula Watch. <https://www.youtube.com/watch?v=pLRgZza8PXg&feature=youtu.be>

“The Navy is looking at extremely low frequency field exposure, the kind we get from the wiring in our house, or from high-voltage power lines, and those are not the kinds of exposures that the Navy is planning to use on the Peninsula.”

And,

“Why did the Navy pick this one study to cite as the only citation in this whole thing [the EWR EA] to say we don’t have to worry about human health effects, is just ridiculous.”³³

And,

“Another problem is that they say the effects on leukemia are speculative, and when you look at the Focke et al paper, that’s not what they say at all. They say that childhood leukemia is, in fact, well-associated with these exposures. So, the one citation that they make here [in the EA] contradicts statements they’ve made.” Concerning wildlife, he said, “Animals are of similar concern, specifically types of animals... we know that birds seem to be particularly sensitive, especially migrating birds, and this is a major migration flyway and they don’t tell us anything that gives assurances that birds are not going to be severely impacted.”³⁴

Dr. Pall also wrote a detailed letter to the Navy³⁵ on November 2, 2015, describing his concerns about effects of electromagnetic radiation on human health.

According to Navy statements at public meetings, attack weaponry will not be used, nor is the term ‘electronic attack’ even discussed in the Navy EA. However, the stated intent of the training is to turn out “fully trained, combat-ready squadrons.” Former Navy pilots familiar with directed energy detection and electronic attack systems that use directed energy have expressed concern about the levels of radiation emitted by the mobile emitters as well as the electronic detection array coming from the jets.³⁶

The following is quoted in Joint Publication 3-13.1³⁷ which the Navy referenced in its EA:

³³ Olympic Peninsula Watch Video. “Dr. Martin Pall Interview – Navy’s Electromagnetic Emitters and Health Impacts,” May 12, 2015. 12-minute version:

<https://www.youtube.com/watch?v=uaIqwzq55ug> 36-minute version:

<https://www.youtube.com/watch?v=pLRgZza8PXg&feature=youtu.be>

³⁴ Ibid, Pall.

³⁵ Pall, Martin, Ph.D. Comment Letter, November 2, 2015.

http://westcoastactionalliance.org/wp-content/uploads/2015/11/NavyOlympwarElect_MartinPall.pdf

³⁶ Private communications with retired Navy pilots.

³⁷ All Services. Joint Publication 3-13.1, *Doctrine Update*, February 2012.

http://westcoastactionalliance.org/wp-content/uploads/2015/01/2012-02-08-2012-du_jp3_13_1-2-Electromagnetic-spectrum-doctrine-update.pdf

“Electronic Attack is defined in the Department of the Army Field Manual #3-36 - “Electronic Warfare in Operations,”³⁸ as: “...a division of electronic warfare involving the use of electromagnetic energy, or antiradiation weapons to attack personnel, facilities, or equipment with the intent of degrading, neutralizing, or destroying enemy combat capability and is considered a form of fires (JP 3- 13.1). Electronic attack includes—

- *Actions taken to prevent or reduce an enemy’s effective use of the electromagnetic spectrum, such as jamming and electromagnetic deception.*
- *Employment of weapons that use either electromagnetic or directed energy as their primary destructive mechanism (lasers, radio frequency weapons, particle beams).*
- *Offensive and defensive activities including countermeasures.”*

Directed energy is defined as: “...an umbrella term covering technologies that relate to the production of a beam of concentrated electromagnetic energy or atomic or subatomic particles (JP 1-02). A directed-energy weapon uses directed energy primarily as a direct means to damage or destroy an enemy’s equipment, facilities, and personnel. In addition to destructive effects, directed-energy weapon systems support area denial and crowd control.”

