GEORGIA
DEPARTMENT OF NATURAL RESOURCES
COASTAL RESOURCES DIVISION

June 26, 2009

Naval Facilities Engineering Command, Atlantic
Attn: Code EV22 (USWTR EIS/OEIS Project Manager)
6506 Hampton Blvd.
Norfolk, Virginia 23508-1278

VIA FACSIMILE: 757.322.4894

RE: Objection to Negative Determination, Undersea Warfare Training Range (USWTR)

Dear Commander:

The Georgia Coastal Management Program (GCMP) has reviewed your April 29, 2009 Negative Determination letter and the enclosed pre-release Final OEIS/EIS (hereafter FEIS) for the Navy's proposed Undersea Warfare Training Range (USWTR). While we appreciate the Navy's effort to assess the potential impacts of the proposed project, the letter and FEIS fail to address numerous concerns previously outlined in our October 27, 2008 letter regarding the USWTR Draft OEIS/FEIS (hereafter DEIS, enclosed). In particular, we remain concerned that the mitigation measures outlined in the FEIS fail to adequately protect North Atlantic right whales and their habitat. We maintain that there will be reasonably foreseeable coastal effects to Georgia's coastal zone and hereby request that you submit a formal Federal Consistency Determination.

The Georgia Endangered Wildlife Act (O.C.G.A. 27-3-130 et seq.) and its attendant rules, enforceable policies of the GCMP, list North Atlantic right whales as an endangered species and afford them protection under the Act. Georgia also has a Cooperative Agreement with the National Marine Fisheries Service (NMFS) under Section 6 of the Endangered Species Act (ESA) that includes state and federal waters offshore of Georgia and Florida. The agreement mandates Georgia to review federal actions that have the potential to impact right whales and provide comments and/or recommendations aimed at minimizing or eliminating impacts to right whales. In particular, this agreement tasks Georgia with taking management steps to:

- Reduce or eliminate injury or mortality and serious injury to right whales caused by ship collisions, and
- Protect habitats essential to the survival of right whales.

The mitigation measures in the FEIS fail to adequately reduce risk of mortality from ship collisions. The FEIS also fails to quantify the effect of mid-frequency active (MFA) sonar on right whales and right whale habitat located off Georgia and northeast Florida.

Ship Collisions

Ship collisions are the leading anthropogenic cause of right whale mortality. Vessels transiting to the USWTR from ports at Mayport, FL and Kings Bay, GA will pass through waters inhabited by North Atlantic right whales between November 15 and April 15 each year. These transits will place right whales at risk of mortality and serious injury from ship collisions. The Navy recognizes this risk and has proposed the following mitigation measures in the FEIS accordingly:

- Posting lookouts and altering course or speed in the event of a right whale sighting,
- Consulting the Early Warning System (EWS) for recent whale sightings,
- Operating at "slow safe speed" within approximately 20NM of shore (i.e. within the right whale critical habitat, plus an adjacent 5 NM-wide associated area of concern), and
- Avoiding north-south transits within 20NM of shore.

While these measures are prudent, and may reduce risk of ship collisions, they fail to adequately address the role of ship speed in reducing collision probability. The best available science indicates that probability of large whale mortality and serious injury is reduced significantly at ship speeds of 10 knots or less (Laist et al. 2001, Pace and Silber 2007, Vanderlaan and Taggart 2007). Since the DEIS was published in 2008, NMFS has implemented seasonal 10 knot speed restrictions for non-sovereign ships 65ft or greater at ports along the Atlantic coast in order to reduce the likelihood of right whale mortality and serious injury from ship collisions (50 CFR 224.105). NMFS has requested that the Navy and other federal agencies voluntarily comply with these regulations also. As such, the GCMP recommends that the Navy adopt the following mitigation measures prior to initiating the proposed project (in addition to those already outlined in the USWTR FEIS):

- All Navy vessels 65 feet or longer will operate at speeds of 10 knots or less when transiting within the Southeast U.S. Seasonal Management Area (i.e. within ~30 NM of shore) between November 15 and April 15 annually,
- Vessels may operate at speeds greater than 10 knots as necessary to maintain safe steerage and navigation, and
- Vessels may operate at speeds greater than 10 knots when engaged in combat, activities in support of combat, or other defense activities requiring greater vessel speeds.

