The Honorable Richard A. Jones

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STATE OF WASHINGTON, et al., Plaintiffs, v. UNITED STATES DEPARTMENT OF THE NAVY, et al., Defendants.	NO. 2:19-cv-01059-RAJ CITIZEN'S OF EBEY'S RESERVE AND PAULA SPINA'S OBJECTION TO MAGISTRATE'S RECOMMENDATION TO DENY MOTION FOR PRELIMINARY INJUNCTION (ORAL ARGUMENT REQUESTED)

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I. THE EQUITIES AND PUBLIC INTEREST SUPPORT ISSUANCE OF A PRELIMINARY INJUNCTION

A. The National Defense Claim

The Magistrate's report states that "military interests do not always trump other considerations." Dkt. 72 at 12 (quoting *Winters*). But the report's uneven treatment of the Navy's and plaintiffs' evidence suggests otherwise. We ask this Court in its *de novo* review to provide a more searching analysis of the Navy's national defense claims. *See* 28 U.S.C.A. §636(b)(1).

The judiciary should not abandon its role of assuring that the two other branches of government respect each other's authority. *De La Cruz v. Tormey*, 582 F.2d 45, 63, n. 18 (9th Cir. 1978) ("a blind and unyielding deference to legislative and executive action is judicial abdication and is equally to be condemned") (internal quotation omitted). Congress has ordered that all federal agencies make their decisions only after fully complying with NEPA. 42 U.S.C. § 4332. The Navy is not excepted. *See also,* Dkt. 72 at 13 (Constitution vests military decisions in "the **legislative** and executive branches") (emphasis supplied; internal citation omitted). Yet, as discussed below, the report effectively gives the Navy all the trump cards by accepting the Navy's litigation declarations at face value and not testing them against the Navy's own pre-litigation statements and reports (and eyewitness accounts from area residents).

The report's uneven perspective also is reflected in its over-arching statement that granting injunctive relief would "require day-to-day entanglement of the Court in Navy operations." Dkt. 72 at 3. Far from it. Not even the Navy made this claim. Dkt. 55. Directing the Navy to return to the *status quo ante* or implement Alternative 2C (80% Ault Field/20% OLF) (GRR 150296) would require no daily supervision. We trust that the Navy would honor the Court's directive. The report's "day-to-day entanglement" bogeyman irreparably prejudices the assessment of the requested relief, posing an

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impossible hurdle for concluding that an injunction should issue in the face of that (asserted) consequence.

The report is wrong when it states that whether the Navy reduces or halts Growler operations at Whidbey "is clearly beyond plaintiffs' knowledge." Dkt. 72 at 8:21. Plaintiffs' declarations provided first-person accounts of the extreme noise heard (and in some cases, measured) by those witnesses. *See, e.g.,* Dkt. 40 at 2:6 ("When flying Path 14 the Growlers fly directly over our home at an estimated height of 250 feet . . .") (emphasis in original); Dkt. 32-1 at 1 (noise meter measurements); Dkt. 42, ¶15 (same). The report also ignores that the Navy *publishes its schedule for public review,* Dkt. 40 at ¶12, and provides other public explanations for schedule changes, *see, e.g.,* Dkt. 36-3. The report's dismissive attitude towards the plaintiffs' evidence pervades the report.

On a related item, the report asserts the plaintiffs also cannot know *why* the flights ebb and flow or have been shifted to other fields. Wrong again. The plaintiffs' knowledge is based on the Navy's own documentation. Dkt. 29 at 22:12 (citing Navy's 2005 EA). Plaintiffs were not fabricating this evidence, but it would seem like that if the report is considered without reviewing the evidence.

The report asserts that OLF was "custom designed" for Growler training. Dkt. 72 at 10:18. Not so. OLF was designed to provide an emergency airstrip for Navy flights *during World War II.* Dkt. 62 at ¶15. Only minimal improvements are described by the Navy to support its conclusory "custom design" claim, *see* Dkt. 55-4 at 11:14–18, but even that overstates, *see* Dkt. 62, ¶20.

