Navy sued twice over sonar use near coast

by Terry Rodgers

SAN DIEGO - An agency's squabble with the Navy over military exercises off San Diego County has mushroomed into a broader battle to preserve the special powers of coastal states.

The California Coastal Commission filed suit Thursday to contest the Navy's assertion that the agency has no say over training maneuvers beyond the state's waters, which extend three miles from shore.

On the surface, the case involves the Navy's refusing the commission's request to increase safeguards for marine mammals when it uses sonar. Research has linked the emission of high-intensity sonar to the mass stranding of animals such as whales and dolphins.

But the outcome of the commission's lawsuit could have national significance because it aims to preserve the powers that California and 33 other coastal states exercise over federally driven projects.

The commission argues that even when federal activities occur far offshore, they often affect marine resources along the state's coast and beaches. For more than two decades, California has successfully used that reasoning to halt federal offshore oil drilling and force an array of federal projects to meet the state's stringent environmental standards.

Since 1997, coastal states, including those bordering the Great Lakes, have had the right to negotiate with the military and other federal agencies to ensure that their activities conform with states' environmental standards. Such power is given under the federal Coastal Zone Management Act.

"What's at stake here is the integrity of (that law) and the rights of coastal states to protect ocean resources under their environmental laws," said Peter Douglas, executive director of the California Coastal Commission.

If the Navy successfully challenges the commission's authority, he said, the agency's ability to influence projects ranging from offshore oil drilling to the siting of terminals handling liquid natural gas would be impaired severely.

"They're trying to rip the heart out of the Coastal Zone Management Act," Douglas said.

The commission's unusual action - it has filed suit fewer than 10 times over its 34-year history - was announced during a news conference in Santa Monica.

The commission rarely resorts to lawsuits because it has broad regulatory powers. It can issue cease-and-desist orders against any entity - including cities, developers and homeowners - that fails to comply with the state Coastal Act.

Acting in tandem with the commission Thursday, a coalition of environmental groups sued the Navy for not taking more measures to protect marine mammals during its use of sonar.

The Natural Resources Defense Council, a national organization that has sued the Navy four other times over the sonar issue, is taking the lead in the latest lawsuit. Its fellow plaintiffs are the International Fund for Animal Welfare, the Cetacean Society International, the League for Coastal Protection and Jean-Michel Cousteau's Ocean Futures Society.

The two lawsuits announced Thursday were a disappointing development, said Vice Adm. Barry Costello, commander of the Navy's 3rd Fleet.

He said the Navy had already agreed to 29 safeguards related to sonar use. Also, it is spending more than $10 million annually on scientific research related to the effects of sonar on marine life.

"I truly believe the Navy takes seriously the responsibility to be good stewards of the environment," Costello said.

The new lawsuits will probably test the Navy's strategy of exempting itself from environmental laws on the basis of national defense. In recent years, the Bush administration has not hesitated to bypass environmental regulations for federal activities it considers vital to national security.

In 2005, for example, the Department of Homeland Security exempted a project to build a security fence along the U.S.-Mexico border from all state and federal environmental laws.

In January, the Pentagon took advantage of a congressionally authorized legal loophole allowing it to exempt all Navy training exercises from compliance with the federal Marine Mammal Protection Act.

Sonar used during military drills off Hawaii, the Bahamas, the Canary Islands and Greece has caused whales, porpoises and other marine mammals to beach themselves and die.

While gaps in scientific knowledge remain, researchers suspect that sonar transmissions cause pain or frighten marine mammals into surfacing too quickly, leading to decompression sickness or the formation of deadly air bubbles in the animals' bloodstream.

In January, the Navy asked the commission to endorse its plans to use sonar during 14 training exercises in waters off San Diego County over the next two years.

In a nonbinding ruling, the commission told the Navy it needed to adopt better safeguards. The agency's recommendations included:

- Spending at least 30 minutes checking for the presence of marine mammals before starting each training session.

- Avoiding drills in areas that cross gray whales' migration routes or those with high numbers of marine mammals.

- Lowering sonar levels during fog, darkness or other times of low visibility.

- Reducing sonar levels to 154 decibels when marine mammals come within a 2,000-meter safety zone.

Naval ships emit sonar at up to 235 decibels, but the Navy was willing to reduce that level to 173 decibels if marine mammals wandered into the training zone.

Navy officials rejected the commission's recommendations, contending that they would unduly interfere with training. They also said the agency lacked legislative authority in issuing its ruling.

"By refusing to cooperate, they are really challenging the jurisdiction of the Coastal Commission and the coastal protection laws that apply to California and other coastal states," said Pat Kruer of San Diego, the commission's chairman.

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