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The Navy, Whales and the Court

EDITORIAL

We hope the Supreme Court has the sense to assert its authority over military activities that can cause environmental harm far from any battlefield. Some of the justices' comments this week sounded as though they were feeling far too deferential to the military.

The court is considering whether to reverse lower-court decisions that the Navy must restrict its use of sonar in training exercises to protect whales and other marine mammals. Two lower courts have ruled that the Navy could conduct exercises off the California coast provided it employs mitigation measures, such as suspending or reducing sonar emissions when sound-sensitive marine mammals are nearby.

The Federal District Court in Los Angeles found that the Navy could effectively train with the restrictions. The appeals court offered the Navy a path to relief if

that judgment proved wrong. Unfortunately, the Bush administration sought to evade restrictions by declaring what looks like a bogus national security emergency. Now it is asking the Supreme Court to overturn the restrictions.

Judging from comments at a hearing on Wednesday, many justices seem inclined to do that. It was dismaying to hear Justice Stephen Breyer assert that "I don't know anything about this. I'm not a naval officer." It was discouraging that Justice Samuel Alito found it "incredibly odd" that a district court judge had concluded that her restrictions would not compromise the Navy's training when the Navy claimed they would.

The courts typically give deference to the military, but such reticence does not seem warranted in this situation, which hardly rises to the level of a military emergency. The district court judge drew on the Navy's own records of past exercises and

other evidence submitted by the Navy to reach her conclusion that mitigation measures would not unduly constrain training.

Few justices are truly expert in most of the issues they confront. Yet they have no qualms about ruling on cases that involve complex political, social, economic, scientific or medical issues. The courts have rightly stepped in to second-guess the government's handling of terrorism cases in the midst of the so-called war on terror. Surely the Supreme Court has the ability to judge whether the military should be allowed to flout environmental laws with a dubious claim of national security.