

**07-1239 WINTER, SEC. OF NAVY V. NATURAL RES. DEF. COUNCIL**

DECISION BELOW: 518 F3d 658

LOWER COURT CASE NUMBER: 08-55054

**QUESTION PRESENTED:**

The district court found a likelihood that the Navy failed to comply with the National Environmental Policy Act (NEPA) and preliminarily enjoined the Navy's use of mid-frequency active (MFA) sonar during training exercises that prepare Navy strike groups for worldwide deployment. The Chief of Naval Operations concluded that the injunction unacceptably risks the training of naval forces for deployment to high-threat areas overseas, and the President of the United States determined that the use of MFA sonar during these exercises is "essential to national security." The Council on Environmental Quality (CEQ), applying a longstanding regulation, accordingly found "emergency circumstances" for complying with NEPA without completing an environmental impact statement. The Ninth Circuit nevertheless sustained the district court's conclusion that no "emergency circumstances" were present and affirmed the preliminary injunction. The questions presented are:

1. Whether CEQ permissibly construed its own regulation in finding "emergency circumstances."
2. Whether, in any event, the preliminary injunction, based on a preliminary finding that the Navy had not satisfied NEPA's procedural requirements, is inconsistent with established equitable principles limiting discretionary injunctive relief.

CERT. GRANTED 6/23/2008