The report concludes that returning operations to the *status quo ante* or simply restoring the prior split in favor of Ault Field would compromise the national defense.[1] Before getting into the

[1] The *status quo ante* both restores the prior split in favor of Ault Field and reduces the total number of Growlers by 36 planes, GRR 150143, undoing the changes made when the Navy implemented the Record of Decision. While our request for relief seeks a return to the *status quo ante,* lesser, but still effective, relief could be provided by requiring implementation of Alternative 2C (which includes the 36 new planes, but returns 80% of the flights to Ault).

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details, the overriding flaw with that conclusion is that it is at odds with the Navy's EIS. That document—three years in the making—stated that an 80/20 split favoring Ault Field (Alternative 2C) would "meet the purpose of and need for the Proposed Action." GRR 150290. *See also* GRR 150142; GRR 150314; Dkt. 29 at 23:17; Dkt. 59 at 11:9.

The report acknowledges that, but implicitly concludes the Navy's official EIS—fully vetted through draft and final renditions—is wrong. Instead of taking the Navy at its word given in the EIS, the report cites contradictory evidence, created for this litigation and submitted by the Navy in response to the motion. Dkt. 72 at 9-10. But none of this tardy evidence disputes that EIS Alternative 2C embodies 80% at Ault and that the Navy's EIS found Alternative 2C to be a reasonable alternative—capable of meeting the Navy's objectives.[2] Instead, the Navy relies on *post hoc* rationalizations to promote the advantages of OLF and assert its military necessity. Dkt. 55. But none of those declarations address the conflict between those litigation statements and the Navy's thoroughly vetted, pre-litigation statements in the EIS. The report does not grapple with the dissonance between the Navy's *post hoc* rationalizations and the Navy's own EIS. It totally ignores the argument we presented on this very point. Dkt. 59 at 11–12. The report's penchant for accepting the Navy's *post hoc* rationalizations at face value without searching for the truth is evident throughout its discussion of this evidence.

Turning to some of the details, the report summarizes the Navy's litigation statements about OLF's advantages, Dkt. 72 at 9, but ignores virtually all of our rebuttal of that evidence. Much of our rebuttal was based on the declaration of retired Air Force Lieutenant Colonel Clarence Sims. Based on his own flights over the OLF airstrip and his review of the Navy's own documents, Sims

[2] A "reasonable alternative" is an alternative that "meet[s] the purpose of and need for the Proposed Action." GRR 150290 (EIS).

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demonstrated that OLF was far from "unique;" that the Navy's declarants cherry-picked its attributes (lauding its advantages and ignoring its disadvantages, like a too short runway); that some of the asserted advantages simply were not true (there is urban lighting near OLF); and that OLF was not "custom designed" for the Growlers. Dkt. 62.

The report does not address the substance of any of this evidence. Instead, it observes that Lt. Col. Sims never actually participated in Growler operations at OLF and, therefore, "the Court must view his statements in this light." Dkt. 72 at 12:8.

The report's basis for discrediting Sims' testimony is illogical. None of Sims' testimony required as a foundation that Sims had flown Growlers at OLF. Sims' observations of urban lights around OLF; that SR 20 crosses the final landing approach; and that there is a development of 500 homes at the south end of Track 32 are not dependent on whether he had flown a Growler there. He could observe those things when flying other planes over OLF, which he had done "many times, including at night." Dkt. 62 at 2:6. His statement that the runway is too short is not dependent on whether he had flown a Growler there. It was based on the Navy's own Master Plan for its Whidbey facilities. *Id.* at 4, ¶15. His critique of the Navy's claims regarding the altitude at OLF is not dependent on whether he had flown a Growler there. It was based on the Navy's own training manual (that distinguishes between density altitude and actual altitude). Dkt. 62 at 5–6. The report's dismissive treatment of Lt. Col. Sims' testimony is emblematic of its overall tack of accepting all of the Navy's evidence without question and discrediting the plaintiffs' evidence for no good reason. The Court's *de novo* review should be more searching and, if so, a different outcome should result.

B. Availability of Other Sites

The report concludes that the Navy cannot shift flights back to Ault Field based on the same litigation declarations it cited for its other national defense conclusions. But as explained above,

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the Navy's *post hoc* rationalizations stand in sharp conflict with the statements in the Navy's EIS. The report unquestioningly accepts the Navy's litigation declarations and, worse, fails to critically assess the weight they should be given *in light of the contrary information in the Navy's own EIS.* It is not as if we were relying on a lay person's evaluation of the ability of the Navy to use Ault for 80% of the flights. The Navy said it could in the EIS, yet the report ignores that critical admission. There may not be a circuit court decision in the few years since *Winters* where a preliminary injunction was sustained in the face of a national defense argument, but we are not aware of any case during those years where the military's own EIS acknowledged that the injunction sought was "reasonable" and "meet[s] the purpose of and need for the Proposed Action." GRR 150290 (EIS).

