

<http://www.capitalresearch.org/pubs/pdf/v1233348420.pdf>

Capital Research Center's Foundation Watch

EarthJustice Legal Defense Fund: How Environmentalism Weakens U.S. National Security

By Kevin Mooney

U.S. Supreme Court Sides with the Navy

Environmentalists continue to devise ingenious arguments to attack U.S. military policies and practices. However, the Navy won a big victory late last year in the case of *Winter v. Natural Resources* (available online at <http://www.supremecourtus.gov/opinions/08pdf/07-1239.pdf>) On Nov. 8, 2008 the U.S. Supreme Court in a 6-3 decision overruled lower court restrictions set up to protect whales and other marine creatures from the allegedly damaging impact of sonar, a detection system vital to anti-submarine warfare.

In March 2007 NRDC and five other environmental groups sued to impose conditions on naval training exercises that involve sonar use. In 40 years of sonar training off the coast of California there has not been one documented instance of harm done to marine mammals. Yet federal judges still saw fit to impose environmental restrictions that the Navy said greatly undermined antisubmarine exercises.

A federal court ordered the Navy to shut down the sonar when a marine mammal was spotted within 2,200 yards of a ship and to reduce sonar volume when sea conditions allow sonar to travel farther than usual. The decision was upheld by the Ninth U.S. Circuit Court of Appeals.

But the U.S. Supreme Court overruled the lower courts. Writing for the majority, Chief Justice John Roberts found that national defense trumped environmental concerns. He noted that antisubmarine warfare is a submarines," he continued. "The most effective technology for identifying submerged diesel-electric submarines within their torpedo range is active sonar, which involves emitting pulses of sound underwater and then receiving the acoustic waves that echo off the target."

Roberts agreed with the Navy's contention that NRDC's claims were "too speculative" and that there was no hard evidence showing sonar injury to marine animals... (p. 3)

The Law of Sea Treaty and the Precautionary Principle

As the sonar case illustrates, environmentalists are pressing U.S. courts to recognize an evolving legal standard known as the "precautionary principle." This is the 'better safe than sorry' view that says lawmakers have a duty to regulate or restrict what could be a potential risk even when there is no evidence to prove a hazard.

For instance, EarthJustice is helping groups restrict efforts by the government of Columbia to stop cocaine trafficking by spraying herbicide on the coca crop. Colombian officials cite studies showing

[that] the spraying is safe. But EarthJustice worries that spraying could harm the nation's **"threatened amphibian species," contaminate drinking water and destroy legal food crops. If the idea takes hold that it is good law and public policy to act merely on suspicion and to ban substances and practices even when no harm has been demonstrated, then no enterprise is safe from a lawsuit, observes" Lawrence Kogan, CEO of the Institute for Trade Standards and Sustainable Development (ITSSD).**

And nowhere is the precautionary principle more entrenched than in the proposed Law of the Sea Treaty. To date, more than 150 countries have signed the treaty. President Reagan vetoed the pact in the early 1980s, but the Bush administration favored its ratification and today it has strong backing at the Pentagon and among many members of Congress in both parties.

They believe the treaty can clear up disputes concerning navigation rights. But opponents like Kogan and Frank Gaffney, president of the Center for Security Policy (CSP), warn that the treaty will transfer U.S. sovereignty to the authority of foreign tribunals, which will rule on U.S. seabed mining and military transportation. **"The innocent passage of US nuclear-powered military vessels," write Kogan and former Navy secretary J. William Middendorf, could be stymied by lawyers claiming hypothetical environmental risks. (See "The 'LOST 45' UN Environmental Restrictions on US Sovereignty, Copenhagen Institute, Sept. 27, 2007, <http://www.coin.dk/default.asp?aid=1370>).** (pp. 3-4)