Section 4-66 on page 4-17 says, “Like any other form of electromagnetic radiation, electronic attack can adversely affect local media and communications systems and infrastructure. EW planners consider unintended consequences of EW operations and deconflict these operations with the various functional or integrating cells. For example, friendly jamming could potentially deny the functioning of essential services such as ambulance or fire fighters to a local population. EW officers routinely synchronize electronic attack with the other functional or integrating cells responsible for the information tasks. In this way, they ensure that electronic attack efforts do not cause fratricide or unacceptable collateral damage to their intended effects.” The veracity of this statement is unknown, since it was never addressed by the Navy in public meetings, even when the public questioned the information.

As an aside, Figure 4-2 in the document labels the human components of “targeted assets” that are most vulnerable to electronic attack as “Wetware.” Navy Seals on public beaches aside, it is difficult to comprehend how any branch of the military operating in populated civilian areas will be able to produce fully trained, combat-ready electronic attack squadrons without actually *using* the equipment and without causing significant impacts on local populations as well as wildlife and habitats.

The Navy EA incorporates by reference both the 2010 Northwest Training Range Complex EIS³⁹ and the 2010 Biological Opinion,⁴⁰ neither of which discusses or contemplates use of national

³⁸ Department of the Army. Field Manual 3-16, *Electronic Warfare in Operations*, Undated. http://hosted.ap.org/specials/interactives/_documents/electronic_warfare.pdf

³⁹ US Navy. *Northwest Training Range Complex EIS*. 2010. <http://westcoastactionalliance.org/documents/navy>

forest lands or any lands on the Olympic Peninsula, for mobile electromagnetic radiation transmitters and associated aircraft operations. The Navy EA nowhere discusses, mentions, describes or explains the electromagnetic radiation employed by the search aircraft used to locate the ground transmitters, nor their altitudes, flight paths, and over-land air and noise pollution. It is impossible to assess the impacts of these electronic warfare exercises without an understanding of the electromagnetic radiation produced by the aircraft, the noise pollution and startle effects of such aircraft over our forests, the toxic emissions of aircraft engines over the forests, and the Navy's record of aircraft crashes during training exercises. No honest assessment of the effects of the proposed exercises can justify omitting the combined impacts of aircraft and ground activities. The blatant omission of such information precludes informed public comment and fails to meet NEPA requirements.

Because the Navy's EA downplays the impacts of radiation on wildlife to the point of absurdity, the Forest Service should not adopt the Navy EA and issue the permit without serious consideration of the U.S. Department of Interior's February 7, 2014 critique of the FCC's outdated dismissal of radiation concerns on endangered species and vulnerable human populations (compromised immune systems, pregnant women and fetus, stroke and high blood pressure, et al):⁴¹

"...the electromagnetic radiation standards used by the Federal Communications Commission (FCC) continue to be based on thermal heating, a criterion now nearly 30 years out of date and inapplicable today...Radiation at extremely low levels (0.0001 the level emitted by the average digital cellular telephone) caused heart attacks and the deaths of some chicken embryos.....To date, no independent, third-party field studies have been conducted in North America on impacts of tower electromagnetic radiation on migratory birds. With the European field and U.S. laboratory evidence already available, independent, third-party peer-reviewed studies need to be conducted in the U.S. to begin examining the effects from radiation on migratory birds and other trust species."

18. Electronic warfare on public roads outside of the Military Operating Area (MOA) with no evaluation of associated impacts on human health and endangered species invalidates Navy and Forest Service findings of No Significant Impact and the Fish and Wildlife 2016 Biological Opinion:

The Navy failed to evaluate impacts for and disclose to the public, that the Navy has been driving mobile emitter prototypes and conducting electronic warfare testing and training outside the Military Operating Area (MOA), on roads *throughout the Olympic*

⁴⁰ US Fish and Wildlife Service. *Biological Opinion*, Northwest Training Range Complex, 2010. <http://westcoastactionalliance.org/wp-content/uploads/2015/01/2010-08-12-2010-USFWS-Biological-Opinion-Northwest-Training-Range.pdf>

