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Comments:

Subject: OBJECTION, Pacific Northwest Electronic Warfare Range
CONDENSED VERSION

From:

____ Brion Toss _____ 360-385-1080

Lead Objector who commented in 2014 _____ address and telephone

Additional Objectors:

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Objector's Name _____ address and telephone

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Project Name: Pacific Northwest Electronic Warfare Range

Responsible Official Name: Reta Laford

Affected National Forest: Olympic National Forest, Pacific Ranger District

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US Forest Service
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Dear Ms. Laford,

I/we object to the pending decision by the Forest Service to grant a five-year special use permit to the US Navy to conduct electronic warfare in the Olympic National Forest, for the following reasons, all of which are footnoted with supporting documents in a lengthier and more comprehensive version of this letter that can be found here: _____

1.) The Navy map used in the Electronic Warfare Range EA omitted important geographical details that would

have helped the public understand where the training would be conducted. These maps made it look like the Navy is operating in the middle of nowhere. This is a misrepresentation of facts and is illegal under 18 U.S. Code ? 1515, which defines "misleading conduct" in part as: "(D) with intent to mislead, knowingly submitting or inviting reliance on a sample specimen, map, photograph, boundary mark, or other object that is misleading in a material respect."

A remedy would include rescinding the decision to grant the Navy's permit and requiring that an EIS rather than an EA be produced, due to the controversial nature and scope of this proposed activity, and that it should contain accurate maps without omitting critical details such as major rivers, Olympic National Park boundaries, and even Lake Quinault.

2.) Flight increases were vastly underestimated in the EA. The Navy claimed there would be only a 10 percent increase in flights, when emails obtained by FOIA from the Forest Service show a 38.6 percent increase, and the recently released Growler EIS shows huge increases in flights, including a 600 percent increase at OLF Coupeville. The information in the 2014 EA is outdated and does not reflect the reality we now face; therefore, the permit, which is based on outdated information, should not be granted.

3.) Surface ship involvement was not disclosed. No mention of ship involvement was found in the EA, but those same emails mentioned above disclosed 275 events per year with ships offshore using the mobile emitters. Beyond the effects of jet noise, pollution and other impacts that were not addressed in this EA, surface ship involvement clearly expands the scope of the project and requires a new public process.

4.) Contractors, not Navy personnel, will operate equipment. This fact was not disclosed in the EA but was discovered at a public information meeting. Training for these contractors has never been explained, for example: will they be armed, and what are the legal liabilities and rules of engagement with citizens who happen upon a mobile emitter in Olympic National Forest, and who might wish to speak with these contractors? What assurances can be made and legally enforced that these contractors will operate safely and in a responsible manner?

5.) Forest Service failed to disclose important information. First, your agency failed to disclose to the public in a timely manner that it had already granted four temporary permits to the Navy for use of national forest roads to conduct electronic warfare. This was revealed (and videotaped) in a public information meeting, when District Ranger Dean Millett answered an audience question by saying there had been only one temporary permit, but a week later a letter from Regional Forester Jim Pe?a said that four permits had been issued to the Navy, from 2010 through 2014. All four permits were signed by Mr. Millett. Therefore, Mr. Millett violated 18 U.S. Code ? 1515 by deliberately misleading the public, who had a right to know the full extent of Forest Service involvement. This kind of dishonesty also invalidates a public process.

Second, the Forest Service has made no effort to correct this statement despite many requests: the EA dismissed potential impacts on amphibians and reptiles with the astonishing declaration that these life forms only exist in and around marshes and meadows:

"The proposed activities do not occur on marshes or in meadows; therefore, it is highly unlikely that amphibians or reptiles would occur in the project area." (p. 3.2-6)

A similar statement dismisses the possibility of amphibians or reptiles occurring on "disturbed areas" such as roadside pullouts where mobile transmitters would operate. Both statements are inaccurate and misleading, and the fact that the Forest Service, whose mandate requires it to conduct its own investigation, failed to do so or to request a correction to such a major factual error, renders the EA scientifically invalid.

