



March 22, 2018

Naval Facilities Engineering Command Northwest
Attention: Project Manager, EV21.AW
1101 Tautog Circle, Suite 203
Silverdale, WA 98315-1101

RE: Comments, Naval Special Operations EA–EV21.AW

Dear Sir/Madam,

Thank you for the opportunity to comment on the Navy’s “Special Operations Training in Western Washington” Environmental Assessment (EA). We respectfully submit these comments to raise concerns about the EA. It is seriously deficient in its analysis of: a) the scope of activities; b) ecological, public health, recreational, and cumulative impacts; and c) conflicts of law with state and federal laws governing military operations on public and private lands. We further ask that the Navy cease all activities in public parks that have not been subject to legal review, including public disclosure and comment periods.

We thank you for responding to the recent requests by Senators Murray and Cantwell, and Congressmen Kilmer and Larsen, as well as Governor Inslee, asking that the comment period be extended by 30 days. The potentially affected public was not given adequate information or time to understand and evaluate potential impacts of the Navy’s proposed action as required by NEPA, and this extra time helps.

We recognize and support the need for adequate training of our military personnel, when those training activities are not in conflict with environmental and public health and safety laws and regulations. We respect and support our men and women in uniform at the same time we comment on deficiencies in policy or on actions that conflict with these laws and regulations. The question of whether environmental law applies to military operations has been resolved years ago. It does. Decades of effort by the Armed Services, local government and conservationists have gone into working out reasonable solutions to the problems that arise in balancing the public interests in military defense and environmental protection. Defense as a public interest does not take priority over the other public interest to protect the environment and communities in which we live. Unfortunately, the EA does a disservice to both the need to conduct training and the requirement to meet federal and state laws protecting the environment and public health.

The EA is so seriously deficient that we ask the Navy to withdraw it and conduct an adequate EIS, for the reasons stated below.

A. Scope of activities and notice procedure not adequately considered in EA

- i. Numbers of personnel underestimated**
- ii. Lands used and frequency of activities underestimated.**
- iii. Notice procedures not identified in EA.**
- iv. Reasonable alternatives not analyzed.**

B. Scope of potential impacts not adequately considered in EA.

- i. Ecological function, habitat, cultural sites.**
- ii. Public health and safety.**
- iii. Economic impacts not included in EA.**
- iv. Recreational use impacts not included in EA.**
- v. Cumulative impacts not considered in EA.**

C. EA does not consider potential conflicts of state and federal law prohibiting military activities, and of local zoning regulations.

- i. EA is inadequate to ESA, NEPA, and other standards via its insufficient scope and analysis, and lack of public disclosure of information.**
- ii. State law on military activities not considered.**
- iii. Federal law on military activities in civilian areas not considered.**
- iv. EA does not consider land use conflicts with local zoning.**

A. Scope of activities and notice procedure not adequately considered in EA

The EA does not adequately consider nor make public information on the number of personnel participating in the operations, the lands to be used for operations, the frequency of operations, procedures for notice, nor any analysis of existing reasonable alternatives.

i. Numbers of personnel underestimated.

The Draft EA says a maximum of 84 personnel will be trained. Navy representatives at the open house said 504 personnel would be trained. But an email obtained via Public Records request, from the Governor's military aide Jim Baumgart, expressed concern that as many as 2,000 personnel, including an entire Marine Raider regiment, would be trained. Each of these conflicting numbers implies different impacts. Nowhere in the Draft EA are either 504 or 2,000 personnel mentioned. The EA should be withdrawn and an adequate EIS conducted, with the accurate numbers of personnel involved in the operations analyzed.¹

ii. Lands used and frequency of activities underestimated.

¹ Baumgart, Jim. Email. <http://westcoastactionalliance.org/wp-content/uploads/2018/03/Baumgart-concern-about-2000-personnel-training.pdf>

Designation of this much public and private land for military training is a significant and unprecedented expansion. When measured on nautical charts, the linear length of shoreline depicted in purple on the Navy's map of the training areas exceeds 230 nautical miles, or about 265 statute miles. According to the EA, the training spans seven counties: Skagit, Island, Jefferson, Kitsap, Pierce, Clallam, and Mason. An EA is grossly inadequate for assessing and informing the public about the scope of impacts over this much area.