⁴¹ Department of the Interior. Letter to Eli Veenendaal, National Telecommunications and Information Administration, February 7, 2014. <http://westcoastactionalliance.org/wp-content/uploads/2015/01/2014-02-07-2014-U.S.-Department-of-the-Interior-Letter-to-U.S.-Department-of-Commerce-Cell-Tower-Cell-Phone-Information.pdf>

Peninsula. The upper Hoh Road features prominently in the maps that show where mobile emitter trucks will be conducting electronic warfare.⁴²

The public was led to believe by both the Navy and the Forest Service that the only place mobile emitters would be deployed was on the undeveloped road system within the Olympic National Forest, in part because no mention of driving outside forest boundaries was ever made. On November 22, 2013, the Navy sent a letter⁴³ to the US Fish and Wildlife Service stating that while additional details on the proposed action had become available as well as identification of a previously unanalyzed training component, that the Navy's determinations for listed species had not changed and there would be no new take. The only locations mentioned for electronic emitters were on Forest Service and DNR lands; no public roads were mentioned. However, an email from the Navy to the Forest Service, written in 2012 and obtained by FOIA⁴⁴ indicates that the Navy planned to drive mobile emitters, and may have been driving them since 2010, "on existing roads and trails throughout the Olympic Peninsula within and in the vicinity of the Olympic MOA and in the vicinity of the Okanogan and Roosevelt MOAs." This includes driving them "...all through most of the region as well as outside the geographic confines of the MOAs to optimize and vary training scenarios (dependent on road and area availability)," in order for Electronic Warfare aircrews to "...rehearse and develop real-world tactics, techniques, and procedures under scenarios where stationary emitter signals are emanating for example from Pacific Beach and other potential sites and pop-up mobile emitter signals are received from varied geographic locations within realistic range-ring distances." Types of training listed include "...close-air support, modified escort profiles, general EW tactical proficiency, and War-at-Sea training."

Therefore, any analysis by the Fish and Wildlife Service that did not encompass the areas outside the ones mentioned by the Navy EA would be invalid due to omission and incompleteness. However, since the Biological Opinion did not cover on-the-ground activities on the Olympic Peninsula, this point may be moot because the Biological Opinion itself was an invalid tool for this EA. The Biological Opinion that was finally published in July 2016 by the Fish and Wildlife Service came too late for a valid Finding of No Significant Impact on the EA and the ND/FONSI; the Opinion is merely a retrofit for the Navy EA and the Forest Service ND/FONSI.

At a public meeting in Port Angeles on November 6, 2014, District Ranger and Responsible Official Dean Millett admitted that a temporary special use permit had been granted in 2011 only, for the Navy to conduct a feasibility study on the project and to drive at least one mobile

⁴² US Forest Service. Special Use Permit, September 9, 2013. See "Areas of use in support of Navy Electronic Warfare" page 5. http://westcoastactionalliance.org/wp-content/uploads/2015/02/6-2013_NAVY_Permit_ALL.pdf

⁴³ US Navy. Letter to US Fish and Wildlife Service. *USFWS Reference No: 13410-2009-F-0104*, Nov 22, 2013.

⁴⁴ US Navy to Forest Service, September 7, 2012. Email: *EA in support of the Pacific Northwest Electronic Warfare Range*. <http://westcoastactionalliance.org/wp-content/uploads/2015/02/3-Navy-EW-EA-emails-SUP-paper-file.pdf>

emitter on forest roads. His statement misled the public into believing that only one permit had been granted. In actuality, the Forest Service granted four temporary one-year permits to the Navy, from 2010 to 2014. This was not discovered until Regional Forester Jim Peña disclosed the fact to a citizen in a response letter.⁴⁵ The only temporary permit obtained by FOIA was from 2013, but a map on page 5⁴⁶ indicates that public roads are already being used as “sites for testing and evaluation.” The permit allowed one mobile unit, an SUV equipped with a transmitter, to drive forest roads, but the combination of the map in that permit and the statement in the email (“maximize realistic training scenarios”) leads one to question whether electronic warfare training is being conducted in populated civilian areas throughout the Olympic Peninsula.

