

**Cahto Tribe of Laytonville Rancheria
Coyote Valley Band of Pomo Indians
Hopland Band of Pomo Indians
Little River Band of Pomo Indians
Pinoleville Pomo Nation
Potter Valley Tribe
Robinson Rancheria of Pomo Indians
Round Valley Indian Tribes
Scotts Valley Band of Pomo Indians
Sherwood Valley Rancheria of Pomo Indians**

May 3, 2019

Naval Facilities Engineering Command Northwest
Attention: NWTT Supplemental EIS/OEIS Project Manager
3730 N. Charles Porter Avenue
Building 385, Admin. Room 216
Oak Harbor, WA 98278-5000

Re: *Tribal Oppositional Comments on Draft Supplemental Environmental Impact
Statement for Northwest Training and Testing*

Dear Project Manager:

The above Tribes submit the following comments on the Draft Supplemental EIS/OEIS (SEIS) for the Navy's Northwest Training and Testing (NWTT) activities. Each is a federally recognized Tribe that maintains government-to-government relations with the United States and its agencies. The Tribes have commented on earlier reviews of the environmental impacts of the training and testing. The adequacy of the assessment of cultural, spiritual and environmental impacts from the Navy's training and testing activities is especially important to us because they will take place in the Pacific Ocean, which holds great cultural and spiritual significance to the Tribes.

The Tribes maintain many deeply significant cultural and spiritual ties to the coastline, marine environment and ocean waters along and adjacent to Mendocino and Humboldt Counties, California. The ten Tribes established the InterTribal Sinkyone Wilderness Council, which is charged with the responsibility to protect and preserve the cultural, spiritual and ecological resources that constitute the marine and terrestrial landscape of the traditional Sinkyone and adjacent Tribal territories. Sinkyone traditional territory is located within northern Mendocino and southern Humboldt Counties. Along the coastline, it stretches from Rockport northward to the vicinity of the mouth of the Mattole River. It stretches westward indefinitely into the Pacific Ocean, and eastward to the main system of high ridges east of and parallel to the South Fork and Mainstem of the

Eel River.

The Tribes acknowledge the formal government-to-government consultation with the Department of the Navy, which was initiated to address the Tribes' unique concerns relating to the NWTT. Those discussions have focused on the Tribes' opposition to the Navy's training and testing activities, and the devastation of their impacts. The Tribes acknowledge the inclusion of descriptions about the Tribes' traditional and cultural histories and resources in the Draft SEIS.

Per the Navy's commitment to the Tribes, the NWTT Study Area described in Section 1.1 of the SEIS notes the constraint of conducting activities within the 12-mile area of state and federal waters delineated in the map "Figure ES-1: Northwest Training and Testing Study Area." The Navy has communicated to us that it has implemented new processes designed to ensure its units adhere to these limitations. The 12-mile exclusionary decision was based in part on discussions that occurred during the Tribal—Navy consultations.

The Tribes note Table K-2: Marine Species Mitigation Areas states:

Within 50 NM from the shore in the Marine Species Coastal Mitigation Area, the Navy will not conduct: (1) explosive training activities, (2) explosive testing activities (with the exception of explosive Mine Countermeasure and Neutralization Testing Activities), (3) non-explosive missile training activities, and (4) non-explosive torpedo training activities. Should national security present a requirement to conduct these activities in the mitigation area, naval units will obtain permission from the appropriate designated Command authority prior to commencement of the activity. The Navy will provide NMFS with advance notification and include information about the event in its annual activity reports to NMFS.

While the Marine Species Coastal Mitigation Area provides a measure of protection against harm from Navy training and testing, the Tribes urge the Navy to expand the prohibited activities to include use of sonar, considering the impact such devices have on the health and wellbeing of whales and other marine mammals.

The Navy references in Section 3.11.1 (at page 3.11-19) the case *InterTribal Sinkyone Wilderness Council et al v. National Marine Fisheries Service et al.*, which was filed January 26, 2012 (InterTribal Sinkyone Wilderness Council, 2012). The case includes a standing declaration by a Tribal member, referenced and discussed as "Statement from the Hopland Band of Pomo Indians."

The Tribes provide the following additional comments for the record with regard to the Draft SEIS. The Tribes' comments address four issues of principal concern: 1) definition of best available information; 2) marine species monitoring program; 3) the description of the environment used to assess environmental consequences; and 4) effects of climate change on severity of impacts to ocean water quality.

