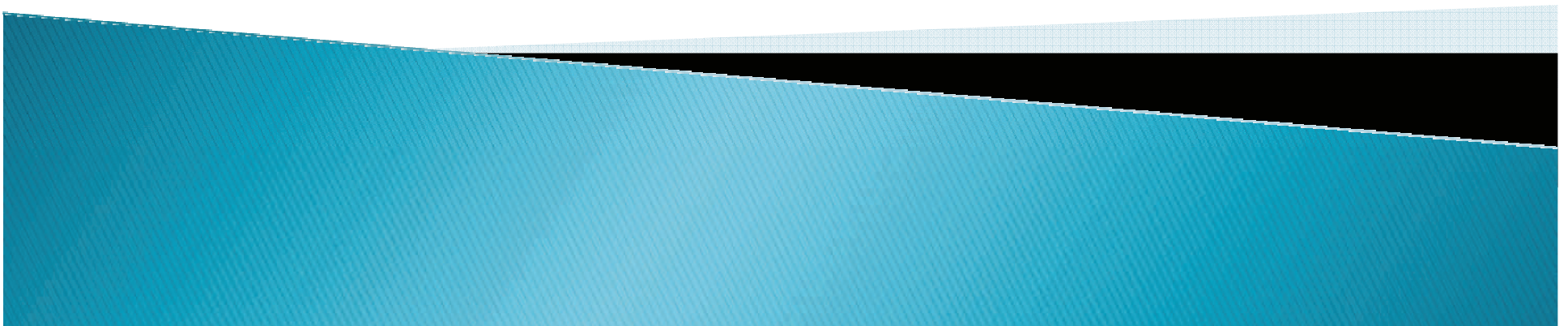


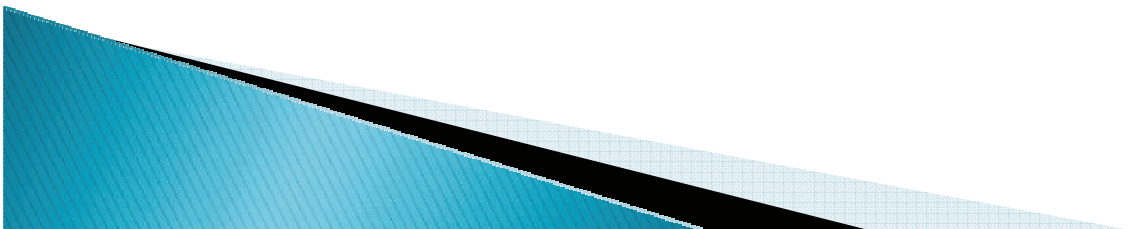
NEPA, Sonar and Whales

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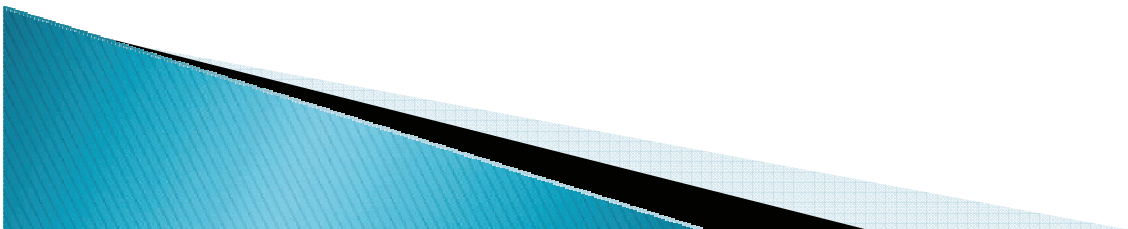
Disclosure

- ▶ Attorneys represent clients
- ▶ This talk is my take on the law, not firm or clients
- ▶ I'm also a Coast Guard Reservist – this talk is my personal opinion, derived from public news sources, no classified information.



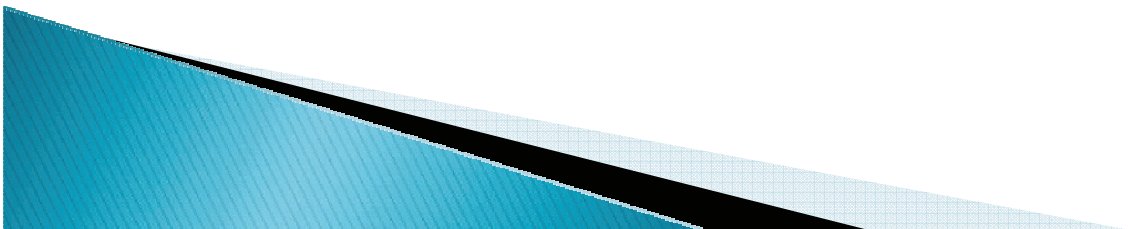
History

- ▶ Navy
- ▶ Sonar
- ▶ Southern California Operating Area
- ▶ Hawaii Range Complex