Mid-Frequency Active (MFA) Sonar

The waters offshore of Georgia and northeast Florida are the only calving grounds for the North Atlantic right whale. There is no alternate calving location for this species. While we recognize that the effects of MFA sonar on baleen whales are poorly understood, we also recognize how difficult it will be to "undo" the USWTR if impacts for MFA sonar are found to occur post-implementation. As such, the potential for direct impacts (i.e. take) by MFA sonar should be evaluated to the fullest prior to implementation of the project. Additionally, mechanisms should be included to monitor the long-term acoustic effects of the USWTR, including management triggers to modify MFA sonar use if negative impacts are documented.

In our October 27, 2008 letter, the GCMP stated numerous concerns about the potential impact that MFA sonar may have on right whales and their habitat, including:

- The acoustic footprint of the proposed project was not quantified in the DEIS,
- The maximum distance at which level B harassment would occur from a source was not provided,
- The potential for cumulative impacts on individual right whales should be considered, and
- An independent program to monitor the long-term effects of sonar on right whale habitat should be implemented.

While we appreciate the Navy's effort to quantify the acoustic footprint of the proposed project and exposure distances in the FEIS, we are concerned by the following results of the acoustic effects model:

- Level B harassment may occur up to 24 NM from a MFA sonar source,
- Up to 47 Level B harassment takes of right whales are predicted to occur annually,
- The maximum distance that sonar energy will travel is 80 NM.

Given the close proximity of the USWTR to the calving grounds (approximately 20 NM), given the distance that MFA sonar energy is predicted to propagate, given the numerous assumptions implicit in the acoustic effects model, and given the number of harassments predicted under the model, it is imperative that the Navy validate the model prior to implementing the proposed project. In situ measurements of MFA sonar levels should be made in the field using actual MFA sonar equipment and a passive acoustic array. For example, MFA sonar would be operated within the USWTR area during the winter months (to mimic conditions when right whales are present). Meanwhile an array of passive acoustic recorders would measure MFA sonar energy received levels at various points from the USWTR to the shoreline, thereby validating the accuracy of the acoustic effects model. While we recognize that such a study raises numerous security concerns, the study design and analysis should be conducted in cooperation with NMFS and independent researchers to the extent practical. The results of this study (and any resulting modifications to take estimates) should be provided to NMFS prior to issuance of a Letter of Agreement (LOA) under the Marine Mammal Protection Act.

Additionally, the potential for long-term effects on individual whales and the calving habitat should be considered. Individual right whales remain in waters off Georgia and northeast Florida for extended periods (3-4 months in the case of cows with calves). Many of these whales return to the calving grounds regularly throughout their lives. Consequently, the potential for long-term impacts on these animals and the calving habitat should be considered. Long-term acoustic monitoring of the calving grounds adjacent to the USWTR should be integrated into the Integrated Comprehensive Monitoring Program (ICMP). Monitoring should begin at least one year prior to project implementation and should occur for at least 5 years subsequent to implementation. Monitoring should continue if the Navy increases MFA sonar use beyond proposed levels at a later date. Study design and analysis should be conducted in cooperation with NMFS and independent researchers with expertise in acoustics and marine mammal biology. Adaptive management triggers (e.g. a reduction in MFA sonar duty cycle, cessation of training during the right whale calving season) should be incorporated into the USWTR LOA in the event that negative impacts are documented by long-term monitoring, thereby enabling

impacts to right whales or right whale calving habitat to be mitigated subsequent to project implementation.

Please submit a formal Federal Consistency Determination that addresses all reasonably foreseeable coastal effects, including effects to North Atlantic right whales and their habitat, at your earliest convenience so as to avoid delays in the project. We look forward to working with you during the remainder of the 90-day review period (through July 22, 2009) to resolve these differences. If you have any technical questions regarding our comments, please contact Brad Winn or Clay George at (912) 264-7355. If you have any questions regarding this federal consistency determination conditional concurrence, please contact Kelie Moore at (912) 264-7218.

Sincerely,

Susan Shipman
Director

SS/km

Cc: David Kaiser, NOAA OCRM