Sonar waiver for Navy is ruled invalid by judge

by Terry Rodgers - CNS

SAN DIEGO - A federal judge Monday said White House officials cannot override her order requiring the Navy to take special precautions to protect whales and dolphins from sonar used during its training off Southern California.

In her 36-page ruling, U.S. District Court Judge Florence-Marie Cooper in Los Angeles rejected arguments made by the White House's Council on Environmental Quality. The panel had said the military's need to conduct sonar exercises constituted an emergency that warranted an exemption from the National Environmental Policy Act.

Cooper concluded "there is no emergency" and therefore no legal basis for the White House to approve "emergency alternative arrangements."

"The Council on Environmental Quality's action is beyond the scope of the regulation and is invalid," Cooper said.

If allowed to stand, the waiver would have exempted the Navy drills from Cooper's restrictions. Among other steps, the judge ordered the Navy last month to not transmit sonar within 12 miles of California's coastline and to shut down the sonar whenever marine mammals are spotted within 2,200 yards.

"We're aware of the court's decision, and we're studying it," said Lt. Cmdr. Cindy Moore, a Navy spokeswoman at the Pentagon.

Navy commanders said they follow 29 safeguards for marine mammals during training with midfrequency active sonar. This type of sonar has been linked to the deaths of beaked whales and dolphins.

Last year, a coalition of environmentalists led by the Natural Resources Defense Council sued to stop the sonar exercises off Southern California unless the Navy adopted stronger protections.

In August, Cooper prohibited the Navy from conducting sonar training off California. The Navy appealed that decision, and a federal appeals court lifted the ban but allowed Cooper to impose safeguards.

Cooper issued her restrictions Jan. 3. Her move prompted the White House environmental council to grant the Navy an exemption from the National Environmental Policy Act.

The Natural Resources Defense Council went back to Cooper to have the waiver overturned.

"The court has affirmed that we do not live under an imperial presidency," Joel Reynolds, an attorney for the Natural Resources Defense Council, said Monday. "The Navy doesn't need to harm whales to train effectively with sonar."

In her ruling, Cooper also cited "significant concerns" about the constitutionality of President Bush's decision to give the Navy a waiver from the federal Coastal Zone Management Act. That law allows the California Coastal Commission to have a say on federal projects affecting the state's marine resources.

Cooper didn't rule on Bush's waiver, she said, because she already has authority to enforce the sonar restrictions under the National Environmental Policy Act.

The Navy last conducted sonar exercises off San Diego, the Catalina Channel and other parts of Southern California from Jan. 23 to Feb. 1, said Cmdr. Dora Lockwood, a spokeswoman for the Navy's 3rd Fleet in San Diego. She said she didn't know of any marine mammals harmed during the drills.

More sonar exercises are planned for this year, she said.

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