No public process was conducted for as many as 30 years of covert combat training in 5 state parks, and this has systematically violated NEPA requirements. The EA does not provide a list of the state parks in which the Navy proposes to train. Navy personnel at an open house said 29 parks are slated for training activity. A Navy slide show provided by Navy personnel acting in the capacity of whistleblower² confirms the 29 state parks and clearly lists them. It also indicates that 68 sites in total, including these parks, have been selected for use.

The previous training that has taken place in 5 state parks is neither applicable as precedent nor appropriate as justification for choosing the path of an EA instead of an EIS, for proposed actions of this magnitude. Additionally, the number of private landowners who have evidently signed real estate agreements with the Navy is secret; thus it is impossible to assess impacts unless the Navy carries out the more complete analysis required by an EIS.

The frequency of actions on the same site are neither accurately disclosed nor analyzed. The EA's alternatives list some sites being visited 10, 20 and as many as 36 times per season, which overlaps with nesting and nursery cycles for many species. NEPA requires an EIS for a scope of impacts this large. Such an analysis has not been done.

iii. Notice procedures not identified in EA

During the recent open house meetings conducted by the Navy on this EA, a Navy trainer said areas for conducting activities would be assessed prior to any training deployment. However, no such check list or procedure is published in the EA, nor was information about this procedure disclosed. Given this lack of information, the following questions arise:

- Site selection: What are the rules and procedures for site selection of private land? If selection is based on willing landowners, how are environmental values taken into account? What consultations with wildlife agencies have been/are being conducted? For state parks, what are the consultation and notification procedures with biologists and park rangers?
- Notice: When and how will the appropriate officials and private landowners be notified prior to training at a given site? Will landowners at adjacent properties be notified? If not, what is the plan for preventing contact between Navy personnel and unsuspecting neighbors who may have pets or children on their properties? What are the notifications and procedures for cleaning up materials accidentally deposited on these adjacent

² Margherita Parrent, US Navy. Proposed NSW Training Within the Pacific Northwest.
http://westcoastactionalliance.org/wp-content/uploads/2018/02/1_US-Navy-Seals-training-NSWG3-Training-REQs_FINAL_19AUG15-MP.pdf

properties, such as paintballs that miss their targets, or unmanned aerial equipment that malfunctions and lands off-site?

- Frequency: Who is responsible for keeping track of which sites have been used how many times? Are state parks informed when sites are used? Is that information to be made available to the public?
- Liability: What are the legal liabilities for state parks in the event of a training accident involving a civilian, and how have parties been notified of such liability? No information has been provided to the public by State Parks Commissioners or the Navy, and it is our understanding after reading a recent article in the Seattle Times that the Commissioners have not received sufficient information from the Navy to make a determination. What are the liabilities of communities in the event local law enforcement is not adequately notified and mistakenly engages with trainees? The police shooting of two Special Operations trainees, one fatally, in Moore County, North Carolina during operation “Robin Sage” was followed by litigation in 2009, and \$750,000 in damages plus an unspecified settlement were paid by the community.³ This appears to have established a legal precedent for community liability, regardless of whether or not local law enforcement officers are notified.

The Navy has not been consistent or complete in giving notice and disclosing information. Citizens and public officials alike have a right to know what is happening where, and when. The EA gives no information on adequate notice of operations. An adequate notice procedure should be developed and published for comment in an EIS.

iv. Reasonable alternatives not analyzed

The Navy owns 46 miles of shoreline and 151,975 acres of land in the Pacific Northwest region.⁴ The Navy also owns and manages coastline, islands, and bases around the world that are a reasonable alternative to the actions proposed, yet these alternatives are dismissed in the EA.

Military property must be used first. The Navy stresses the need to train in the strong currents and cold water of Puget Sound. However, there is plenty of DOD-owned property at Bremerton, Kitsap and Whidbey Island Naval Air Station (on both sides of the island). And there are plenty of current and former Navy personnel on those military bases and in adjacent communities who love interacting with the Navy. Unfortunately, the Navy has chosen hundreds of additional miles of shoreline, much of it private property, but it has not demonstrated why existing locations are inadequate. The training should be conducted on the lands that are already owned by the Department of Defense; that’s why the public set them aside.