The West Coast Action Alliance contacted WADOT to ascertain if a permit had been applied for, or even if such a permit category exists to cover electronic warfare testing and training on public roads. To say the WADOT staff was surprised is an understatement. No permit has ever been applied for, but no such permit category exists, either. We contacted a staffer for State Senator Jim Hargrove, who called the Navy to ask about the appropriateness of driving emitters on public roads while conducting electronic warfare testing and training, even if only for feasibility purposes. The staffer spoke to the Navy about it and then repeated what they had told him: “We haven’t even built the mobile emitters yet, so how could we be doing that?”

Regardless, it begs the question: if a 100-foot hazard perimeter is required around the emitters in remote forested locations, then what are the hazards to people near these mobile emitters on public roads or in populated areas, or hikers on trails, who may be unwittingly exposed to electromagnetic radiation from both emitters and jets? And why are there conflicting images and descriptions of these mobile emitters? An illustrated comment letter from the Forest Service Employees for Environmental Ethics⁴⁷ explains the discrepancy. Although the Navy is building or has already built three truck-mounted mobile emitters, it had acquired a flatbed-sized Joint Threat Emitter in 2012,⁴⁸ but did not mention this or its use in the Navy EA.

In struggling to understand why the Navy would choose to conduct electronic warfare training and testing on public roads in populated civilian areas, we found the official definition of “Realistic Military Training” in a presentation⁴⁹ made by a representative of the Strategic

⁴⁵ US Forest Service. Letter: *Regional Forester Response to Karen Sullivan – Navy Electronic Warfare*, January 7, 2015. <http://westcoastactionalliance.org/wp-content/uploads/2015/01/2015-FS-letter-on-permits-20150108-RO-response-Navy-EW-ltr.pdf>

⁴⁶ US Forest Service. Temporary Special Use Permit. *Special Use Permit Authority, Expiration date 12/31/2013*. http://westcoastactionalliance.org/wp-content/uploads/2015/02/6-2013_NAVY_Permit_ALL.pdf

⁴⁷ FSEEE. Comment letter, October 9, 2014. <http://westcoastactionalliance.org/wp-content/uploads/2015/01/2014-10-09-2014-FSEEE-Comments-on-EA.pdf>

⁴⁸ Globe Newswire. *Northrop Grumman Demonstrates Joint Threat Emitter for NAS Whidbey Island*, June 21, 2012. <http://globenewswire.com/news-release/2012/06/21/479976/259887/en/Northrop-Grumman-Demonstrates-Joint-Threat-Emitter-for-NAS-Whidbey-Island.html>

Operations Command to the Bastrop, Texas, City Council on March 10, 2014, in advance of the “Operation Jade Helm 15” joint military training in several Southwestern states. The Navy has characterized its electronic warfare training on the Olympic Peninsula in similar fashion to what the presenter called “...the next fight, not what we’ve been doing in Afghanistan and Iraq.” Since the Navy is a participant in Jade Helm, it could reasonably be argued that they cannot choose to selectively ignore guidance whenever *any* “Realistic Military Training” meets this broad definition:

“Realistic Military Training (RMT) is training conducted outside of federally owned property.”

