**Defenders of Wildlife \* Other Groups**

April 20, 2018

**Reject Marine Mammal Protection Act Riders in the NDAA**

Dear Member of Congress:

On behalf of our millions of members and supporters nationwide, we urge you to reject any rider in the FY 2019 National Defense Authorization Act (NDAA) that would weaken the Marine Mammal Protection Act (MMPA). We understand that the U.S. Navy has submitted to the House and Senate Armed Services Committees a proposal for inclusion in the NDAA that would exempt the Navy from the five-year limit on MMPA incidental take authorization permits. This proposal would undermine marine mammal conservation, eliminate much-needed review for vulnerable species, remove accountability, and stymie the Navy’s own valuable conservation efforts. Additionally, the proposal is unrelated to military readiness. Consequently, we respectfully request that you reject this proposal and do not include it in the NDAA.

The Marine Mammal Protection Act (MMPA), passed in 1972 with bipartisan support, is a landmark conservation law that prohibits activities that harass, hunt, capture, collect, or kill marine mammals, such as whales, dolphins, seals, and manatees. In order to pursue activities that may incidentally (unintentionally but not unexpectedly) harm marine mammals, private entities or government agencies must apply for a permit. The MMPA also requires permit holders to monitor the damage they cause and implement mitigation measures. To engage in multi-year activities that may harass, injure or kill marine mammals, an entity must obtain a letter of authorization (LOA) from the National Oceanic and Atmospheric Administration (NOAA). These permits are good for up to five years. The Navy’s proposal would exempt it from the five-year time limit.

**The proposal would undermine marine mammal conservation throughout the U.S.:** During its most recent five-year review, the Navy estimated that it would kill more than 250 whales and other marine mammals; cause permanent injury, including lung and hearing damage, to another 3,000; and disrupt foraging and other vital behavior more than 30 million times. Whales and dolphins are often killed in mass stranding events after being disoriented by sonar exercises, and explosives can cause marine mammals grievous injury and death. Periodic review and permitting is necessary to take stock of the Navy’s effects on marine mammal populations and ensure that the Navy can conduct its readiness activities without causing unnecessary harm to marine wildlife.

**The proposal would eliminate review for species that require consistent oversight:** Marine mammals are difficult to track. NOAA concluded in a 2007 study that we could have difficulty detecting even a catastrophic collapse in many marine mammal populations off our coasts, and it may take years to notice severe population declines in some species. The MMPA is different in process and scope from the Endangered Species Act (ESA) and National Environmental Policy Act (NEPA) because it is easier to detect a decline in most terrestrial animals, because we are terrestrial animals. Congress recognized that marine mammals need protections tailored to the challenge of monitoring and conserving marine species. Due to this challenge, the MMPA requires that permit holders whose activities may disrupt, injure, or kill marine mammals obtain authorization from the NOAA Fisheries Office of Protected Resources every five years. The Navy’s proposal would remove this safeguard, whose purpose is to prevent vulnerable marine mammal species from becoming threatened or endangered.

**The proposal would remove accountability:** The Navy’s rider proposal is harmful because it removes an accountability mechanism that is core to the MMPA’s success. The MMPA’s permitting provisions ensure that permit holders comply with the law and implement appropriate mitigation measures. Without necessary time limits and associated monitoring, we would not know how the Navy’s sonar and explosive operations might be affecting species that require consistent oversight. Marine mammals are generally long-lived, slow-reproducing species; therefore, it is important for permits to be periodically reviewed to ensure they are based on the best available scientific data we have on the status of these species.

**The proposal is unrelated to military readiness and would stymie Navy conservation efforts:** NOAA has never denied the Department of Defense an MMPA incidental take permit for military readiness activities. Furthermore, Section 319 of the FY 2004 NDAA (P.L. 108-136) allows the Secretary of Defense, after conferring with the Secretary of Commerce, the Secretary of the Interior, or both, to invoke a two-year complete exemption from the requirements of the MMPA for any readiness action if the Secretary determines it is necessary for national security. Therefore, the MMPA has a national security failsafe that gives the Navy flexibility and enables it to maintain full military readiness without having to worry about MMPA compliance.

Since 2006, the Navy has maintained the Integrated Comprehensive Monitoring Program to coordinate its permitting responsibilities under the MMPA and ESA. This program is essential to ensuring the integrity of marine mammal populations affected by Navy activity. Without the permitting review process, the main incentive for continuing this important work would disappear.

The ocean is changing rapidly, and the mammals that live therein are struggling to adapt. Climate change and commercial activities are displacing marine mammal populations from their historic habitats and negatively affecting them in ways we are still trying to understand. The Navy’s proposal to undermine the MMPA comes at a critical moment for marine conservation, when several species are in serious decline. For example, there are fewer than 450 North Atlantic right whales left on Earth. Seventeen fatalities were documented last year alone. Even worse, not a single new calf has been detected this breeding season. To help save imperiled marine mammal species like the right whale, it is necessary to periodically review the impacts of Navy activities and determine proper mitigation measures. The Navy is also changing. To maintain our military supremacy and the readiness of our armed forces, the Navy deploys and tests new tactics and devices all the time, including new underwater explosive and sonar technologies. For the sake of safeguarding the ecological balance of our world, we need to know how this constant flux is affecting marine wildlife.

We respect and support our military’s efforts to maintain readiness. Defending America’s values, including its conservation values and natural resources, is a critical mission of the armed services, and there is nothing stopping the Navy from maintaining full readiness while also complying with its responsibilities under the MMPA. Please reject this proposal and vote against the inclusion of any riders in the FY 19 NDAA that would erode the MMPA.

Thank you for your consideration.

Sincerely,