Normalizing military training into the lives of civilians regardless of their objections because it is “convenient” for the Navy is insufficient grounds on which to justify a Finding of No Significant Impact. The scope of the EA is seriously deficient for the reasons stated above, and we request that the Navy withdraw the EA and prepare the more comprehensive EIS that addresses the

³ Fayetteville Observer, Michael Futch, staff writer. October 29, 2009. Ex-soldier relieved at end of ordeal.

⁴ NAVFAC Northwest Workload Projections. http://westcoastactionalliance.org/wp-content/uploads/2018/02/20_NAVFAC-Northwest-Workload-Projections-6-21-11.pdf

deficiencies in scope, and procedures for notice. Further, we ask that the Navy withdraw all plans to conduct this training in communities who object to it.

B. Scope of potential impacts not adequately considered EA

The EA does not adequately consider or make public information about impacts on ecological functions and species, public health and safety, local economies, or cumulative environmental impacts as required by NEPA.

i. Ecological function, habitat, cultural sites

Puget Sound has sensitive nearshore nesting, roosting and foraging habitat for 72 species of seabirds, waterfowl, and shorebirds,⁵ many of which feed on invertebrates that trampling or repeated disturbance would kill or injure. Our state parks host more than 200 species of birds, at least 115 of which nest there. Throughout the proposed training area there is designated critical habitat for several endangered fish species; unfortunately, the analyses for each endangered or threatened species use boilerplate language that does not adequately assess or disclose impacts. Further, disclosure of consultation with federal and state wildlife agencies is omitted.

In every case, the EA dismisses all impacts to all species and their habitats, when clearly there will be impacts, given for example that the EA failed to disclose the total number of personnel to be trained. Effects from the use of sonar in shallow water ecosystems is also not addressed. Designated nearshore critical habitat for endangered and threatened species such as Puget Sound rockfish are found in at least 50 percent of the shoreline areas the Navy designates for training;⁶ add deepwater designated critical habitats and the training areas overlap 100 percent. Since aerial, underwater and surface drones and transport vehicles are to be deployed in this training, it is inconceivable that there would be no impacts.

Wildlife respond to noise by avoidance, but in shallow-water habitats where juvenile species of fish, crabs and others are found, being flushed from a hiding spot increases predation. Our fisheries are already in steep decline. The public, private individuals, and organizations have invested significant resources in restoring these “nursery” shoreline areas. The EA also dismisses impacts of repeated trampling in shallow waters, beaches and upland areas where birds may be nesting, and erosion of cliffs from climbing. In several areas where over-the-beach insertions and extractions appear to also include direct actions in structures atop friable cliffs that are subject to landslides, analysis of impacts to these cliffs and to property owners whose lands may erode as a result, should include consultation with qualified geologists. This has not been conducted and must be done.

⁵ Buchanan, Joseph. Nearshore Birds of Puget Sound, Technical Report.
http://www.pugetsoundnearshore.org/technical_papers/shorebirds.pdf

⁶ Puget Sound rockfish critical habitat map
http://www.westcoast.fisheries.noaa.gov/publications/gis_maps/maps/other/rockfish/pugetsoundrockfishch8_25_14.pdf

At a single paragraph, the EA's analysis of cumulative impacts to Tribal, cultural and historic sites that may be impacted is completely inadequate.

Of concern to assessing the impacts is the insufficient information on operational evaluation of sites overall and during operations over time. No one representing the Navy at the open house meetings was able to answer the question of how the sites are chosen with respect to doing harm to wildlife and habitat. The EA did not provide any information about the following:

- What is the procedure for site selection and scheduling activities with regard to wildlife and habitat function?
- Operationally, how will the Navy determine which birds are nesting where? Will they consult with the US Fish and Wildlife Service? State agencies? Who will be contacted to know what areas are sensitive at training time?