The report likewise credits a vice admiral's statement that training at OLF "cannot be replicated anywhere else," Dkt. 72 at 10, without assessing its credibility in light of directly contrary evidence from the Navy's records about the availability and utility of other fields. *See* Dkt. 36-4. *See also* GRR 121559 (Growler use of El Centro declined in recent years not because ill-suited, but because of "budgetary pressures"). A more probing assessment of the Navy's *post hoc* statements is necessary.

C. Other Equitable and Public Interest Issues

In its analysis of equitable and public interest issues, the report fails to consider the import of the declarations from elected officials in Port Townsend and San Juan County that reverting to the *status quo ante* would provide a huge benefit to those communities (not just the area immediately surrounding OLF). *See* Dkt. 41 and 43. The report mentions these declarations briefly when summarizing the evidence of irreparable harm, Dkt. 72 at 15, but not where they matter—in its discussion of the public interest.

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II. THE NAVY IS CAUSING IRREPARABLE HARM

At the outset of the analysis of irreparable harm, the reports states "after 1992, . . . the area around the airfield was locally zoned for noise exceeding 65 decibels." Dkt. 72 at 16. Therefore, anyone who moved to the area likely cannot show harm because "the harm complained of is self-inflicted." *Id.* (quoting *COER I*, 122 F. Supp. 3d at 1084). The report is factually incorrect.

First, there was no change in zoning in 1992. To our knowledge, the zoning then and now has been Rural and Rural Agriculture. GRR 31017. Both of those zoning districts allow residential land uses. Neither authorizes adjacent uses to invade those districts with noise, greater than 65 decibels or otherwise.

It is likely that the report intended to cite a different county ordinance, specifically, chapter 9.44 of the County Code (the chapter cited in *COER I*). Chapter 9.44 is not part of the zoning code. It is a separate ordinance that requires property owners near airfields to give notice to purchasers that the property is an "airport environs mapped impacted area." Island County Code (ICC) § 9.44.050. The notice also is to state that "Property in the vicinity of Ault Field and OLF Coupeville will routinely experience significant jet aircraft noise" and that "the noise generated by the single flyover of a military jet may exceed the average noise level depicted by the airport noise zones and may exceed 100 DBA." *Id.* Also: "More specific information regarding airport operation and aircraft noise can be obtained by calling the Community Planning Liaison Office at NAS Whidbey Island and the Island County Planning and Community Development Department." *Id.*

The report's attempted reference to this noise warning ignores that this lawsuit is not focused on the existence of OLF nor the noise levels associated with it in years gone by. The issue is whether prospective property purchasers were warned that the Navy would be changing its operations (types of planes, number of planes, and percentage of operations at OLF) such that noise levels in that area

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would increase as dramatically and as deafeningly as they have since the Navy implemented the Record of Decision. As the report notes elsewhere, the focus must be on "injury from these increased operations." Dkt. 72 at 14. That admonition should apply to whether home buyers were warned of the new operations. Simply citing a county ordinance that alerts purchasers to OLF's existence and general statements about the noise it creates does not demonstrate, without more, that purchasers 5, 10 and 20 years ago were put on notice that there would be a huge increase in noise in 2019.

There is more, but it does not support the Navy's position or the report's conclusion that the plaintiffs' harm is self-inflicted. The code-mandated warning directed prospective purchasers to the county planning department and to the Navy for more information. Not until the draft EIS was published in late 2016 would a prospective purchaser who contacted the Navy have received information about the noise impacts of the Navy's new plans. But even as of that date, the prospective purchaser would have received *the Navy's* assessment, which was dramatically understated. *See* Dkt. 29 at 10–16; Dkt. 38; Dkt. 59 at 1–6. If a prospective purchaser relied on the Navy's representations and actions, it would not have been until the new regime was instituted in 2019 that a buyer would have been on notice of the huge increase in noise.