6.) The Navy and Forest Service did not take a "hard look" as required by the National Environmental Policy Act (NEPA), and reinforced by case law. 42 U.S. Code ? 4321 et seq., dictates that federal agencies must take a "hard look" at the environmental consequences of a proposed action, and that the requisite environmental analysis "must be appropriate to the action in question." (Metcalf v. Daley, 214 F.3d 1135, 1151 (9th Cir. 2000)) For example, the Electronic Warfare EA did not examine the effects of jet noise that will be triggered by the issuance of a permit to an agency that flies the jets. That amounts to segmentation of impacts. Therefore, this EA does not constitute a "hard look."

7.) Inadequate notification. Failure by the US Navy to notify affected Olympic Peninsula communities of the existence of the EA and its brief 15-day comment period was an egregious breach of the public process. Failure by the Forest Service to place notifications in those same papers a month later for its own public

process compounded this breach and demonstrates the broken public trust that agency officials must strive to repair. Forest Service District Ranger Dean Millett publicly admitted that he had chosen not to place any notices in publications that serve communities on the northern and western Olympic Peninsula, except for a single sheet of paper pasted in the window of the Forks, WA post office. Forks is a three-hour drive from some of the affected communities.

For the Navy to issue a Finding of No Significant Impact immediately following an EA on which it had received not a single comment from elected officials, Tribes, businesses and the general public, and then to have that followed by uncritical endorsement from the Forest Service, is irresponsible and a complete violation of the public trust. This was exacerbated when base commander Captain Michael Nortier used the same newspapers on the Peninsula that were avoided for purposes of publishing notices, to challenge and mock public concerns as "myths." Many people were trying to address the multiple procedural concerns of citizens, businesses, Tribes and environmental organizations regarding the Navy's failure to provide proper notice and opportunity to be heard. Many people tried to address myriad substantive problems with the Navy's EA and the Forest Service's clumsy initial attempts to address the public's need for information. Nortier's mockery and the silence of the Forest Service were the equivalent of rubbing the public's nose in their failure to catch the tiny notices in Seattle-area papers, or find the single 8" X 11" piece of paper pasted in the window of the Forks post office.

A NEPA public process is not an Easter egg hunt. A federal agency must not mock or remain silent when another agency mocks the constituents it is supposed to serve. A federal agency must attempt to reduce the reservoir of public mistrust it creates when it acts irresponsibly. The Forest Service has considerably improved its public notification process since Mr. Millett's gaffes, but he is still the Responsible Official on this decision, and it is obvious that the outcome was set in stone long before the public process was initiated, regardless of public health, safety, economic and environmental concerns.

8.) Public hearings in affected communities were not held. Instead, the Navy held "public information meetings" at the request of Rep. Derek Kilmer, but neither the Navy nor the Forest Service would allow comments to be accepted for the record. Further, on the day of the meeting in Port Angeles, they unethically reduced the public comment time from three minutes to one. This caused many public concerns to remain unexpressed, and, because written comments were not being accepted, to remain off the record. Public hearings in a NEPA process "are required when there may be substantial environmental controversy concerning the environmental effects of the proposed action, a substantial interest in holding the meeting, or a request for a meeting by another agency with jurisdiction over the action." (40 CFR 1506.6 (c)). Because this was never done, the spirit and intent of NEPA was violated. Because and the Forest Service has endorsed a Navy EA on which not one public comment was received, and for which no hearings were held in affected communities, the public process should be considered invalid.

9.) Forest Service failed to conduct its own research. The Forest Service has a duty to conduct its own independent scientific review of the impacts of activities that it allows or condones; an agency cannot simply adopt the conclusions of another agency. (See, 747 F2d 1240 Save Our Ecosystems v. P Clark E Merrell.) Numerous other legal cases cited in the lengthier version of this letter have demonstrated that "NEPA requires each agency to indicate the research needed to adequately expose environmental harms," alternatives must be "affirmatively studied," and the decisions make "the completion of an adequate research program a prerequisite to agency action." Examples described in # 2, 5 and 6 of this letter and footnoted in the longer version clearly show that the requisite research was not presented by the Forest Service to the public, and therefore, the public rightly assumes it was not conducted. This is unlawful.