For the EA to dismiss impacts by saying species will simply get out of the way, and that trainees will avoid all historic and cultural sites, especially when darkness is the usual time they train, is as inadequate as it is impractical. The Navy should withdraw the EA and conduct an EIS addressing the deficiencies in impacts analysis and operational procedures.

ii. Public health and safety

A version of this training was mentioned in the 2008 Northwest Training Range Complex Draft Environmental Impact Statement /Overseas Environmental Impact Statement Volume 1, which said:

“NSW forces (SEALs and Special Boat Units) train to conduct military activities in five special operations mission areas: unconventional warfare, direct action, special reconnaissance, foreign internal defense, and counterterrorism. Specific training events include insertion/extraction operations to hone individual skills in delivery and withdrawal of personnel and equipment using unconventional methods. Access control is the key to reducing the risk to the public due to the hazardous nature of NSW training. Since there is no general public access to Indian Island, the activities occurring on the island pose no risk to public safety.” (Emphasis added.)

The above statement is an acknowledgement that if training activities take place where the public has access, there is a risk to public safety. When the Final EIS was published in October 2015, all discussion of Naval Special Warfare training was removed.

This EA fails to disclose and evaluate potential public health hazards to civilians, vulnerable populations such as children, the disabled, and the elderly, and hazards to marine navigation. Most of these exercises, as stated previously, will happen at night. There is no information in the EA on preventing operational errors during the training in order to avoid invading the wrong beach or property, sensitive nesting habitat, or especially, private property with young children who are more easily traumatized. The potential for misunderstandings between trainees and civilians is not addressed, nor is operational notice other than to say a “spotter” will ask park visitors what their intentions are, which is itself problematic.

According to the EA and the Navy slide show by Margherita Parrent, “building clearing” direct actions in the form of mock gun battles are slated to take place on both private property and in state parks. The EA says the weapons sound like air rifles, and it relies on the acoustic differentiation abilities of the public, and of children, to know the difference between the sound of an air rifle and any other weapon being aimed and fired in their vicinity. This is an utterly inappropriate and dangerous assumption.

At the open house, a Navy representative said that environmentally friendly, “gentle” fake bullets will be used. While the Draft EA discloses that these projectiles are paintballs, it does not address what happens when realistic-looking weapons are fired and civilians who are unaware of the exercise either get caught in the crossfire or call 9-1-1, thinking an emergency is occurring. It does not discuss or reassure the public about appropriate responses by law enforcement officers, who may respond with lethal force if not fully briefed, as did a sheriff’s deputy in North Carolina (discussed below). It does not address or acknowledge how campers or other visitors in state parks may react to such military exercises, and it fails to acknowledge that park users may be harmed from interactions; these include the near-homeless, many of whom are veterans with PTSD, who live in temporary shelters in these state parks. The Navy has provided no information on procedures or notifications in the event an armed civilian encounters an exercise, or if an armed response ensues with live ammunition. The Navy has not said whether “hostages” will be used in realistic building-clearing or other activities. The Navy has also not disclosed how it has apprised the hunting community.

The EA does not discuss the potential for injury, harm or liability. The Navy recognized in a 2008 Draft EIS that Naval Special Warfare training activities carry public safety risks, yet it does not evaluate in this EA any potential harm to civilians in the area of operations. In 2009 a sheriff’s department in North Carolina was involved in a shooting of trainees during training exercises, one fatal. The local government was sued, and the community paid more than \$750,000 in damages. Damages to civilians may occur in the training exercises, ranging from minor to major injuries and potential fatalities. Injury to livestock, wildlife, and domestic animals may also occur. The EA does not acknowledge that the training projectiles (paintballs) can be poisonous, and that livestock, wildlife, and domestic pets may be harmed; there are reports that pets have died after ingestion. The EA does not identify, nor discuss provision for legal responsibility, liability, and damages if injury occurs. The Navy does not commit to pay damages from injuries resulting from its training activities. The potential liability may fall on the landowner, the State Park system, local law enforcement, and government. Additionally, the Navy provides no information about cleanup following training exercises, nor how they will enter adjacent property that they have no permission to enter if stray projectiles or equipment land there. Injury may result from inadequate clean up after the training exercises.

The EA does not adequately address impacts on vulnerable populations, including children, the disabled, veterans with PTSD, and the elderly. In evaluating the potentially disproportionate impacts on children, the EA states on page 3.4.5 that “any effect on children would be fleeting—a glimpse of trainees or just being present in the general area.” Impacts to children are dismissed with little information. Additionally, Executive Order 13045, Protection of Children from Environmental Health and Safety Risks, requires a full evaluation of potential harm to children.