The notice also directed prospective buyers to inquire of the County planning department, but to our knowledge, the record includes no evidence that the planners issued warnings in earlier years that the Navy was planning a huge increase in noise around OLF in 2019. To the contrary, the County zoning code has continued to allow *residential* development in this area at densities ranging from one unit per 10 acres up to one unit per a single acre. GRR 150403.

The report also ignores that following the 1992 notice ordinance, the Navy told the community that things would get better, not worse. In its 2005 Environmental Assessment, the Navy told the

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community that there would be a 20% **reduction** in operations at OLF, GRR 60937 (Table 1-3, line 4) (emphasis supplied) and:

> Operation of the EA-18G [Growler] in replacement of the EA-6B **results in less noise exposure to the local community**. This is primarily due to the better performance of the EA-18G and the **reduction in the number of operations.**

GRR 30968-69 (emphasis supplied). *See also COER I* at 1074–75 (Navy's 2004 noise report "projected a **decrease in noise at OLF Coupeville** following the transition to the EA-18G);" (emphasis supplied). As this Court found, "the 2005 EA concluded that the transition from the EA-6B Prowler to the EA-18G Growler at NAS Whidbey Island **would have no significant impact.**" *Id.* at 1075 (emphasis supplied). Why should a prospective purchaser have believed otherwise?

Likewise, in the earlier litigation, the Navy told this Court that the increase in overflights in 2011 and 2012 was an aberration and that by 2014 the flights had dropped down to the level forecast in the 2005 EA. *Id.* at 1078–79. Presumably, a reasonably informed prospective purchaser would take the Navy's and a federal judge's pronouncements into account and conclude that noise levels were not going to be increasing around OLF. The "coming to the nuisance" facts are different now than they were in *COER I*.

In sum, the report is exceedingly harsh—and factually inaccurate—in concluding that the plaintiffs' harms were "self-inflicted." No one—not the county, not the Navy, not a federal judge—told prospective purchasers that noise would be increasing dramatically at OLF with introduction of the Growlers or with the shift in operations to OLF.

We provided this evidence in our motion, Dkt. 29 at 22, explaining that "[h]omeowners and businesses have shaped their lives and livelihoods based on the Navy's statements of its planned use of the airspace at levels far below those approved in the ROD." The Navy did not take issue with this evidence. *See* Dkt. 55. In particular, the Navy did not raise a reliance defense: that while the Navy had

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made those statements publicly, declarants did not say they had relied on them. Dkt. 55 at 18. Because the Navy did not raise the reliance defense, we did not address it in our reply, instead noting that the Navy had not contested our evidence on this issue. Dkt. 59 at 10. But even though reliance was not raised by the Navy, the report makes it an issue and concludes that because we had not addressed the reliance issue, "equitable concerns weigh against finding that plaintiffs are suffering irreparable injury." Dkt. 72 at 16:12–16.

This Court should find the reverse. It was not equitable for the report to raise the reliance issue *sua sponte* and not provide plaintiffs an opportunity to address it. We are confident the Navy did not raise the reliance issue because it knows full well that its claims in the 2005 EA and in the prior litigation were widely circulated in the community and, thus, if the reliance issue had been raised, it would have been met with a barrage of counter declarations and documentation (*e.g.*, untold newspaper coverage of the Navy's characterization and forecasts, corroborating statements by local elected officials and Chamber of Commerce representatives, and County Comprehensive Plan policy discouraging development only in the tiny Accident Potential Zone at the end of each runway and more). Also, we would have provided evidence that the required notice was not provided by MLS realtors. *See Deegan v. Windermere Real Estate*, 197 Wn. App. 875, 883 (2013) (MLS "did not include the language required by ICC 9.44.050. Form 22W also did not include the airport environs map showing locations of the aircraft facilities and the impacted areas"). One piece of that evidence already is present. Dkt. 45, ¶ 8 If the Court is going to consider the reliance defense, we request leave to supplement the record to address it and are filing a motion for that purpose.

In sum, because the Navy misled the community with assertions that operations would decrease and not exceed the levels shown in the 2005 EA, the equities weigh in favor of the plaintiffs, not against them, contrary to the report's finding.

