



Navy Jets Attempt Evasive Maneuver Around NEPA

Update of 02-01-16

"The Pentagon has transformed the National Environmental Policy Act into a sham and a shame." **1** This statement aptly describes what the Navy has made of NEPA in respect to its Pacific Northwest Electronic Warfare Range proposal. The more one looks at what the Navy has done, and has not done, the more alarming its actions become.

In our past updates we have explained how the Navy's Northwest Training and Testing Final Environmental Impact Statement totally ignored the impacts of the electromagnetic radiation that would be emitted from the electronic warfare jets using the Electronic Warfare Range. We have also explained how the Federal Interagency Commission on Aviation Noise has criticized the Navy's noise study for using computer sound simulations that have not been tested against actual sound measurements. And we have explained how the State Historic Preservation Officer has criticized the Navy for not defining the actual flight profiles that the electronic warfare jets would be flying.

In future updates, we will return to more fatal flaws, such as the above, in the substance of the Navy's NEPA documents. Now, however, we want to address a flagrant procedural sleight of hand that has completely prevented the public from any meaningful opportunity to comment on the Navy's analysis of the major impacts of the EWR - the impacts of the electronic warfare jets.

In August of 2014, the Navy issued its Pacific Northwest Electronic Warfare Range Draft Environmental Assessment (2014 EA). Based on that document, the Navy then issued a Finding of No Significant Impact which said "an Environmental Impact Statement (EIS) is not required for the installation and operation of an electronic warfare (EW) Range in the Pacific Northwest."

In reaching that decision, however, the Navy only considered the impacts of the mobile emitters that would serve as the targets for the electronic warfare jets. The 2014 EA contained no analysis of the impacts of the electronic warfare jets themselves on the EWR. Worse yet:

(1) The 2014 EA falsely claimed that "[a]ll of the EW training activities and locations that would be associated with the implementation of the Pacific Northwest EW Range were analyzed in the [2010 Northwest Training Range Complex Environmental Impact Statement/ Overseas Environmental Impact Statement]" (2010 NWTRC EIS/OEIS), and

(2) The 2014 EA also said that "any changes to the type or tempo of training conducted in the [EWR] will be addressed in the [Northwest Training and Testing (NWTT) EIS/OEIS]." At the time this statement was written, only the NWTT Draft EIS/OEIS existed, and it simply did not address "any changes to the type or tempo of training conducted in the [EWR]."

To emphasize this point, the 2014 EA addressed only the impacts of the mobile emitters, and promised that the impacts of the electronic warfare jets:

(1) were addressed in a document (the 2010 NWTRC EIS/OEIS) that in fact did not address those impacts, or

(2) would be addressed in a document (the NWTT EIS/OEIS), the draft of which did not address those impacts.

Now fast forward to October 1, 2015. On that date the Navy released the final version of the NWTT EIS/OEIS. Suddenly, what the 2014 Environmental Assessment said regarding the NWTT EIS/OEIS became somewhat true. Appendices J and K of that document addressed the impacts of the electronic warfare jets on the EWR, albeit incompletely and inadequately.

Very importantly, this demonstrates that from the beginning of the preparation of the 2014 EA, the Navy knew that the impacts of the electronic warfare jets on the EWR should be addressed in an environmental impact statement. By not doing so from the start, however, the Navy knowingly violated the procedural requirements of NEPA in two especially egregious ways. First, it illegally segmented the analysis of the environmental impacts of the EWR into two separate proceedings - the study of the mobile emitters in the 2014 EA, and the study of the electronic warfare jets that eventually became a part of the final version of the NWTT EIS/OEIS. Second, it deprived the public, in regard to the impacts of the electronic warfare jets, of any meaningful opportunity to comment on the scope of the required environmental documents, and also of any meaningful opportunity to comment on the analysis of the impacts at a draft environmental impact stage.

In these respects the law is clear. 40 CFR § 1508.25 requires connected actions to be analyzed in the same environmental document. Actions are connected if they:

- (i) Automatically trigger other actions which may require environmental impact statements.
- (ii) Cannot or will not proceed unless other actions are taken previously or simultaneously.
- (iii) Are interdependent parts of a larger action and depend on the larger action for their justification.