However, the Draft EA does not disclose the results of such an evaluation. Psychologists have proven that children from 8-12 years of age are especially prone to being frightened by realistic violence, and do not have the maturity to self-regulate or cope with trauma. Families in the proposed training area encourage children to spend time in the woods learning to appreciate nature and enjoying our beaches. Outdoor educators actively work to manage fear in outdoor experiential settings.⁷

The Navy has neither consulted with nor sought agreement from local communities to allow military combat training in public parks and shore areas, especially on what children will be exposed to. According to a presentation made by a representative of the Special Operations Command to the Big Spring, Texas City Council while seeking invitations and approval to conduct “realistic military training” activities in civilian areas as part of Operation Jade Helm 15,⁸ multiple requirements exist for securing public permission, cooperation, and health and safety. The Navy has demonstrated none of these measures were taken, nor will be taken, with regard to this training.

The Navy must evaluate potential harm to vulnerable populations in an adequate EIS, disclose the information, and consult with the public fully and openly, before putting into operation these activities; even then, it must also respect the wishes of communities who do not want to be exposed to this training.

Marine Navigation Hazards are not addressed in the EA. The Navy has said it will train divers to get on shore undetected. That means they will not have any dive lights or other devices to make them or their vehicles visible to others in or on the water. The Navy has said that the area won't be roped off or restricted, so kayaks, sailboats and other craft that use those waters could potentially collide with a Navy vessel or unmanned surface vehicle, or be caught up in operations. What are the liabilities in the event a small boat collides with unlit Navy vehicles or personnel in a marina? Who gets sued, the Port or the Navy, or both? Given the potential for accidents during covert operations, juxtaposed with the recent record of Navy ships colliding with other ships that caused damage and multiple fatalities, the Navy must thoroughly evaluate and disclose procedures for ensuring marine navigation safety during operations, and to indemnify local government entities from liability.

iii. Economic impacts not included in EA

The EA fails to assess or address impacts to a vibrant tourism industry, fisheries, property values and other economic interests in the training area. For example, it fails to address potential impacts on property values associated with, or adjacent to, the training. In the event a property owner discovers that a “real estate agreement” exists between his/her neighbor and the Navy, is that property owner obliged to disclose that fact to potential buyers? What are the legal ramifications if a buyer backs out of a sale due to the existence of combat training on an adjacent property, or if the value of a property near one that hosts this training declines? What are the liabilities in the event of an accident on private property? The EA fails to adequately assess the

⁷ Ewert, Alan. Managing Fear in the Outdoor Experiential Setting. Journal of Experiential Education. First published May 1, 1989. <http://journals.sagepub.com/doi/abs/10.1177/105382598901200104?journalCode=jeea>

⁸ “Jade Helm presentation to Big Spring Texas City Council,” <https://www.youtube.com/watch?v=dLM4-aImMkY>

impacts to recreational industry contributions to local community economies. The Surfrider Foundation's 2015 Recreational Use Study found that the Washington coast attracted 4.1 million trips in a single year, resulting in \$481 million from direct expenditures to our state's coastal economy.⁹

iv. Recreational use impacts not included in EA

The EA fails to mention or address the chilling effect on public enjoyment of state parks, their recreational value, and on outdoor activities and tourism. According to a federal report released by the US Department of Commerce in February 2018,¹⁰ outdoor recreation contributes \$373.7 billion to the nation's Gross Domestic Product and comprising 2 percent of GDP. This sector is growing a full percentage point faster than the overall economy, and it is a major pillar of the regional economy.

Unfortunately, Navy representatives at an open house held to inform the public about the EA and the training activities told attendees that the public will never know when they're being watched, tracked and monitored without their knowledge or consent, by military trainees hiding in and around state parks, beaches and private lands along a 265-mile length of Puget Sound shoreline. One said that entering unawares into a secret exercise will make the unsuspecting civilian a participant. This could include a child. Another Navy representative said, "...the point is to be able to watch and track whoever comes through—you, the public, "the enemy," without your awareness, whether you're walking, fishing, enjoying nature, or otherwise going about your business." He suggested that people should not be doing anything in the woods for which privacy might be needed, because "...we might be watching you." A third representative confirmed that the public is to be the proxy for the enemy: "That's the point: for the military to take down enemies without being detected. If the public detects us, then we've failed in what we're trying to do." He then assured listeners that the Navy would not aim their weapons at civilians. This was not an anomaly where one speaker was saying all these things, it was several Navy representatives speaking both together and separately, to multiple witnesses.