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The report's foundation for analyzing the increase in noise was fundamentally flawed. The report parrots the Navy's finding that the selected alternative results in only a 1% to 4% increase in overflights at OLF. Dkt. 72 at 6:8. But that is the highly misleading statement. That metric is the hours of overflights expressed as a percentage of the total hours in a year. GRR 167647. That metric results in a very small number pre-ROD (1%), which will (and has now) increased to 4%. That is a four-fold increase, consistent with Navy's statement that overflights at OLF will increase from 6100 to 23,700—nearly 4-fold. GRR 150298. But the report never expresses the increase in overflights or noise as a 4-fold increase. The report's conclusions regarding the additional harms being suffered by the community was not informed by a recognition that the overflights have increased four-fold (not "from 1% to 4%").[3]

The report emphasizes that plaintiffs have not linked the harm caused by the noise to "quantifiable health problems" nor "tie[d] the amount of exposure . . . to any particular data about the length of exposure and correlation to hearing loss." Dkt. 72 at 3, 17. But the Navy's own health-based requirements do just that. For every 6 dB increase in noise, the allowable exposure time is reduced by 75%. GRR 113628. In the 100 dB to 110 dB range, the maximum allowed time for unprotected exposure drops from 15 minutes to 1.5 minutes. *Id*. Hundreds of people are being exposed to those levels in violation of the Navy's own hearing protection standards.

The report faults plaintiffs for not providing medical records "substantiating their claims." Dkt. 72 at 18. The report was wrong to insist on individual medical records. For several reasons, it should be sufficient to demonstrate that the activity to be enjoined is likely to cause physical harm (*e.g.*,

[3] Furthermore, the metric describing hours of overflights as a percentage of hours in the years (resulting in the 1% and 4% figures cited in the report) is not particularly useful. In terms of hearing loss, the issue is the absolute time of exposure, not the ratio comparing the exposure time to quiet time. In terms of disruption of life's everyday events, the issue is the number of days when overflights occur, forcing people to go elsewhere for their sanity. *See, e.g.*, GRR 419–20.

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hearing loss) to some of the impacted population, without having to identify specific individuals who can already attribute their own hearing loss to the Growler noise.

One, the report's analysis ignores that exposing humans to an environmental hazard is itself a harm, even before the harm manifests itself. The record establishes that there is a dose-response relationship: the more noise reaching a human's ear, the more likely the human will suffer a loss of hearing. Plaintiffs should not have to wait until the hearing loss is manifest. Plaintiffs seek to stop the noise *before* the irreparable harm occurs. Injunctive relief clearly is appropriate in such situations.

Two, the report's analysis fails to distinguish between population level harm and individual harm. When an environmental agent (*e.g.*, a carcinogen or cigarette smoke) increases the risk of physical harm, it may be relatively easy to show the population-level impacts, without linking any individual's condition to the exposure. For instance, epidemiological studies can readily show that a toxin increases the risk of a certain kind of cancer, but do not establish that a particular individual's cancer was caused by an exposure to that toxin. Courts routinely distinguish between these two different types of causation as "generic (or general) causation" and "individual causation." *In re Hanford Nuclear Reservation Litigation*, 292 F.3d 1124, 1133 (2002).[4]

In a toxic tort case, both types of causation must be proved, *id.*, but this is not a toxic tort case. Presenting evidence that the population as a whole is subject to noise levels that are known to cause hearing loss should be sufficient to obtain injunctive relief for the community, as is done when agencies adopt population-wide rules to protect human health. *See, e.g.*, *NRDC v. EPA*, 735 F.3d 873, 879–884 (2013). Indeed, the Navy does not dispute that *its own analysis* predicted the new operations

[4] Individual causation is fraught with difficulties that may preclude a medical provider from stating with certainty that a given individual's physical impairment is due to a particular environmental exposure. *See, e.g., Sterling v. Velsicol Chem. Corp.*, 855 F.2d 1188, 1200–01 (1988). But that does not undermine at all the population level conclusions that the exposure will cause harm to individuals in the community—even if it is medically difficult or impossible to determine which ones.