In addition the following reasonable community outreach steps were contained on that same slide:

“The RMT process is designed to ensure proper coordination between DOD representatives and local and regional authorities. The process includes the following measures:

*Risk Assessment, Medical, and Communications Plans;
MOU, MOA, and Licensing agreements (training areas, staging areas, role players);
Legal Review;
ID of training, staging areas, role players, airfield, drop zones (DZ) and Landing Zones (LZ) surveys;
Letters of Invitations [sic] obtained from local officials (Mayor, County Commission);
Coordination with local, state and federal law enforcement
Public Affairs Review.”*

Not one of the measures listed in the SOCOM presentation⁵⁰ has been offered to the public or to local or state officials in Washington, and no documentation exists that such measures have ever been considered, or RMT itself evaluated. This is particularly galling in the example of January 2016, in which the public was told that Navy Seals have for several years been conducting insertions, extractions, launch and recovery, special reconnaissance and other activities with “simulated weapons” in populated areas that adjoin 68 state parks, beaches and boat landings in Puget Sound, the Strait of Juan de Fuca, and the outer coast, without the knowledge of the public. Training like that cannot be considered anything but RMT. The fact that the public is completely unaware of it because the Navy has not notified them or conducted a public process, despite obligations as described in the SOCOM presentation, is further evidence of intent to

⁴⁹ US Special Operations Command (SOCOM). Presentation by civilian contractor. *Jade Helm Presentation to Big Springs Texas City Council*, March 10, 2014.

<https://www.youtube.com/watch?t=1951&v=dLM4-aImMkY>

⁵⁰ US Army. *Request to Conduct Realistic Military Training (RMT) JADE HELM 15*.

Powerpoint slide show. <http://american3rdposition.com/wp-content/uploads/Jade-Helm-Martial-Law-WW3-Prep-Document-1.pdf>

deceive the public and circumvent the law, and of bad faith on the part of the Navy, and by extension, the Forest Service.

The Navy's NEPA process should have made absolutely clear that electronic warfare training in potentially populated areas is their intent, and **the public should have had the opportunity to be heard on the full scope of activity**. The hard work of civilians who have for decades strived to make and keep the Olympic Peninsula a great place with a robust tourism economy as well as special designations such as World Heritage Site, Biosphere Reserve, National Marine Sanctuary, and Wild Olympics, now fear seeing our forests irradiated, our species extirpated, our silence disrupted, our seas blown up, our main bridge to the mainland closed unpredictably disrupting access to health facilities, our swimming and boating areas used for military training exercises, and our drinking water and air polluted.

The SOCOM presentation also states, "To hone advanced skills, the military and interagency require large areas of undeveloped land with low population densities with access to small towns." Perhaps the Olympic Peninsula once met the criteria for low-density population 50 years ago, when the Military Operating Areas were first established, but that is no longer the case, especially when one considers that besides the much larger current residential population of more than 100,000 people, the Olympic National Park alone is responsible for 3 million visitors per year.

Solution: The Forest Service must require full and adequate disclosure of all military activities from the Navy and coordinated activities with other armed services, and require full environmental impact statement from the Navy, conduct its own environmental impact statement, with adequate full public participation. Only these steps will meet legal requirements and heal the public mistrust that the current lack of transparency has created.

19. Rational Endpoints: The Navy insists that impacts it did not consider in its 2014 Environmental Assessment for establishing an Electronic Warfare Range on the Olympic Peninsula were previously addressed in the 2010 Northwest Training Range Complex EIS, from which the Electronic Warfare Range EA was purportedly tiered; however, this claim is inaccurate, because those impacts were not addressed (see discussion under point # 15.) This is further substantiated by the 2010 U.S. Fish and Wildlife Service's Biological Opinion (BO) issued for the NWTRC. The BO only addressed air operations associated with the Electronic Warfare Range but not the placement and operation of mobile vehicle-mounted emitters. The December 2014 scoping process for yet another EIS on the addition of 36 new Growler jets to the fleet at Naval Air Station Whidbey Island covered only the immediate environs of the airfield and not surrounding lands and waters over which the jets will be flying, and we are now seeing that concern realized in the recently released Growler EIS. The other 82 jets at Whidbey Naval Air Station were superficially addressed in an EA in 2005, which promised a 36% reduction in the number of individuals in surrounding areas who would be exposed to aircraft noise greater than 65 decibels. That claim too has been proven false. Now the number of Growler jets is at least 118, and Whidbey Island will house the nation's entire fleet of them. **Impacts to surrounding areas outside the immediate environs of the airfield have never been**

adequately addressed in a lawful NEPA process, because rational endpoints for the environmental review simply do not exist in the analyses.