10.) Cumulative impacts. In order to take the hard look required by NEPA, agencies are required to assess impacts and effects that include: "ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative." (40 C.F.R. ? 1508.8.)

NEPA defines "cumulative impact" as: the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. The EA first separates impacts so they can't be added together, then dismisses many long-term and cumulative effects as "not reasonably foreseeable," when in fact they are, and not only that, analysis of these is required by law. The Navy cannot legally dismiss such impacts, but they did. The Forest Service's own biological research should have

been used in the Navy's cumulative impacts analysis, but it wasn't. This is another concern about the EA's scientific validity and its legality.

11.) Interaction with and effects of, climate change as a potential magnifier of impacts was not evaluated in the Electronic Warfare Range EA. The entire passage on climate change was nonspecific boilerplate material. The Navy's contribution to climate change and air pollution in the Pacific Northwest is potentially significant, given that if the average jet fuel consumption rate (based on typical operations patterns) of single EA-18G Growler jet is 1304 gallons per hour (multiplied 10X when afterburners are used) and this produces 9.57 kg CO₂ per gallon, then the CO₂ produced is 12,479 kg, or about 12.5 metric tons of CO₂ per flight hour when not using afterburners. The per capita emissions in Washington state in 2011 was 10.18 metric tons per year (including all residential, commercial and industrial activities), so one hour of flight is about 23 percent more than the annual CO₂ emissions of a typical Washington state citizen. In the Navy's 2015 EIS for Northwest Training and Testing, it analyzed emissions not from Growlers, but from Prowlers, which are no longer being flown and did not have afterburners. Prowlers were phased out more than a decade ago. Therefore, the Forest Service's decision to grant the permit is not based on real data about climate change, as the law requires, and it should be rescinded.

12.) Claims of "tiered" NEPA documents are inaccurate. The Navy used the following reasoning for not evaluating some impacts in the EA that the public is concerned about: Evaluations of those impacts had been conducted in earlier EISs, and therefore, no analysis of those concerns needed to be done in this EA, according to the Navy. However, a close reading of the 2010 Northwest Training Range Complex EIS reveals that it did not evaluate the proposed activities in the electronic warfare range, because the emissions it discussed included ships and aircraft but not mobile emitter trucks. Hazardous materials discussed in that EIS included a training area just west of the Cascades and an offshore ocean area, but not the Olympic Peninsula. Electronic combat (attack) covered only the offshore ocean, not the Olympic Military Operating Area, which was not evaluated in the 2010 EIS. Same thing for the 2014 Northwest Testing and Training Draft EIS - it only mentioned overflights by jets at high altitude enroute to train at sea, not the dogfighting and low-level training that the Forest Service permit could help trigger. It also states that the training evaluated in both EISs was similar, which is a double admission that the Olympic Peninsula was not evaluated. Therefore, the Electronic Warfare Range EA cannot possibly be tiered off documents that did not even mention it.

13.) Definitions are unclear. What constitutes an "event" or an "activity" is never specifically defined in the Electronic Warfare Range EA or in documents it is supposedly tiered off. As such, it is impossible to determine the true environmental impacts of the Navy's proposed actions. An "event" can last for seconds, minutes, hours, or several days as discussed in other Navy EISs. If the number of annual "events" over the Olympic Peninsula is estimated in the Electronic Warfare Range EA at 5,000, it makes a tremendous difference in impacts if they are brief or lengthy. Not knowing these basic definitions hampers the public's ability to evaluate impacts. The EA is incomplete without this knowledge, and should therefore be rejected.

14.) Radiation hazard exposure. Public questions about chronic radiation exposure to nesting birds, small mammals and amphibians, many of which could be in trees and thus directly in line with the 14-foot height of the transmitters carried on the mobile emitters, as well as to hikers, campers, photographers, boaters and other users, were dismissed. The EA falsely stated that amphibians would probably not be found in the selected locations for the mobile emitters. It also failed to discuss the downward-directed radiation coming from the jets overhead.

