Winter, Secretary of the Navy v. Natural Resources Defense Council
555 U.S. 7 (2008)

Chief Justice Roberts delivered the opinion of the Court.

"To be prepared for war is one of the most effectual means of preserving peace." 1 Messages and Papers of the Presidents 57 (J. Richardson comp. 1897). So said George Washington in his first Annual Address to Congress, 218 years ago. One of the most important ways the Navy prepares for war is through integrated training exercises at sea. These exercises include training in the use of modern sonar to detect and track enemy submarines, something the Navy has done for the past 40 years. The plaintiffs complained that the Navy's sonar training program harmed marine mammals, and that the Navy should have prepared an environmental impact statement before commencing its latest round of training exercises. The Court of Appeals upheld a preliminary injunction imposing restrictions on the Navy's sonar training, even though that court acknowledged that "the record contains no evidence that marine mammals have been harmed" by the Navy's exercises.

The Court of Appeals was wrong, and its decision is reversed.

I

* * *

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 …

The waters off the coast of southern California (SOCAL) are an ideal location for conducting integrated training exercises, as this is the only area on the west coast that is relatively close to land, air, and sea bases, as well as amphibious landing areas …

Sharing the waters in the SOCAL operating area are at least 37 species of marine mammals, including dolphins, whales, and sea lions. The parties strongly dispute the extent to which the Navy's training activities will harm those animals or disrupt their behavioral patterns. The Navy emphasizes that it has used MFA sonar during training exercises in SOCAL for 40 years, without a single documented sonar-related injury to any marine mammal. The Navy asserts that, at most, MFA sonar may cause temporary hearing loss or brief disruptions of marine mammals' behavioral patterns.

The plaintiffs are the Natural Resources Defense Council, Jean-Michael Cousteau (an environmental enthusiast and filmmaker), and several other groups devoted to the protection of marine mammals and ocean habitats. They contend that MFA sonar can cause much more serious injuries to marine mammals than the Navy acknowledges, including permanent hearing loss, decompression sickness, and major behavioral disruptions. According to the plaintiffs, several mass strandings of marine mammals (outside of SOCAL) have been "associated" with the use of active sonar. They argue that certain species of marine mammals—such as beaked whales—are uniquely susceptible to injury from active sonar; these injuries would not necessarily be detected by the Navy, given that beaked whales are "very deep divers" that spend little time at the surface.

II

The procedural history of this case is rather complicated. The Marine Mammal Protection Act of 1972 (MMPA), 86 Stat. 1027, generally prohibits any individual from "taking" a

marine mammal, defined as harassing, hunting, capturing, or killing it. 16 U. S. C. §§1362(13), 1372(a). The Secretary of Defense may "exempt any action or category of actions" from the MMPA if such actions are "necessary for national defense." §1371(f)(1). In January 2007, the Deputy Secretary of Defense—acting for the Secretary—granted the Navy a 2-year exemption from the MMPA for the training exercises at issue in this case. The exemption was conditioned on the Navy adopting several mitigation procedures …

The National Environmental Policy Act of 1969 (NEPA), 83 Stat. 852, requires federal agencies "to the fullest extent possible" to prepare an environmental impact statement (EIS) for "every . . . major Federal actio[n] significantly affecting the quality of the human environment." 42 U. S. C. §4332(2)(C) (2000 ed.). An agency is not required to prepare a full EIS if it determines—based on a shorter environmental assessment (EA)—that the proposed action will not have a significant impact on the environment. 40 CFR §§1508.9(a), 1508.13 (2007).

In February 2007, the Navy issued an EA concluding that the 14 SOCAL training exercises scheduled through January 2009 would not have a significant impact on the environment ...

Shortly after the Navy released its EA, the plaintiffs sued the Navy, seeking declaratory and injunctive relief on the grounds that the Navy's SOCAL training exercises violated NEPA, the Endangered Species Act of 1973 (ESA), and the Coastal Zone Management Act of 1972 (CZMA). The District Court granted plaintiffs' motion for a preliminary injunction and prohibited the Navy from using MFA sonar during its remaining training exercises. The court held that plaintiffs had "demonstrated a probability of success" on their claims under NEPA and the CZMA. Pet. App. 207a, 215a. The court also determined that equitable relief was appropriate because, under Ninth Circuit precedent, plaintiffs had established at least a " 'possibility' " of irreparable harm to the environment. Based on scientific studies, declarations from experts, and other evidence in the record, the District Court concluded that there was in fact a "near certainty" of irreparable injury to the environment, and that this injury outweighed any possible harm to the Navy.

* * *

The Court of Appeals further determined that plaintiffs had carried their burden of establishing a "possibility" of irreparable injury. Even under the Navy's own figures, the court concluded, the training exercises would cause 564 physical injuries to marine mammals, as well as 170,000 disturbances of marine mammals' behavior. Lastly, the Court of Appeals held that the balance of hardships and consideration of the public interest weighed in favor of the plaintiffs. The court emphasized that the negative impact on the Navy's training exercises was "speculative," since the Navy has never before operated under the procedures required by the District Court. In particular, the court determined that: (1) the 2,200-yard shutdown zone imposed by the District Court was unlikely to affect the Navy's operations, because the Navy often shuts down its MFA sonar systems during the course of training exercises; and (2) the power-down requirement during significant surface ducting conditions was not unreasonable because such conditions are rare, and the Navy has previously certified strike groups that had not trained under such conditions. The Ninth Circuit concluded that the District Court's preliminary injunction struck a proper balance between the competing interests at stake.

