



THE UNDER SECRETARY OF THE NAVY
WASHINGTON, D.C. 20350-1000

28 December 2000

MEMORANDUM FOR THE CHIEF OF NAVAL OPERATIONS
COMMANDANT OF MARINE CORPS

Subj: COMPLIANCE WITH ENVIRONMENTAL REQUIREMENTS IN THE CONDUCT
OF NAVAL EXERCISES OR TRAINING AT SEA

Ref: (a) OPNAVINST 5090.1B
(b) MCO 5090.2a
(c) NWP 4-11
(d) Navy Regulations, Article 0832
(e) OPNAVINST 3100.5E
(f) DoD 2005.1-M, Maritime Claims Reference Manual

Encl: (1) Supplemental Guidance for Compliance with
Environmental Requirements at Sea
(2) Environmental Compliance Decision Tree for Major
Exercise and Training Operations At Sea

1. Purpose and scope. This memorandum clarifies Department of the Navy (DON) policy for continued compliance with certain environmental requirements. The policy applies to the conduct of exercises, including United States (U.S.) joint and combined exercises, and training at sea. For purposes of this policy, exercises and training do not include combat operations, operations in direct support of combat, or other activities conducted primarily for purposes other than training. This memorandum is in amplification of references (a) through (e). These requirements include:

a. Preparation of environmental planning documents, including those required by the National Environmental Policy Act (NEPA), the Coastal Zone Management Act (CZMA), and Executive Order (E.O.) 12114, "Environmental Effects Abroad of Major Federal Actions";

b. Initiating consultations with regulatory agencies pursuant to the Endangered Species Act (ESA) for exercises and training conducted at sea;

c. Application to regulatory agencies for an incidental take statement under the ESA or similar permission under the Marine Mammal Protection Act (MMPA).

Although these are not the only environmental requirements that may be applicable to exercises or training conducted at sea, they pose the greatest risk of disruption from litigation or enforcement actions. Failure to comply with these legal requirements can be used by regulators or third parties, no matter what their motivation, to delay, halt, or alter exercises or training and could create criminal liability for commanders. This amplification of the guidance found in references (a) through (e) is being issued to ensure efficient and consistent compliance with these requirements in circumstances within the special competence of the DON and to preserve the flexibility necessary for the Navy and Marine Corps to train and exercise at sea.¹ This policy does not affect command responsibility pursuant to references (a) and (b) for activities that occur landward of the high water mark.

2. Background. The demands and responsibilities placed upon the Navy and Marine Corps require fully trained forces ready for deployment on short notice. Live-fire exercises with surface combatants, submarines, and aircraft, as well as extensive amphibious operations, mine warfare, and sophisticated special operations, enable the Navy and Marine Corps team to train the way it will fight--and win--our future conflicts. At the same time, the DON is committed to compliance with environmental requirements in the conduct of naval exercises or training at sea. National defense and environmental protection are not mutually exclusive. Environmental compliance enhances access to areas needed for exercises and training and reduces the risk that exercises and training will be disrupted by litigation or enforcement actions or will be subjected to additional regulation.

3. Policy. In conducting exercises and training at sea, the Navy and Marine Corps shall comply with applicable statutes, regulations, and executive orders and will strive to protect the environment, prevent pollution, and protect natural, historic, and cultural resources. While environmental compliance is a command responsibility and applicable throughout the chain of command, it is DON policy to comply with environmental requirements in a manner that is consistent and efficient and

¹ "At sea" for the purposes of this policy means the area from the U.S. high water mark seaward to the recognized Exclusive Economic Zones (EEZs) or fishing zones as set out in reference (f). Nothing in this policy, however, is meant to expand the area where any particular legal requirement applies. "At-sea" also includes the airspace above this area.