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would put nearly 700 people at risk for permanent hearing loss. Dkt. 29 at 4 (citing GRR 159186); Dkt. 55 (no denial by the Navy). But the report never mentions that admission. Notably, in its own analysis, the Navy did not attempt to identify the specific 700 individuals that would suffer hearing loss. That was of no consequence in the EIS's assessment of population level harms and it should be of no consequence now.[5]

The Court need not "speculate on potential irreparable injury that will result in future hearing loss when it lacks any evidence of any past hearing loss associated with the same increased operations." Dkt. 72 at 18. *See also* Dkt. 55 at 11 (Navy: plaintiffs failed to provide "the required 'sufficient causal connection' between the alleged irreparable harm and the activity to be enjoined") (quoting *Nat'l Wildlife v. NMFS,* 886 F.3d 803, 819 (2018)). Once the analysis proceeds at the population level and plaintiffs' unchallenged dose response testimony is given its due, the Court can confidently conclude that the required causal connection has been shown.

The report also stresses that we cannot rest our request for relief on any Navy noise other than the additional quantum generated by the Growlers. This is wrong, too. First, the Navy did that for us. The Navy's prediction that nearly 700 people are at risk of permanent hearing loss is in comparison to those at risk in the No Action alternative. GRR 159186. Second, as stated in *National Wildlife, supra* (internal citation omitted), "a plaintiff need not further show that the action sought to be enjoined is the exclusive cause of the injury." There, dam operations were adversely impacting endangered salmon through various means. Only some gave rise to liability. But the Ninth Circuit approved the District's Court reference to the entire suite of harms in deciding whether the harm was irreparable.

[5] If we had presented medical records linking the noise with hearing loss from several area residents, we expect the Navy would have responded that the injunctive relief we sought was out of proportion to the harm suffered by just a handful of residents. Identifying individual residents who have suffered the harm is not nearly as important as demonstrating that an entire population is being exposed and that, given the dose response relationship described above, a significant percentage will suffer irreparable hearing loss.

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"[A]s a practical matter, the effects on listed species of the current spill regime . . . cannot be cleanly divorced from the effects of the . . . dam operations taken as whole." *Id.* at 820. So, too, here, the issue should be whether the current noise levels are likely causing irreparable harm, not whether that noise divorced from earlier noise impacts is causing the harm.

The report states that it would not consider the plaintiffs' evidence of loss of use and enjoyment, citing two commercial economic injury cases for the proposition that an injunction should not issue unless monetary damages are inadequate. Dkt. 72 at 16. Loss of use and enjoyment of one's property is not an economic loss. The harms here include not being able to converse inside in your own home, hiding in closets with small children terrified by the noise, and lost visits with grandchildren. Dkt. 29 at 5–7; Dkt. 72 at 18 ("unquestionable disruption to plaintiffs' lives"). Yes, the Navy can pay for those damages, but it would be far from adequate. Residents want their lives back, not a check from the Navy.

III. PLAINTIFFS ARE LIKELY TO PREVAIL ON THEIR CLAIMS

Given the report's treatment of other issues, it touched only briefly on the merits. Its only comment on the NEPA claims, beyond citing the APA's deferential standard of review, was a statement that most of plaintiffs' arguments are simply a dispute about the best mode of analysis, where judicial deference is "at its zenith." Dkt. 72 at 22. The report provides no consideration of our arguments to the contrary, *i.e.,* that the issue was not whether the best methodology had been used, but whether the Navy was using the wrong method (using a screwdriver to hammer a nail) or generating misleading information. No deference is required when the methods used are inappropriate or misleading. *See* Dkt. 59 at 2:14–26. *See also In re Silicone Gel Breast Implants Products Liab. Litig.,* 318 F. Supp. 2d 879, 890 (C.D. Cal. 2004) (expert testimony inadmissible when otherwise appropriate methodology is misapplied). As to the report's final observation that the alleged statutory

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violations are procedural, *National Wildlife* instructs that the "fundamental direction to district courts when confronted with a request for injunctive relief to remedy a procedural violation" is provided by the purpose of the environmental statute at issue. 886 F.3d at 819 (internal quote omitted). An injunction here to protect human health arising from NEPA process violations is founded on NEPA's purpose and policy. *See* 42 U.S.C. §4321 ("promote efforts which will . . . stimulate the health and welfare of man"); -§4331 ("assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings").

IV. CONCLUSION

The motion should be granted and the Navy enjoined from implementing the Record of Decision, until this matter is resolved on its merits.

Dated this 5th day of August, 2020.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 5, 2020, I served a copy of the foregoing on counsel of record electronically through the court's CM/ECF system.

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