We granted certiorari and now reverse and vacate the injunction.

III

A

A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.

The District Court and the Ninth Circuit concluded that plaintiffs have shown a likelihood of success on the merits of their NEPA claim. [The Court concluded it unnecessary to resolve this aspect of the parties' disagreement.]

The District Court and the Ninth Circuit also held that when a plaintiff demonstrates a strong likelihood of prevailing on the merits, a preliminary injunction may be entered based only on a "possibility" of irreparable harm. The lower courts held that plaintiffs had met this standard because the scientific studies, declarations, and other evidence in the record established to "a near certainty" that the Navy's training exercises would cause irreparable harm to the environment.

The Navy challenges these holdings, arguing that plaintiffs must demonstrate a likelihood of irreparable injury—not just a possibility—in order to obtain preliminary relief. On the facts of this case, the Navy contends that plaintiffs' alleged injuries are too speculative to give rise to irreparable injury, given that ever since the Navy's training program began 40 years ago, there has been no documented case of sonar-related injury to marine mammals in SOCAL. ... For their part, plaintiffs assert that they would prevail under any formulation of the irreparable injury standard, because the District Court found that they had established a "near certainty" of irreparable harm.

We agree with the Navy that the Ninth Circuit's "possibility" standard is too lenient. Our frequently reiterated standard requires plaintiffs seeking preliminary relief to demonstrate that irreparable injury is *likely* in the absence of an injunction. Issuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with our characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.

It is not clear that articulating the incorrect standard affected the Ninth Circuit's analysis of irreparable harm. Although the court referred to the "possibility" standard, and cited Circuit precedent along the same lines, it affirmed the District Court's conclusion that plaintiffs had established a " 'near certainty' " of irreparable harm. …

As explained in the next section, even if plaintiffs have shown irreparable injury from the Navy's training exercises, any such injury is outweighed by the public interest and the Navy's interest in effective, realistic training of its sailors. A proper consideration of these factors alone requires denial of the requested injunctive relief. For the same reason, we do not address the lower courts' holding that plaintiffs have also established a likelihood of success on the merits.

B

A preliminary injunction is an extraordinary remedy never awarded as of right. In each case, courts "must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief." *Amoco Production Co.*, 480 U. S., at 542. "In exercising their sound discretion, courts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of

injunction." *Romero-Barcelo*, 456 U. S., at 312. In this case, the District Court and the Ninth Circuit significantly understated the burden the preliminary injunction would impose on the Navy's ability to conduct realistic training exercises, and the injunction's consequent adverse impact on the public interest in national defense.

This case involves "complex, subtle, and professional decisions as to the composition, training, equipping, and control of a military force," which are "essentially professional military judgments." We "give great deference to the professional judgment of military authorities concerning the relative importance of a particular military interest." As the Court emphasized just last Term, "neither the Members of this Court nor most federal judges begin the day with briefings that may describe new and serious threats to our Nation and its people." *Boumediene* v. *Bush*, 553 U. S. __, __ (2008) (slip op., at 68).

Here, the record contains declarations from some of the Navy's most senior officers, all of whom underscored the threat posed by enemy submarines and the need for extensive sonar training to counter this threat. … We accept these officers' assertions that the use of MFA sonar under realistic conditions during training exercises is of the utmost importance to the Navy and the Nation.

These interests must be weighed against the possible harm to the ecological, scientific, and recreational interests that are legitimately before this Court. …

While we do not question the seriousness of these interests, we conclude that the balance of equities and consideration of the overall public interest in this case tip strongly in favor of the Navy. For the plaintiffs, the most serious possible injury would be harm to an unknown number of the marine mammals that they study and observe. In contrast, forcing the Navy to deploy an inadequately trained antisubmarine force jeopardizes the safety of the fleet. Active sonar is the only reliable technology for detecting and tracking enemy diesel-electric submarines, and the President—the Commander in Chief—has determined that training with active sonar is "essential to national security."

The public interest in conducting training exercises with active sonar under realistic conditions plainly outweighs the interests advanced by the plaintiffs. Of course, military interests do not always trump other considerations, and we have not held that they do. In this case, however, the proper determination of where the public interest lies does not strike us as a close question.

* * *

IV

As noted above, we do not address the underlying merits of plaintiffs' claims. While we have authority to proceed to such a decision at this point, doing so is not necessary here. In addition, reaching the merits is complicated by the fact that the lower courts addressed only one of several issues raised, and plaintiffs have largely chosen not to defend the decision below on that ground.

At the same time, what we have said makes clear that it would be an abuse of discretion to enter a permanent injunction, after final decision on the merits, along the same lines as the preliminary injunction. An injunction is a matter of equitable discretion; it does not follow from success on the merits as a matter of course.

* * *

President Theodore Roosevelt explained that "the only way in which a navy can ever be made efficient is by practice at sea, under all the conditions which would have to be met if war existed." President's Annual Message, 42 Cong. Rec. 67, 81 (1907). We do not discount the importance of plaintiffs' ecological, scientific, and recreational interests in marine mammals. Those interests, however, are plainly outweighed by the Navy's need to conduct realistic training exercises to ensure that it is able to neutralize the threat posed by enemy submarines. The District Court abused its discretion by imposing a 2,200-yard shutdown zone and by requiring the Navy to power down its MFA sonar during significant surface ducting conditions. The judgment of the Court of Appeals is reversed, and the preliminary injunction is vacated to the extent it has been challenged by the Navy.

It is so ordered.