minimizes administrative burdens on commanders of operating units. The following specific policies apply for compliance with environmental requirements for exercises (including U.S. joint and combined exercises) and training at sea:

a. Ranges and Operating Areas (OPAREAS). In accordance with references (a) through (e) as implemented by enclosures (1) and (2), fleet commanders in chief, with support from Navy region and numbered fleet commanders, shall develop a programmatic approach to environmental compliance for ranges and OPAREAS within their respective areas of responsibility.² Fleet commanders and SYSCOM commanders shall coordinate development of a programmatic approach to environmental compliance for research, development, training, and evaluation ranges to the extent they are used for fleet training. For at-sea Marine Corps ranges and OPAREAS, commanding generals of Marine Expeditionary Forces with support from installation Commanders and ground, aircraft, and service support commanders shall develop a programmatic approach to environmental compliance within their respective areas of responsibility. The foregoing shall be applicable to exercises and training at sea that are regularly scheduled within OPAREAS or ranges used for naval gunnery, bombing, amphibious landings, missile or torpedo training or other similar training. Priority shall be given to compliance efforts for activities that, because of their frequency, location, nature of the affected environment (e.g., near a marine protected area such as a marine sanctuary or a location where protected species are likely to be present), and/or characteristics (e.g., use of those ordnance items or sensors with the potential to impact the environment over a wide area), present the greatest possibility of significant environmental effects. Cognizant commanders shall promulgate a description of activities and any associated standard operating

² "Programmatic approach" refers to a comprehensive analysis of the environmental impacts of a class of undertakings repetitive in nature or of similar effect and recurring within the same geographical area, so as to avoid or mitigate adverse effects to the extent practicable consistent with the accomplishment of the military training and exercise activities under review. A programmatic approach can include the preparation of a baseline document, such as a conservation plan or biological assessment; or by contrast, it can include the preparation of tiered NEPA documents, such as a programmatic environmental impact statement with supplemental environmental analyses. The Fleet CINCs and Marine Corps CGs charged with developing a programmatic approach have the discretion to determine the specific methodologies to be pursued under the circumstances, subject to the coordination and approval procedures established elsewhere in this policy document.

procedures (SOPs) for which compliance is completed. Thereafter, other commands may conduct these activities in accordance with applicable SOPs within the operating areas without further environmental planning or consultation. Cognizant commanders shall periodically review and update approved activities and SOPs as appropriate.

b. Major Training Exercises. Commanders or officers in charge of major exercises (OCE) shall ensure and document³ compliance with environmental requirements applicable to the full range of activities proposed for the exercise.

(1) For the purposes of this guidance, a "major exercise" is a maneuver or simulated wartime operation involving planning, preparation, and execution that:

(A) Is carried out pursuant to an operation order or similar tasking directive primarily designed for the purpose of training; and

(B) Has substantial potential to cause a significant impact on the quality of the environment because of the number of participating units, the nature of the training activities, and the location of the exercises.

Major exercises include JTFEX, FLEETEX, RIMPAC, Kernel Blitz and exercises of similar scope and intensity as designated by the Echelon II commander or his delegate. They may be a combined, joint, or single-service exercise, depending upon participating organizations. "Major exercise" does not include unit-level training or multi-unit training that is not conducted under a dedicated training operation order.

(2) Those activities occurring within a range or regional operating area that are already documented pursuant to paragraph 3.a., above, require no further documentation other than to incorporate the environmental SOPs into the exercise plan, usually Annex L of the operational plan. Compliance efforts will give priority to those exercises that include activities that, because of their frequency, location, nature of

³ Documenting compliance shall be in accordance with references (a) through (e) and this policy document. It can mean conducting an environmental analysis for activities not previously analyzed and documented or it can mean incorporating by reference the analyses and mitigation measures established previously for like exercises and training events.

the affected environment (e.g., near a marine protected area such as a marine sanctuary or a location where protected species are likely to be present), and characteristics (e.g., use of those ordnance items or sensors with the potential to impact the environment over a wide area), present the greatest possibility of significant environmental effects. Any mitigation measures required to complete environmental analysis or consultation shall be incorporated into the operation order or similar tasking document covering the exercise.

(3) Major training exercises may incidentally involve activities conducted on behalf of systems commands or acquisition proponents. In such circumstances, the system command or acquisition proponent shall ensure that the environmental compliance and mitigation measures supporting the activity are in accord with the environmental compliance and mitigation measures implemented by the commander in charge of the major exercise.

(4) For exercises that are repeatedly conducted without significant change in activities or location, compliance should emphasize a programmatic approach.