According to the EA, mobile emitters will transmit electromagnetic radiation for a total of 2,340 hours per site per year, and 7,020 hours across three sites each year (p. 2-6.) This provides a total electromagnetic radiation exposure of 35,100 hours across all 15 sites each year (2,340 hrs/site/yr x 15 sites) which is never explicitly stated in the EA. In sum, an undefined area 30.8 m (101.1) feet west of each mobile unit site will be exposed to 4-8 GHz of electromagnetic radiation for 2,340 hours/year, with 9 hours of exposure occurring every fifth day. Omitted from the EA but admitted in news reports was the Navy's September 28, 2014 statement that fifteen minutes of exposure is enough time to sustain damage to soft tissue such as the eyes. Although the Navy failed to disclose the hours of operating time expected at the fixed emitter at Pacific Beach, an undefined area 217.5 m (713.7 ft) west of the fixed emitter will be exposed to 2-18 GHz of electromagnetic radiation for 2,340 hours per year.

The Navy used one citation out of thousands to support this statement: "There are no conclusive direct hazards to human tissue as a result of electromagnetic radiation. Links to DNA fragmentation, leukemia and cancer due

to intermittent exposure to extremely high levels of electromagnetic radiation are speculative; study data are inconsistent and insufficient at this time (Focke et al.)" Unfortunately, according to an expert, (details in lengthier letter,) that statement is about extremely low frequency exposure, the kind we get from the wiring in our houses, or from high-voltage power lines, and those are not the kinds of exposures that the Navy is planning to use on the Peninsula. Also, the Focke study cited by the Navy did not actually conclude that effects on leukemia are speculative. It said childhood leukemia is well-associated with these exposures. And, there were no assurances or research of any kind that migrating birds, which are very sensitive to this kind of radiation, are not going to be severely impacted.

Finally, the EA does not discuss or even mention the term "Electronic Attack," but the purpose of the training is "to turn out fully-trained combat-ready electronic attack crews." Directed energy in the form of weaponized lasers or microwaves or other technology used by Growlers is not mentioned in the EA; nor are any potential impacts from electromagnetic radiation discussed in any previous "tiered" NEPA documents. Nor is it discussed in the currently open Growler Draft EIS, which limits itself to jet noise and air pollution. Most people will find it rather ironic that in a suite of EISs and EAs designed to promote warfare training using electromagnetic weaponry, that not one analysis or in-depth discussion of impacts from exposure to this electromagnetic radiation occurs in a single one of these documents.

The Forest Service's uncritical endorsement of the Navy's EA without questioning their lack, or conducting its own biological research, amounts to a dereliction of duty.

15.) Forest Service prior knowledge of electronic warfare on public roads. In a 2012 email that supported the 4 temporary electronic warfare permits signed by District Ranger Dean Millett from 2010 through 2014, the Navy stated that it planned to drive mobile emitters "on existing roads and trails throughout the Olympic Peninsula within and in the vicinity of the Olympic MOA and in the vicinity of the Okanogan and Roosevelt MOAs." This includes driving them "all through most of the region as well as outside the geographic confines of the MOAs to optimize and vary training scenarios (dependent on road and area availability)," in order for Electronic Warfare aircrews to "rehearse and develop real-world tactics, techniques, and procedures under scenarios where stationary emitter signals are emanating for example from Pacific Beach and other potential sites and pop-up mobile emitter signals are received from varied geographic locations within realistic range-ring distances." Types of training listed include "close-air support, modified escort profiles, general EW tactical proficiency, and War-at-Sea training." A map on page 5 of the 2013 temporary permit shows that public roads were already being used as "sites for testing and evaluation."

This begs the question: if a 100-foot taped-off hazard perimeter is required around the emitters in remote forested locations, then what are the hazards to people near these mobile emitters on public roads or in populated areas, or even hikers on trails, who may be unwittingly exposed to electromagnetic radiation from both emitters and jets? This is probably not a question the Forest Service can answer, but if your agency had prior knowledge that the Navy has been conducting electronic warfare training on public roads, it was your duty to inform the Washington State Department of Transportation, which did not know this activity was occurring.