1. Best Available Information

One of the Navy's rationales for updating the 2015 Final EIS with a supplemental EIS is the need to incorporate analyses based on the most current and best available science and analytical methods. The Tribes disagree with this rationale because "best available science" is not defined in the Draft SEIS. The working definition should take into account the Tribal Traditional Knowledge (sometimes referred to as "Traditional Ecological Knowledge" or "TEK") of the Tribes. Since time immemorial, Tribes have used and managed their traditional marine environment, including the southern portion of the Navy's Northwest Training and Testing Range. The deep-seated understanding of this environment, acquired and passed down for generations, is an epistemology that informs sustainable management, and ensures abundant, healthy and biologically diverse ecosystems. It represents a vitally important complement to the western science that the Navy is required to utilize when analyzing impacts to Tribal cultural, spiritual and marine resources. Tribal Traditional Knowledge should be meaningfully taken into account for this purpose, while fully respecting the need for cultural sensitivity and confidentiality.

2. Marine Species Monitoring Program

The Draft Supplemental EIS includes an environmental baseline against which to assess potential impacts of the training and testing is essential to a thorough environmental review. *Draft SEIS* at 3-2. Accuracy in the baseline in turn depends on a robust monitoring program that is designed to fully encompass the marine species populations in the Study Area. The Navy's shift in priorities "towards assessing the potential response of individual species to training and testing activities" directly results from *InterTribal Sinkyone Wilderness Council et al v. National Marine Fisheries Service et al*. The Tribes strongly urge the Navy to expand its application of this approach. *Id*.

In addition, the Tribes require that the monitoring program be expanded to include effects of training and testing beyond potential harm to species population levels. Population level effects are insufficient to fully take into account the potential harm that Navy training and testing may cause, because this standard does not fully incorporate the concept that impacts to Tribal cultural and spiritual resources may not be manifested in physical impacts on marine species. Moreover, the courts have clarified that a finding of "negligible impact" does not fully satisfy the Navy's obligation under the Marine Mammal Protection Act, and that the Navy is subject to an independent statutory requirement to ensure that mitigation measures are sufficient to achieve the "least practicably adverse impact." *Natural Resources Defense Council v. Pritzker*, 823 F. 3d 1125, 1133 (9th Cir. 2016). The Navy's obligation under the federal trust responsibility to act in the best interests of Indian Tribes likewise includes the requirement to reduce impacts to the lowest possible level. *See, Pyramid Lake Paiute Tribe v. Department of the Navy*, 898 F. 2d 1410 (9th Cir. 1990) (a "no jeopardy" finding of the Endangered Species Act does not preclude a finding that the Navy breached its fiduciary duty to the Tribe to conserve water for the Tribe's endangered fishery). To meet this standard, a more expansive definition of harm is required.

3. Environmental Consequences

The Draft SEIS identifies three stressors to be analyzed: access, availability of

marine resources or habitat, and loss or damage to Tribal fishing gear. *Draft SEIS* at 3-9. The Tribes note first that this list does not appear to be a set of stressors but rather a list of the kinds of resource-related issues implicated by the Navy's training and testing. The list should be revised to address that confusion. Second, this list is insufficient to capture the unique relationship of Northern California Indian Tribes to the Pacific Ocean, as it seems geared more specifically to those Tribes in the Pacific Northwest that exercise off-reservation treaty fishing rights through access to Usual and Accustomed Fishing Grounds. The Tribes request the Navy to expand the list of "stressors" to include those parts of the Study Area offshore from Northern California that encompass cultural and spiritual resources of the Tribes, and the concept that those resources have intangible features, such as spiritual connections, that will be impacted by the training and testing.

4. Climate Change and Water Quality

The Draft SEIS concludes that the assessment in the 2015 Final EIS that impacts to water quality from explosives and explosives byproducts in training and testing remains valid and does not need to be reconsidered. *Draft SEIS* at 3.1-19 to 3.1-36. Based on the studies conducted since 2015, this conclusion neglects to take into account the effect that changes in the climate may have on the corrosive power of an increasingly acidic ocean. Specifically, the Draft SEIS does not consider the likelihood that acidification of the ocean waters will accelerate the corrosion of explosive devices and byproducts that remain after training and testing is complete. The cumulative effect of this dynamic should also be considered.

In conclusion, the Tribes **remain opposed** to the Navy's training and testing activities, including the use of sonar, in the NWTT due to continued concerns regarding cultural, spiritual and environmental impacts. The Tribes nevertheless will be continuing their discussions with the Navy in the ongoing government-to-government consultation and in the NEPA process. The Navy's future training and testing activities must be conducted in a way that provides greater respect and protection for cultural and spiritual values and resources, and marine species of significance to the Tribes.

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cc: National Marine Fisheries Service
U.S. Fish and Wildlife Service
California Coastal Commission
California Ocean Protection Council
Earthjustice
Natural Resources Defense Council