Statements like the above represent neither responsible operational military training procedures nor awareness of their potential impacts to communities. One can easily imagine hiking on a public park trail and unexpectedly encountering training operations. The fear or anxiety such an encounter may create is unwarranted. The lack of information in the EA, combined with the inadequate and alarming information shared verbally at public meetings, does not inspire confidence. The potential for mistakes and misunderstandings and the negative impact on recreational visits from increased encounters were not evaluated. The EA should be withdrawn and the Navy training activities carried out on the 151,975 acres and 46 miles of shoreline purchased by the public to be used for these purposes.

v. Cumulative impacts not considered in EA

⁹ Surfrider Foundation, "An Economic and Spatial Baseline of Coastal Recreation in Washington," May, 2015, available at <http://publicfiles.surfrider.org/P97SurfriderWACoastalRecreationReport.pdf>.

¹⁰ US Department of Commerce, Bureau of Economic Analysis. <https://www.bea.gov/newsreleases/industry/orsa/2018/pdf/orsa0218.pdf>

The EA does not take into account the impacts of other Navy activities in these same areas that have been considered in other NEPA documents. For example, by their process to supplement or finalize the Environmental Impact Statements of the expansion of military activities in the following areas, no relationship exists between evaluations of these impacts:

1. The addition of 36 Growler aircraft (Draft EIS, 2017);
2. Northwest Training and Testing Range (Final EIS, 2015, Phase 2 scoping currently open);
3. The 2014 EA for the establishment of an Electronic Warfare Range;
4. Any of the 24 NEPA processes for construction of facilities involving pile-drivers, from Fiscal Years 2016 through 2018;¹¹
5. Any of the Navy's approximately 36 EISs or EAs in Puget Sound over the past few years.¹²

The ecological impacts on threatened and endangered species by multiple military operations in the same area are cumulative. The EA does not include these analyses and is seriously deficient.

While SEAL operations were mentioned in a Draft EIS in 2008, they were removed from the Final. The October 2015 Final EIS for Northwest Training and Testing said:

Naval special warfare units are required to utilize a combination of specialized training, equipment, and tactics, including insertion and extraction operations using decelerator/parachutes, submerged vehicles, rubber and rigid hull boats, and helicopters; boat-to-shore and boat-to-boat gunnery; underwater demolition training; reconnaissance; and small arms training. ... However, no land-based activities, to include those of the naval special warfare community, are analyzed in this EIS/OEIS. (Emphasis added.)

Thus, impacts from Naval Special Warfare training were pulled out of an EIS and have never been analyzed. An EA is a deficient vehicle for assessing a project of this scope and size, especially when there are potential psychological as well as physical impacts to communities, vulnerable populations, threatened and endangered species, and economic impacts. Such impacts are not only un-analyzed, but are not mentioned in the vastly expanded scope of this training. The EA should be withdrawn and an EIS be conducted, to include all cumulative impacts, and to avoid those communities who object to it.

C. EA does not consider potential conflicts of state and federal law prohibiting military activities, and of local zoning regulations.

i. EA is inadequate to ESA, NEPA and other standards via its insufficient scope and analysis, and lack of public disclosure of information.

¹¹ US Navy. NRNW In-Water Construction Projects. http://westcoastactionalliance.org/wp-content/uploads/2016/07/102_US-Navy.-NRNW-in-water-construction-projects-6-Mar-2012.ppt

¹² US Navy. NW NEPA Report. <http://westcoastactionalliance.org/wp-content/uploads/2016/11/NW-NEPA-Report-12.15.15-4.xlsx>