16.) Rational endpoints. As discussed in #12, the Navy's EA did not evaluate several types of impacts because of claims that such impacts had been previously evaluated in "tiered" NEPA documents. The Fish and Wildlife Service's Biological Opinion used by the Navy for the Electronic Warfare Range EA was produced in 2010, for an EIS that did not cover the Olympic Military Operating Area, and that therefore, evaluated no species and habitats specific to the area covered by the EA. That 5-year Biological Opinion expired several months after the EA was published, so no baseline for impacts evaluation existed during the entire public process. As another example of this, the Navy's 2005 EA on transitioning from Prowler jets to Growlers established limits of sound exposure that promised a 36% reduction in the number of individuals in surrounding areas who would be exposed to aircraft noise greater than 65 decibels. The public believed them. No noise evaluations were made for areas beyond the immediate Whidbey environs. But the number of Growlers has grown significantly, including a 368 percent increase in flight operations at OLF Coupeville compared to what was predicted in that 2005 EA, and a 479 percent increase in nighttime flights, which accounted for 84 percent of operations. (It is about to grow to a 600 percent increase.) Because the 2005 EA predicted a decrease in flights and, according to a statement by attorney David Mann, "assumed a significantly smaller percentage of nighttime operations, it failed to accurately apply the 10-dB penalty [resulting from the Day-Night (DNL) metric that averages all noise events for a 24-hour period and applies a 10-dB penalty for nighttime events after 10:00 pm and before 7:00 am] and therefore significantly underestimated the impact to the surrounding community."

Such increases were not mentioned in the 2005 Prowler to Growler EA, because there was no established baseline; the limits just keep creeping up and up. Those 82 Growlers from the 2005 EA are grandfathered in via a faulty and insufficient NEPA analysis, yet the new Growler EIS covers just 36 new jets, and the Forest Service's permit will unleash noise that has never been evaluated.

Having no baseline makes it all but impossible to document future impacts. Impacts from noise, for example, have never been evaluated for areas outside the immediate environs of Whidbey Island Naval Air Station, yet they will be subjected to intrusive jet noise and other effects. As you know, impacts from jet noise were not addressed in the Electronic Warfare EA, which segmented impacts and severely constrained the public's capacity to understand and assess them. Therefore, since rational endpoints for environmental review simply do not exist, which creates a situation in which no baselines exist, how can increases in noise impacts be accurately evaluated?

After the public outcry on the Electronic Warfare Range EA, Rep. Derek Kilmer publicly asked the Navy to conduct a "neutral" sound study on impacts to Olympic National Park. The Navy, evidently ignoring him, published instead a recycled study on Prowlers.

The Navy's interpretation of "new and continuing activities" under 40 CFR 1508.18(a) is highly questionable. The Navy's own regulations define this phrase and insist that when environmental effects of an ongoing activity are significantly and qualitatively different or more severe than predicted in a NEPA document, that it constitutes a "substantial change" that requires a new NEPA document to be prepared. Included in this would be "changes in operational tempo, area of use or in methodology/equipment which has the potential for environmental impacts" and "should be considered a proposal for a new action and be documented accordingly."

The 2014 EA, being badly out of date, describes proposed actions whose impacts have undergone substantial increases. It did not evaluate the full scope of impacts, and it represents what almost no one except the Navy would disagree was a failed public process. For the Forest Service to grant a permit after all this would be a mistake.

17.) Navy did not substantiate its need for national forest lands. The Navy already has a lot of land available to its pilots. It currently conducts electronic warfare testing and training on at least 4 bases in Washington, Oregon, Idaho, and Nevada, but said in its 2014 EA that it needs the Olympic National Forest, because it would save \$5 million per year in fuel costs from not flying the 400 miles to Mountain Home, Idaho. This in turn would save 45 minutes of flying time each way, that Whidbey-based Navy personnel could spend with their families.

