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Ref. No. P-13643

July 3, 2012

Mr. Larry M. Foster, Director
Environmental Readiness
Department of the Navy
Commander
United States Pacific Fleet
250 Makalapa Drive
Pearl Harbor, Hawaii 96860-3131

Dear Mr. Foster:

**Subject: U.S. Navy Hawaii-Southern California Training and Testing (HSTT) Draft
Environmental Impact Statement/Overseas Environmental Impact Statement**

This responds to your letter dated May 3, 2012 (received May 11, 2012), which provided notification of the release of the Draft Environmental Impact Statement/Overseas Environmental Impact Statement (EIS/OEIS) for U.S. Navy Hawaii-Southern California Training and Testing (HSTT), and which requests the following actions by the Hawaii CZM Program relative to Coastal Zone Management Act federal consistency requirements:

1. Navy Request: Review the EIS/OEIS "to ensure that the activities proposed in the EIS/OEIS remain consistent with the activities outlined and conclusions made in the 2008 Hawaii Range Complex EIS/OEIS Coastal Zone Management Act (CZMA) Coastal Consistency Determination and the approved 2009 Navy De Minimis Activities List."

CZM Response: It is the responsibility of the Department of the Navy, pursuant to 15 CFR 930, Subpart C, to demonstrate to the Hawaii CZM Program that the activities proposed in the HSTT EIS/OEIS remain consistent with the activities outlined and conclusions made in the 2008 Hawaii Range Complex EIS/OEIS CZMA coastal consistency determination. The 2009 Navy De Minimis Activities List is not applicable to activities that are subject to the EIS level of NEPA compliance, such as the activities included in the HSTT EIS/OEIS. We will provide the Navy with guidance and assistance for consistency determinations in accordance with 15 CFR 930.34(d), if requested.

In order for the Hawaii CZM Program to provide consistency guidance, the Navy must identify and compare the activities proposed in the HSTT EIS/OEIS with the activities included in the 2008 Hawaii Range Complex EIS/OEIS CZMA coastal consistency determination. Specifically, activities that must be identified include: activities that are new and/or different from those activities reviewed in 2008; activities that are a continuation of the activities reviewed in 2008; and activities that are a continuation of the activities reviewed in 2008, but have changed in scope, size, operation, scale, intensity, and/or frequency. This information is necessary to identify the applicable Hawaii CZM Program enforceable policies.

2. Navy Request: Concurrence that the "2008 HRC EIS/OEIS CZMA Coastal Consistency Determination and 2009 Navy De Minimis Activities List continue to adequately address these activities outlined in the HSTT Draft EIS/OEIS."

CZM Response: Continuity of consistency from the Navy's 2008 federal consistency determination cannot be presumed for the HSTT activities. In order for us to determine whether the 2008 HRC CZMA consistency determination can be applied to the HSTT activities, the Navy must provide a comparative CZMA consistency analysis between the 2008 HRC activities and the HSTT activities. It is our position that a new CZMA consistency determination is required for HSTT activities, as explained in response no. 3, below.

The 2009 Navy CZMA De Minimis Activities List, which was developed cooperatively by the Hawaii CZM Program and the Department of the Navy, and approved by the Office of Planning on July 9, 2009, is not applicable to activities that are subject to the EIS level of NEPA compliance. EIS level activities, such as the activities included in the HSTT EIS/OEIS, are not de minimis activities. Therefore, we disagree with the application of the Navy CZMA De Minimis Activities List to HSTT activities.

3. Navy Request: Concurrence that "no further CZMA federal consistency review is required."

CZM Response: We disagree with the Navy's position that, "no further CZMA federal consistency review is required." A CZMA consistency determination is required for all HSTT activities that were not previously reviewed by the Hawaii CZM Program. The HSTT EIS/OEIS by itself does not fulfill the content requirements of a consistency determination. The required content of a consistency determination is identified in 15 CFR 930.39.

The CZM consistency determination must also include the activities that were reviewed in the 2008 HRC EIS/OEIS CZMA coastal consistency determination, but

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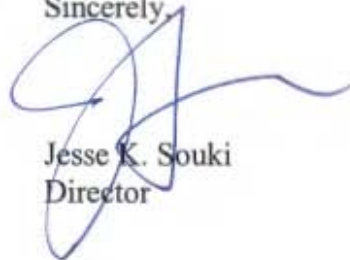
have either changed, will result in a cumulative impact with the new HSTT activities, or were issued consistency objections that remain unresolved.

In addition, information in the HSTT EIS/OEIS that was not available to us in 2008 will cause us to reevaluate previously reviewed activities. For example, the 2008 Hawaii Range Complex Final EIS/OEIS, Section 4.1.2.3 Environmental Consequences - Sea Turtles, indicates that activities proposed under Alternatives 1 and 2, i.e., sonar use and underwater detonations, would not affect sea turtles, and for compliance under ESA the "Navy finds that these activities are not likely to affect green, olive ridley, loggerhead, hawksbill, or leatherback sea turtles." However, the HSTT Draft EIS/OEIS, Section 3.5 Sea Turtles, indicates that activities involving acoustic stressors, physical disturbances, and strike stressors, "may affect and are likely to adversely affect green, hawksbill, olive ridley, leatherback, and loggerhead sea turtles." The substantial difference in reported anticipated impacts to sea turtles, which are State of Hawaii coastal resources, warrants supplemental federal consistency review pursuant to 15 CFR Section 930.46. There is also new evidence that Navy SINKEX exercises can cause spikes in PCB levels in fish (Honolulu Star-Advertiser, March 5, 2012). This new information will cause us to reevaluate our previous consistency concurrence for SINKEX.

Please note that the Office of the Planning is the authorized lead agency for the Hawaii CZM Program. All future correspondence regarding the Hawaii CZM Program should be sent directly to the Office of Planning at the above mailing address.

We are confident that we can arrive at a solution that allows the Navy to carry out its mission while ensuring consistency with the CZMA, both of which are important to the public health and safety of the people of the United States. If you have any questions, please call John Nakagawa of our CZM Program at 587-2878.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jesse K. Souki", with a long horizontal flourish extending to the right.

Jesse K. Souki
Director

c: Ms. Rebecca Hommon, Navy Region Hawaii
Mr. Mark Delaplaine, California Coastal Commission
Ms. Ivenetta Smith, Naval Sea Systems Command
Mr. David Kaiser, NOAA OCRM
Ms. Kristen Fletcher, Coastal States Organization