The EA fails to adequately assess biological impacts to the ecological function of the land and marine habitats identified in it; nor does it adequately address impacts to threatened and endangered species. There is no evidence in the EA of either the final results of, or ongoing proof of, formal or informal consultation with federal wildlife agencies under Section 7 of the Endangered Species Act. A previous ESA determination for an earlier round of this training, prepared by the Navy in Fiscal Year 2016, analyzed impacts associated with the proposal to "...conduct training at 28 Western Washington locations" between January 1 and May 31, 2016 in Jefferson and Kitsap Counties. This biological assessment, prepared by Navy personnel, concluded without evidence that there was no need to consult with federal wildlife agencies under the ESA, Marine Mammal Protection Act, or Magnusen-Stevens Fishery Conservation and Management Act. The document described training activities on civilian and other non-military lands as a "real world" environment for Special Forces personnel to practice stealth tactics" and to "maneuver in the water and across land undetected." It is common knowledge that many operations are conducted in darkness, yet the Navy's ESA determination failed to mention "darkness" or the timing of the training. It relies again on avoiding marine mammals and not disturbing listed species. That biological assessment's conclusion that there was no need to consult with agencies due to its conclusion of no impacts was deficient.

In the current EA, the Navy promises that it will be informally consulting with the US Fish and Wildlife Service, but offers no proof of this consultation and no information for the public to use in evaluating impacts. When and if the results of such consultation are ready for the public to see, the Final EA may give no opportunity for public comment, as has been the Navy's practice in recent years. Therefore, we ask that due to the expansive scope of this project and the likelihood of significant impacts to a variety of listed species that are already in serious decline, that the EA be withdrawn and formal consultation be initiated as part of the preparation of an EIS.

ii. State law on military activities not considered.

State Parks are not intended for military training. The military use of state parks may be at odds with Washington state law. For example:

- a.) WAC 352-37-095, "Disturbances," specifically prohibits any conduct which "...impedes or disturbs the general public in the use and enjoyment of state park areas..." Navy personnel have stated that a safety officer will survey the park for users and ask them their intention so that the Navy can "train around them." Most people who are told that a combat training activity is going on "around them" will certainly be disturbed.
- b.) WAC 352-37-230, "Firearms," specifically prohibits discharging of a firearm "except for good cause authorized by the commission." The possession, display, carrying, discharge or use of a firearm is regulated under 9.41 of RCW. The Navy's use of firearms - 'simulated' or not - is not in keeping with the peaceful nature intended in Recreational Parks. There is no exemption for military training activities.
- c.) WAC 352-32-010, "Intimidate," prohibits engaging in conduct in state parks "...that would make a reasonable person fearful." Given the lack of clear operational guidelines

disclosed in the EA, it is foreseeable that the public may find themselves in situations that will cause reasonable fear.

d.) RCW 79A.40.080, “State immunity from liability” is precise about state liabilities when there is an “exercise of police power of the state” but it does not contain language that relinquishes the state’s power to the military. Given the litigation over the shooting by a police officer of two Special Operators during covert "Operation Robin Sage" training in North Carolina that resulted in the death of one and injury liability damages of \$750,000 paid by the community to the surviving soldier, what provisions has the Navy made with the state parks system for such a possibility? What are the liability implications for City, County, or private property owners?

If civilians may encounter small arms fire or military combatants at any time in any of the state parks selected by the Navy, because no adequate notifications are given, and if they should also expect to be physically and electronically surveilled during these exercises, what part of state or federal law allows the introduction of this unacceptable level of risk? The EA cannot become a vehicle for changing state law. The Navy must seek legislative change in the democratic process, not by fiat and non-disclosure in an EA process. The Navy should withdraw the EA, complete an EIS that analyzes potential conflicts with existing state law.

iii. Federal law on military activities in civilian areas not considered.

The EA and Navy representatives imply or have directly stated that the training includes covert physical and electronic surveillance of US citizens on public and private lands, but there are unclear guidelines for interactions with civilians. Both describe military activities that will amount to the Navy monitoring the activity of private individuals and potentially intervening with their activities. For example, Navy personnel explained how “clearing actions,” meaning mock gun battles, are a part of the training they will undertake at state parks. They said that safety "spotters" would be used to alert citizens to impending or ongoing training. The example given was: "The safety team member would approach a camper or visitor and ask them their intention for activities." This statement implies that the Navy will be asking visitors to explain what they intend to do in the park and on beaches. Will Navy personnel then judge whether the activity is lawful or not? Will the Navy report activity considered suspicious to local authorities? The EA does not disclose or analyze potential conflicts or violations of federal law, nor does it discuss the rights to privacy and physical security of civilians on non-military lands. Such intervention would likely be perceived as intimidating, and upon being informed that a military exercise would be taking place in their vicinity, it’s likely that some visitors would curtail their activities or leave.