A 1988 Master Agreement (MOU) between the Department of Defense and the US Department of Agriculture clearly states, in the preface, under section C, that "training activities on National Forest System lands will be authorized when compatible with other uses and in conformity with applicable forest plans, provided the Department of Defense determines and substantiates that lands under its administration are unsuitable or unavailable." The Department of Defense never substantiated that its own lands were unsuitable or unavailable, as the EA's stated reasons clearly show. Nowhere does federal law justify overriding the public interest for totally incompatible functions and purposes that conversion to an electronic warfare range present to Olympic National Forest and its spillover effects on neighboring Olympic National Park. The Navy has not demonstrated that such great "need" cannot be met by using existing facilities already in operation. If it's a scheduling problem, as Navy representative John Mosher said at a public meeting, then the Department of Defense needs to do a better job of managing its existing warfare ranges.

To summarize, remedies would include the following items that begin with: rescind the decision to grant the permit until the following have been completed by the Forest Service and/or the Navy:

- 1.) Acknowledge that the Electronic Warfare EA did not address the full scope of impacts;
- 2.) Require that an EIS rather than an EA be produced, due to the controversial nature and scope of this proposed activity, and that it should contain accurate maps without omitting critical details such as major rivers, Olympic National Park boundaries, and even Lake Quinault.
- 3.) Respond to longstanding public requests by having the Navy answer questions about the roles and training of contractor-operators, whether they will be armed, what type of armament they will be carrying, and what the public can expect when encountering them;

- 4.) Correct scientific inaccuracies contained in the EA to standards that Forest Service biologists can support;
- 5.) Conduct a more inclusive and fair public process, including holding real public hearings in affected communities as required by NEPA;
- 6.) Conduct your own independent scientific investigations on all reasonably foreseeable impacts and cumulative analyses, in order to verify Navy's Findings of No Significant Impacts;
- 7.) Ensure that alternatives have been carefully considered, along with mitigation measures, to avoid or minimize adverse environmental impacts;
- 8.) Rescind the decision to grant the permit until the fact that the EA, which addressed emissions only from the mobile emitters and associated "construction activities," and not the cumulative air quality impacts of more than a hundred Growler jets and hundreds more other aircraft flying overhead, can be assessed.
- 9.) Require proper analyses of effects on climate change, not the boilerplate that the Navy has used; since the military is the world's largest single user of fossil fuels, they owe the public an analysis;
- 10.) Do not accept that NEPA documents are tiered unless they actually are;
- 11.) Insist on clarifications by asking that terms like "event" are defined so that the public can understand and evaluate impacts;
- 12.) Stop downplaying, as Mr. Millett does, the potential health effects and risks from radiation coming from directed energy weaponry or mobile emitter trucks, and investigate the reasons why the Department of the Interior sent a memo to the Federal Communications Commission in February 2014, criticizing the FCC's 30 year-old standards based on thermal heating, and evaluate potential impacts on migratory birds, amphibians and other trust species.
- 13.) Take steps to heal the public mistrust that resulted from this disingenuous process;
- 14.) Establish real baselines for noise impact evaluation.
- 15.) Substantiate properly the need for Defense Department use of national forest lands as directed by the 1988 Master Agreement.

Conclusion:

There is no doubt in the public's mind that noise from Navy aircraft is being significantly and chronically underestimated; no doubt that severe effects in some communities, which were never evaluated, will occur with greater severity and frequency than documents show, and no doubt that the evaluation of electromagnetic radiation impacts is entirely absent from the Electronic Warfare EA and other NEPA analyses. There is no doubt that noise and other impacts have been so severely piecemealed that a permit for the mobile emitters does not account for the increased jet noise it will trigger. There is no doubt that air pollution was not adequately addressed in the EA, no doubt that effects of radiation are both unknown and unevaluated, and no doubt that the Forest Service, having failed to conduct its own research to verify the Navy's claims, appears to be about to rubber-stamp an unfair, unethical process that has created a deep well of public anger and mistrust. We urge the Forest Service to rescind the decision to issue this permit, to conduct the necessary science, to consider the impacts that were left out, and to start again, with an EIS, an honest dialog, and a more inclusive public process.

Thank you for your time.

Sincerely,

____ Brion Toss _____