(5) The OCE for a combined exercise shall provide participating foreign units with a description of the measures to protect the environment required of similar U.S. units as early as reasonable in the exercise planning process and should encourage them to comply.

c. Routine Training and Exercises. For routine training and exercises at sea not covered by subparagraphs a. and b. above, commanders shall ensure compliance with environmental requirements in accordance with references (a) through (e) and this policy, including the supplemental guidance provided in enclosure (1).

4. All Navy domestic and overseas environmental assessments for exercises and training shall be forwarded up the chain of command to a designated flag-level official at the Echelon II commander for approval. This change in approval authority shall be incorporated into the next change to reference (a). Copies of the assessments will be provided by the Echelon II command to OPNAV (N4 and N3N5). All Marine Corps domestic environmental assessments for exercises and training shall continue to be initiated, reviewed, coordinated and reported by the Commandant

of the Marine Corps, a commanding general, commanding officer, or other designee per the provisions of Section 12104 of reference (b). All Marine Corps overseas environmental assessments for exercises and training shall be initiated, reviewed, coordinated and reported per appendix Q of reference (b) and forwarded up the chain of command to a designated general officer at the Echelon II commander for approval. Nothing in this memorandum alters provisions of references (a) and (b) that require elevation of decisions under specific circumstances; e.g., effects of national importance.

5. Implementation

As soon as practical, fleet commanders in chief will develop plans and budget submissions to implement this policy, prioritizing implementation in accordance with paragraph 3 above. Activities historically conducted within at-sea operating areas may continue during implementation of this policy. In accordance with reference (d), commanders should resolve any non-compliance issues and report discrepancies to the immediate superior in their chain of command.

A handwritten signature in black ink, appearing to read "R. B. Pirie, Jr.", with a stylized, cursive script.

Robert B. Pirie, Jr.

**Supplemental Guidance for Compliance
with Environmental Requirements at Sea**

1. Action thresholds and frequently occurring issues.

References (a) - (c) provide general guidance on environmental compliance. The following specific policies deal with particular issues that arise in complying with environmental requirements for exercises and training at sea:

a. NEPA

(1) NEPA requires that, before making a final decision to proceed, the DON consider the environmental consequences of a proposed major Federal action with the potential to significantly affect the environment of the U.S. The DON's activities include actions that are carried out as they were before NEPA was enacted, new actions, and modified actions. Activities at sea may occur within, near, or well beyond the territorial sea of the U.S. In addition to references (a) - (c) the DON will comply with the following guidance.

(2) Actions that reasonably could produce significant effects on the environment within the U.S., including its territory or territorial sea, must be documented in accordance with NEPA even if the actions themselves occur outside the U.S. The territorial sea of the U.S. for domestic law purposes is currently three nautical miles (NM). As a matter of policy, however, the DON will comply with NEPA for proposed actions that reasonably could produce significant effects within 12 NM of the U.S.

(3) Continuing actions. A continuing or ongoing action is one that either: (a) began before January 1970 and that has continued in substantially the same manner and environment; or (b) began after January 1970 and for which the requisite environmental analysis under NEPA or E.O. 12114 has been completed and that has continued in substantially the same manner and environment. Action proponents do not have to conduct any additional analysis under NEPA or E.O. 12114 for continuing actions unless environmental degradation is occurring or is likely to occur because of a continuing action, or there have been substantial changes in a continuing action that have the potential for significant environmental impacts.

b. E.O. 12114: When undertaking an action that has the potential to significantly harm the environment outside U.S. territorial waters, the command proposing the action must

document environmental considerations per those sections of references (a) through (c) that implement E.O. 12114. Factors to consider in determining whether an action reaches the threshold requiring documentation include unique characteristics of the geographical area, intensity and scope of the action, whether effects are direct or indirect, degree of scientific controversy, and the potential for violating environmental laws.

c. CZMA: A State's coastal zone extends seaward 3 NM, except for Texas and Florida's Gulf coast where the coastal zone extends seaward 9 NM. If an action affects any land or water use or natural resource of the coastal zone of a state with a Federally approved coastal zone program, then the action must be consistent to the maximum extent practicable with the enforceable policies of the state program. Both direct and indirect effects must be considered, and it is not required that the effects be adverse. Compliance with the CZMA is normally incorporated into the documentation and procedures used to comply with NEPA and E.O. 12114.