Given that this training includes the use of sophisticated unmanned aerial and surface vehicles (drones) carrying robotic surveillance and communications devices referred to as “payloads” in the EA, it is likely that such surveillance could include accessing data from the electronic devices of unwitting passersby, as well as physical monitoring of their conversations and tracking their whereabouts as they unsuspectingly transit the area or are camped there. Such surveillance could include accessing their calls, emails, chats, text messages and private conversations, and possibly taking their photos. Other than use of the word “payload” to describe the surveillance devices,

the EA fails to acknowledge or explain how these advanced technologies will be used during these secret operations, or disclose the levels of surveillance that citizens will be subjected to.

Unmanned Aerial Systems as mentioned in the EA have data-capture and recording capability that would likely be used for after-action debriefing for training purposes. These recordings will capture activities of people not involved with the training and who would be unaware that the recordings may be stored and viewed later by any number of personnel in the Navy, or potentially other agencies. There was no information provided about how the data might be collected or used during or after the training, and nothing about how or whether the data will be shared, secured, protected and stored, or destroyed.

The EA does not acknowledge or evaluate the 4th Amendment protections of the right to privacy, against warrantless search and seizure, of personal and private assets. A recent decision of the US Supreme Court requires law enforcement to obtain a warrant, including establishing probable cause, before the contents of a cell phone can be captured.¹³ Law enforcement operations can only use facial recognition from photos, videos, etc., under subpoena. Federal law prohibits the military from conducting domestic law enforcement activities; limitations on standing military serving law enforcement functions without authorization were established after the Civil War via the Posse Comitatus Act,¹⁴ which prohibited a standing army from engaging in law enforcement activities on US soil.

The EA does not address potential conflicts with 4th Amendment rights, US Foreign Surveillance Act (FISA) protections, and privacy concerns of those in the training area who may be unaware they are being surveilled, tracked and recorded. The EA should be withdrawn and an EIS prepared that would evaluate these important potential conflicts.

iv. EA does not consider land use conflicts with local zoning.

The Navy states it has contacted numerous private landowners along the 265 linear miles of shoreline selected for this training, and “real estate agreements” have been signed with landowners, renewable every 5 years. Private landowner agreements allow the Navy to conduct covert combat training on these properties for an unknown number of times, in some cases as many as 10, 20 or 36 times per year. These agreements and the identities of the private landowners are not disclosed. However, the EA does not analyze potential conflicts with zoning regulations that may either allow, modify, restrict or limit this type of activity in residential areas. The EA does not indicate that the training falls within the allowable activities under Shoreline Management Plan and other land use plans, policies or regulations that address this type of land use. The EA does not address adjacent property owners who will not be notified in advance about the training, in order for them and the public to have input and protect their economic interests as well as physical safety concerns. The EA should be withdrawn and an EIS prepared that includes evaluation of the potential conflicts with local land use law, regulations and policies.

¹³ Riley v. California, 577 U.S. ____ (2014), at https://www.supremecourt.gov/opinions/13pdf/13-132_819c.pdf.

¹⁴ 18 US Code § 1385 – Use of Army and Air Force as posse comitatus.
<https://www.law.cornell.edu/uscode/text/18/1385>

This EA is fatally flawed in addressing all of these concerns, and the Navy should withdraw it, prepare an EIS, and conduct needed training on military lands, not in civilian communities and state parks.

Thank you for your kind attention to our concerns.

Sincerely,



Connie Gallant
President
Olympic Forest Coalition



Karen Sullivan
Co-Founder
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Representative Mike Chapman
Representative Steve Tharinger
Senator Kevin Van De Wege
Governor Jay Inslee
Washington State Parks Commissioners
US Fish and Wildlife Service
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Port Townsend City Council
Jefferson County Board of Commissioners
The American Civil Liberties Union
Advocates for the West
Earthjustice
Western Forest Law Center
Dave Phillipps, The New York Times
Dan LaMothe, The Washington Post
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Dahr Jamail, Truthout
Hal Bernton, The Seattle Times