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Sonar sense

Message for the justices: Save the whales!

EDITORIAL

Smart as they are, whales and dolphins make lousy attorneys, which is why they were represented by sharks from the Natural Resources Defense Council in a case heard Wednesday by the Supreme Court. Yet even if the plaintiffs couldn't be present, their lives are on the line in a case that also has deep implications for defining the powers of the executive branch when national security issues are at stake.

The Navy set out last year to conduct training exercises off the Southern California coast using mid-frequency sonar, a powerful tool for hunting submarines. Unfortunately, it's also a powerful tool for scrambling the brains of whales and other marine mammals, which can be deafened and even killed by such sonar. Though federal law requires the Navy to perform studies of the environmental impact of its exercises, it refused to do so -- and also refused to take common-sense precautions to protect marine life, as it had been doing in other waters.

A suit by the NRDC resulted in injunctions and court orders for the Navy to take such precautions. So the brass went to a higher authority: President Bush. He issued a directive exempting the exercises from environmental laws in the interest of national security, and his White House Council on Environmental Quality granted the Navy an exemption because "emergency" conditions were in place. Never mind that Congress never gave this agency the power to overturn court orders.

This case presents only the latest example of the Bush administration overstepping the bounds of executive branch authority. The heart of the question for the Supreme Court is how much deference judges should give to military and executive opinions about national security. Traditionally, courts give a good deal of leeway to the military because the public interest in a strong, well-prepared national defense force outweighs mundane regulatory concerns. But that doesn't mean the courts should abdicate their authority every time a president issues a directive.

Federal courts have ordered

the Navy to be on the lookout for marine mammals during its exercises, turn down the sonar when they get close and refrain from operating at night or under certain weather conditions. The notion that this compromises national security seems like a bad joke, especially because the Navy has been taking similar precautions off the Atlantic Coast and Hawaii with no apparent impact on its sailors' readiness. Given that the coastal waters of Southern California are among the most biologically diverse in the world and contain endangered species that would be threatened by unrestrained use of sonar, requiring the Navy to obey the law isn't too much to ask.