Under any or all of these provisions, the operation of the mobile emitters is an action connected with the operation of the electronic warfare jets that will target the mobile emitters.

"A project has been improperly segmented, on the other hand, if the segmented project has no independent utility, no life of its own, or is simply illogical when viewed in isolation." *Stewart Park v. Slater*, 352 F.3d 559.

An un-segmented, properly undertaken Electronic Warfare Range NEPA process, in which a consideration of the effects of the electronic warfare jets was included, would have involved both a scoping step as well as a draft environmental impact statement step.

At each of these steps the public would have had an opportunity to comment.

A NEPA Information Guide [2](#) describes the scoping process as follows:

"Scoping is required by NEPA regulations. It is to be "an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action . . ."

Scoping sets the boundaries (i.e., the scope) of the analysis and helps to identify information sources. The scoping process also helps focus alternatives and identifies issues to be addressed within the EIS. Both internal (i.e., the agency) and external (i.e., the public) input is included as part of the process."

That same information guide says a draft environmental impact statement:

"[F]ully evaluates the impacts of the action and reasonable alternatives. Once the Draft is completed, it must be filed with the Environmental Protection Agency (EPA) and be circulated for public comment for 45 days";

It stresses the importance of public comment by saying:

"The public can make a difference in the EIS process by making timely comments and by making useful and important comments, such as:

- Comments on inaccuracies or discrepancies,
- Comments on adequacy of the analysis,
- Comments identifying new impacts, alternatives, or mitigation measures, and
- Disagreements with interpretations of impacts."

The Navy knows full well how to begin a NEPA evaluation with a scoping procedure. It is now preparing a draft environmental impact statement (DEIS) on the EA-18G Growler Airfield Operations at Naval Air Station (NAS) Whidby Island. That effort has included three separate scoping steps, the latest of which was accompanied by an elaborate scoping document.^{3, 4.}

The Navy's blatant disregard of the National Environmental Policy Act in respect to the Pacific Northwest Electronic Warfare Range is a prime example of a governmental agency gone rogue. For a project that adversely affects Olympic National Park (the sixth most visited National Park in the country, a World Heritage Site, and an International Biosphere Reserve), and which is squarely centered in the critical habitats of the threatened and endangered marbled murrelet and spotted owl, no less than the most exhaustive compliance with NEPA should be expected.

It is time for all of our elected officials from President Obama, Senators Cantwell and Murray, Representative Kilmer, down to our local county commissions, city councils and port commissions, to demand that the Navy's disrespect for the law ends.

1 Connecting the Dots: US Military Expansionism - at Home and Around the World., by Carol Miller, La Jicarita, An Online Magazine of Environmental Politics in New Mexico. The article can be read at <https://lajicarita.wordpress.com/2015/01/08/connecting-the-dots-us-military-expansionism-at-home-and-around-the-world/>.

2http://www.greateratlantic.fisheries.noaa.gov/prot_res/atgtrp/osm/NEPA%20Overview.pdf

3
<http://www.whidbeyeis.com/Files/Public/Documents/Whidbey%20Scoping%20Booklet.pdf>

4 Although this ongoing procedure did begin with a scoping process accompanied by an elaborate scoping document, it too is fundamentally flawed in at least two ways. First, the EA-18G Growlers being analyzed in the DEIS, would fly to and train in the EWR. Evaluating the impacts of those aircraft only in close proximity to NASWI, and in a separate environmental impact statement, is yet another unlawful segmentation of another part of the EWR proposal. This is graphically illustrated by flight profiles, shown in that scoping document as going towards and returning from the area of the EWR, that are arbitrarily cut off a short distance from NASWI. The impacts of the EA-18G Growlers should have been analyzed from lift off to landing along the entire flight profiles, including impacts in the EWR and in the area between the EWR and NASWI. Second, this ongoing procedure also improperly relies on computer sound simulations that have not been tested against actual sound measurements.