d. ESA: A command or activity is responsible for determining whether its proposed actions "may affect" a protected species under the ESA. If so, then it must consult with the relevant regulatory agency, either National Marine Fisheries Service (NMFS) or U.S. Fish and Wildlife Service (FWS). The threshold for consultation is crossed if it is reasonably foreseeable that the action may affect a protected species. The command or activity may enter into "informal" consultation to determine if there are adverse effects that cannot be mitigated. If it is reasonably foreseeable that an action is likely to adversely affect a protected species, then the Navy or Marine Corps must initiate "formal" consultation. An action is not likely to "adversely affect" if no "takes" are expected to occur or "takes" are extremely unlikely. "Takes" include actions that harass, harm, or kill. Harm refers to an act that actually kills or injures the protected species. Harass means an act that significantly disrupts essential behavioral patterns, such as breeding, feeding or sheltering.

e. MMPA: There is no consultation requirement under the MMPA. A command proposing an action is responsible for determining if it is reasonably foreseeable that its actions will "take" marine mammals. A command should make this determination early in the planning process, because compliance with the MMPA can take significant time. If "takes" are reasonably foreseeable, the command must seek authorization from the relevant regulatory agency (normally NMFS for at sea

activities, but FWS has responsibility for some marine mammals). The MMPA prohibits actions that harass, harm or kill a marine mammal, whether such actions are negligent or intentional. Unlike the ESA, the MMPA further distinguishes types of harassment. "Level A" includes harassment that has the potential to injure. "Level B" harassment includes actions that cause a sustained, biologically significant disruption to critical behavioral patterns, such as breeding, feeding, sheltering or migrating, so that there is an impact on the species or stock. If an action will result only in Level B harassment, then the command must seek an Incidental Harassment Authorization (IHA) or implement mitigation measures so that "takes" are no longer reasonably foreseeable. Obtaining an IHA requires up to 135 days, but it is good for only one year. If it is reasonably foreseeable that the command's actions will cause injury or death, then the command must seek a Letter of Authorization (LOA), or implement mitigation measures so that "takes" are no longer reasonably foreseeable. An LOA can be approved only if it will result in no more than a negligible impact on the species population. It covers 5 years but can take a year or more to process. Commands preparing programmatic documentation in accordance with paragraph 3(a) of the basic memorandum should consider applying for an LOA.

2. Routine Training and Exercises

a. Routine training and exercises at sea generally:

(1) Are associated with transits, maneuvering, safety and engineering drills, replenishments, flight operations, and shipboard or airborne gunnery, missile, or torpedo firings;

(2) are conducted as unit operating schedules permit;

(3) are not repeated in the same vicinity;

(4) utilize available sensors and assets within normal operating parameters;

(5) ordinarily have minor, localized, and transient effects on the environment; and,

(6) do not cross the action thresholds described in paragraph 1.

b. A commander may proceed with an activity he or she has determined is a routine training or exercise activity, unless

there are circumstances or information that indicate that the activity may cross an action threshold described in paragraph 1. When an otherwise routine training or exercise activity may cross an action threshold in paragraph 1, even when employing available mitigation measures, sensors and assets, the commander shall not proceed with the activity absent further environmental analysis. For example, such circumstances could include recent or frequent sightings of protected species in the vicinity of the proposed training or exercise.

c. The Chief of Naval Operations and the Commandant of the Marine Corps shall:

(1) Develop guidelines that assist the operational commander in recognizing circumstances or information that trigger the need for a determination concerning whether a routine training evolution may cross an action threshold in paragraph 1;

(2) Provide the operating forces of the Navy with information on the distribution of marine mammals and listed species within designated ranges and OPAREAS; and,

(3) Develop and direct implementation of any precautions, mitigation measures, or special considerations that must be taken to minimize potential impacts on marine mammals or listed species during routine training and exercises that are not within existing ranges or OPAREAS.

d. In addition to any precautions, mitigation measures, or special considerations promulgated under paragraph 2.c(3) above, the fleet commander or USMC base commanding general, or their delegates, shall develop and direct implementation of any precautions, mitigation measures, or special considerations that must be taken to minimize potential impacts on marine mammals or listed species during routine training and exercises that are within ranges and OPAREAS.

**ENVIRONMENTAL COMPLIANCE DECISION TREE FOR
MAJOR EXERCISES & TRAINING OPERATIONS AT SEA**

