

# United States Senate

WASHINGTON, DC 20510

December 5, 2008

The Honorable William J. Brennan, Ph.D.  
Acting Undersecretary of Commerce for Oceans and Atmosphere  
U.S. Department of Commerce  
Administrator, National Oceanic and Atmospheric Administration  
1401 Constitution Avenue, NW  
Room 5804  
Washington, DC 20230

The Honorable Dale Hall  
Director, Fish and Wildlife Service  
4401 Fairfax Drive  
Arlington, VA 22203

Dear Secretary Brennan and Director Hall:

We are writing to express our serious concerns regarding the schedule the Navy has asked the National Oceanic and Atmospheric Administration (NOAA) and the Fish and Wildlife Service (FWS) to adhere to in issuing Biological Opinions for the proposed homeporting of ships at Naval Station Mayport, Florida. In view of the significant environmental issues associated with the Navy's homeporting proposal, we ask that you meet with us this month to discuss the Navy's actions.

Last month, the Navy issued its Final Environmental Impact Statement (FEIS) prior to completion of the Biological Opinions, which is inconsistent with the Endangered Species Act Handbook (which states, "At the time the FEIS is issued, section 7 consultation should be completed."). We question how the Navy can adequately assess the impacts of its actions on protected species without your agencies' critical inputs. Given the potential adverse impacts of this proposed homeporting action on several threatened and endangered species, we want to ensure that your agencies have both the time and documentation needed to conduct thorough analyses of the proposed action, unhindered by arbitrary deadlines—including the Navy's apparent intention to issue a Record of Decision on its proposal for Naval Station Mayport by December 31, 2008.

The Navy's proposal to homeport a nuclear-powered aircraft carrier at Mayport would increase the amount of military and commercial traffic in and around the Naval Station and require the collection and disposal of 5.2 million cubic yards of dredged material—resulting in thousands of additional vessel trips to and from dredge disposal areas. We believe the Navy's proposed action presents clear risks to species and habitat protected under the Endangered Species Act, particularly the North American right whale

(NRW) and the Florida manatee, and their respective habitats. Both species are particularly susceptible to ship-strikes, which could increase should the Navy homeport a nuclear-powered aircraft carrier at Mayport.

Moreover, the Navy's discussions in the Biological Assessments and FEIS of impacts to the right whale and the Florida manatee do not adequately address impacts from increased vessel operations that will result from dredging and homeporting additional ships at Mayport. This was an area of great concern raised by NOAA in its past Section 7 correspondence and its DEIS comments to the Navy. We are also concerned that the Navy intends to make its homeporting decision without the benefit of the conclusions from the East Coast Range Complex Biological Evaluation, which is not expected to be completed until April 2009.

As you are undoubtedly aware, the Biological Opinion is a key part of the Section 7 process; it provides: (1) documentation of the effects of the action on protected species and habitat, (2) an opinion on whether the action is or is not likely to jeopardize the continued existence of the listed species or result in the destruction or adverse modification of critical habitat, (3) the incidental-take statement that limits the amount or extent of incidental impact on the species, and (4) mandates reasonable and prudent measures and restrictions that must be implemented as part of a project. The Biological Opinion must be carefully prepared and reviewed to be completely certain that it meets legal requirements and will adequately protect species and habitat. The Navy did not complete its Biological Assessments for the Mayport homeporting until November 2008. The East Coast Range Complex Biological Evaluation is not expected to be completed until April 2009. We question, in the strongest terms, whether your agencies can complete legally sufficient and adequate Biological Opinions by the end of this month.

Congress has considered issues associated with strategic homeporting of Navy ships for the last four years. Mindful of the significant environmental issues associated with the Navy's proposal for Mayport, Florida, it is inconceivable to us that your agencies should not be afforded as much time as necessary to ensure your assessments and opinions are developed as thoroughly and carefully as possible.

We look forward to meeting with you regarding the Navy's Mayport homeporting proposal and its environmental ramifications. The Navy's documented haste to issue a record of decision must not be allowed to interfere with your agencies' requirements to complete the Section 7 consultation process with due diligence. We fear the Navy's stated goal of issuing a record of decision by December 31, 2008, will result in both an inadequate consultation process and findings, as well as a failure to consider fully the impacts of its proposed actions on protected species.

Sincerely,

  
John Warner  
United States Senator

  
Jim Webb  
United States Senator