The Navy's activities out of NAS Whidbey Island continue to expand so far beyond the limits set forth in the 2005 EA as to invalidate it. A letter⁵¹ from Attorney David Mann of Gendler & Mann LLP to Admiral Bill Gortney, Commander, Fleet Forces Command, addresses in detail the piecemealed and significant increases in Navy activity at Naval Air Station (NAS) Whidbey Outlying Field that have not been addressed in any NEPA processes. In his letter, Mr. Mann questions the Navy's interpretation of "new and continuing activities" under 40 CFR S 1508.18(a), in which the Navy's own regulations say, "The term continuing activities which may necessitate the preparation of a NEPA document will be applied by the Department of the Navy to include activities which are presently being carried out in fulfillment of the Navy mission and function, including existing functions, where: (2) There is a discovery that the environmental effects of an ongoing activity are significantly and qualitatively different or more severe than predicted in a NEPA document prepared in connection with the commencement of the activity. A substantial change in a continuing activity (such as a substantial change in operational tempo, area of use or in methodology/equipment) which has the potential for environmental impacts should be considered a proposal for a new action and be documented accordingly." **Therefore, he concludes, according to the Navy's own regulations, "...a new NEPA review must be conducted if either the environmental effects of the ongoing activity are significantly different or more severe than predicted, or if there is a substantial change in the continuing activity with a potential for significant environmental impacts."**

The solution: The Forest Service must adopt this approach to the outdated and inaccurate 2014 Navy EA (Electronic Warfare Range EA).

Mann goes on to document a 368 percent increase in flight operations at Outlying Landing Field-Coupeville compared to what was predicted in the Navy's 2005 EA, plus 479 percent more nighttime operations, which accounted for 84 percent of all operations. Because the 2005 EA predicted a decrease in flights and "...assumed a significantly smaller percentage of nighttime operations, it failed to accurately apply the 10-dB penalty [resulting from the Day-Night (DNL) metric that averages all noise events for a 24-hour period and applies a 10-db penalty for nighttime events after 10:00 pm and before 7:00 am) and therefore significantly underestimated the impact to the surrounding community." The Navy has amply demonstrated that there are neither endpoints nor rationality to the public, in its ever-expanding encroachment on public and private lands, waters, and the airspace above them, nor on local economies, the environment, and public health.

⁵¹ Mann, David S. Letter. *NAS Whidbey, Central Whidbey Outlying Field (OLF Coupeville)* June 11, 2013. <http://westcoastactionalliance.org/wp-content/uploads/2015/05/Gendler-and-Mann-NEPA-request-June-2013.pdf>

To summarize, remedies would include the following, beginning with: rescind the ND/FONSI, and postpone any final decision to grant the permit until the following have been completed by the Forest Service and/or the Navy:

- 1.) Acknowledge that the 2014 Navy Electronic Warfare EA did not address the full scope of impacts and take steps to require that the improper segmentation of the EA be addressed before a final decision is made;
- 2.) Require that an EIS rather than an EA be produced, due to the controversial nature and actual scope of this proposed activity, and that it should contain accurate maps without omitting critical details such as major rivers, Olympic National Park boundaries, and even Lake Quinault, including cumulative impacts to human health, endangered species and their habitats, air and drinking water sources.
- 3.) Respond to longstanding public requests by having the Navy answer questions about the roles and training of contractor-operators, whether they will be armed, what type of armament they will be carrying, and what the public can expect when encountering them;
- 4.) Correct scientific inaccuracies contained in the EA to standards that Forest Service biologists can support;
- 5.) Conduct a more inclusive and fair public process, including holding public hearings in affected communities as required by NEPA;
- 6.) Conduct its own independent scientific investigations on all reasonably foreseeable impacts and cumulative analyses, in order to verify the Navy's Findings of No Significant Impacts;
- 7.) Ensure that alternatives have been carefully considered, along with mitigation measures, to avoid or minimize adverse environmental impacts;
- 8.) Rescind the decision to grant the permit until the fact that the EA, which addressed emissions only from the mobile emitters and associated "construction activities," and not the cumulative air quality impacts of more than a hundred Growler jets and hundreds more other aircraft flying overhead, can be assessed.
- 9.) Require proper analyses of effects on climate change, not the boilerplate that the Navy has used; since the military is the world's largest single user of fossil fuels, they owe the public an analysis;
- 10.) Do not accept that NEPA documents are tiered unless they actually are and require correction of omissions;
- 11.) Insist on clarifications by asking that terms like "event" are defined so that the Forest Service and the public can understand and evaluate impacts;

12.) Accurately and fully inform the public, with special emphasis on vulnerable populations and species, of the potential health effects, scientific studies, and best available science on the risks from radiation coming from directed energy weaponry or mobile emitter trucks, and investigate the reasons why the Department of the Interior sent a memo to the Federal Communications Commission in February 2014, criticizing the FCC's 30 year-old standards based on thermal heating, and evaluate potential impacts on migratory birds, amphibians and other trust species. Cease misinformation to the public downplaying the potential impacts, such as comments by Mr. Dean Millet and publically retract such statements.

13.) Take steps to heal the public mistrust that resulted from this disingenuous process with an adequate NEPA process that meets legal requirements;

14.) Establish real baselines for noise impact evaluation based on best available science, including conducting noise studies in situ.

15.) Fulfill the 1988 Mast Agreement requirements to fully substantiate the need for Defense Department use of Olympic national forest lands for electronic warfare training rather than existing DOD lands, as directed by the 1988 Master Agreement.

Conclusion:

There is no doubt in the public's mind that noise from Navy aircraft is being significantly and unlawfully underestimated; no doubt that severe effects in some communities, which were never evaluated, will occur with greater severity and frequency than the decision documents show, and no doubt that the evaluation of electromagnetic radiation impacts is entirely absent from the 2014 Navy Electronic Warfare EA and other NEPA analyses published by these federal agencies. There is no doubt that noise and other impacts from directly related training activities have been so segmented that a permit for the mobile emitters only does not account for the increased jet noise and impacts associated with the training exercises. There is no doubt that air and drinking water pollution was not adequately addressed in the Navy EA and therefore the Forest Service ND/FONSI, no doubt that effects of radiation are both unknown and unevaluated, and no doubt that the Forest Service, having failed to conduct its own environmental impact statement to verify the Navy's claims, appears to be on the precipice of violating its own regulations and federal law, much less be about to rubber-stamp an unfair, unethical process that has created a deep well of public anger and mistrust. It is our view that these inadequacies may lead to the impairment of human health, and extirpation of endangered species. We urge the Forest Service to rescind the notice of decision and findings of no significant impact on the Navy Special Use Permit, to conduct the necessary scientific study, review and analysis, to consider the impacts that were left out, and to start again, with an EIS, an honest dialog, and a legally adequate and inclusive public process.

Sincerely yours,



Karen Sullivan, WCAA co-founder



Connie Gallant, President,
Olympic Forest Coalition

cc:

The Honorable Patty Murray
The Honorable Maria Cantwell
The Honorable Bernie Sanders
The Honorable Derek Kilmer
The Honorable Rick Larsen
The Honorable Jay Inslee, Governor of the State of Washington
The Honorable Elizabeth May, Member of Parliament, Saanich-Gulf Islands, British Columbia,
Canada
Board of County Commissioners, Jefferson County, Washington
Board of County Commissioners, Clallam County, Washington
Board of County Commissioners, Grays Harbor, Washington