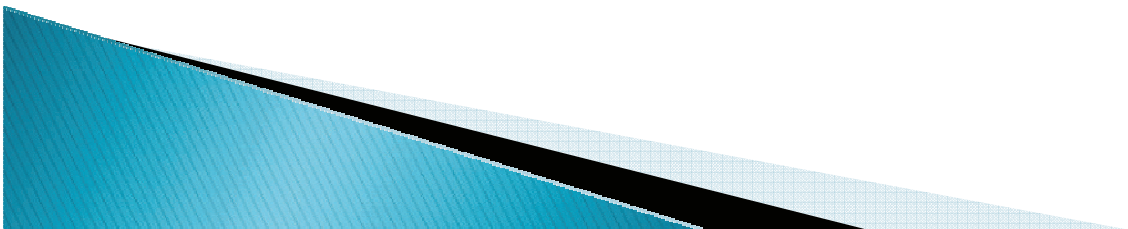
Litigation

- ▶ LFA Case – *Evans v. NRDC*
- ▶ MFA Case in California – *Winter v. NRDC*
- ▶ Hawaii Case – *OMI v. Gates*



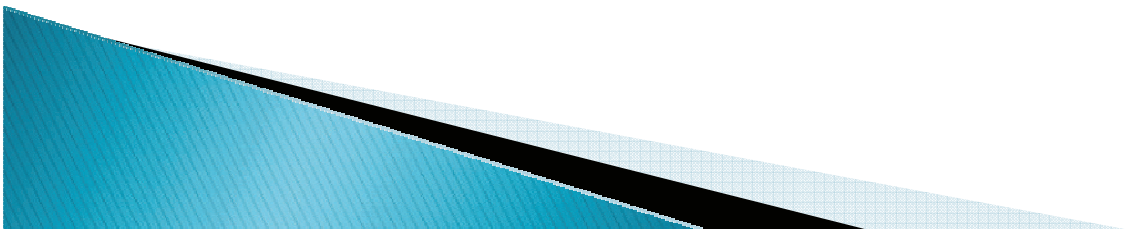
Procedural Background

- ▶ Lawsuit filed in Central District of California.
- ▶ Sought injunction against use of SOCAL OPAREA citing NEPA and CZMA
- ▶ Injunction pending EIS requested
- ▶ District Court grants injunction
- ▶ Appeal to Ninth Circuit, remanded
- ▶ District Court again grants injunction
- ▶ CEQ Finding
- ▶ District Court again grants injunction



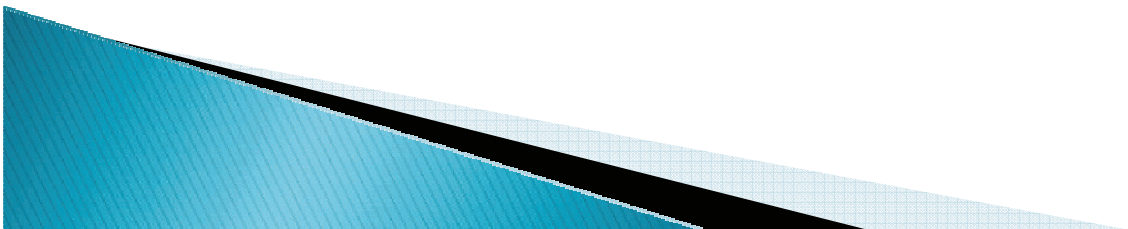
Ninth Circuit Opinion

- ▶ Dense
- ▶ Art. III problem – Executive Branch overturning judicial branch
- ▶ Preliminary Injunction standard
- ▶ Constrained by facts found below
- ▶ Upheld the injunction
- ▶ U.S. appeals



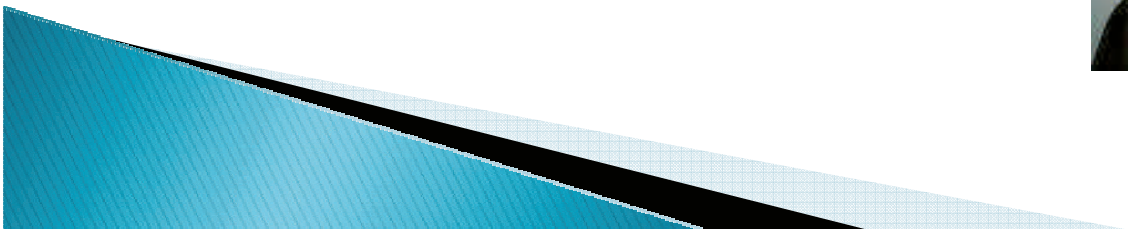
Supreme Court Grants Review

- ▶ NEPA and Supreme Court
- ▶ Several doctrines at issue (displacement, injunction standard)
- ▶ Role of politics?
- ▶ Amicus briefs
- ▶ Navy League – don't forget about the Chinese and Iranians.



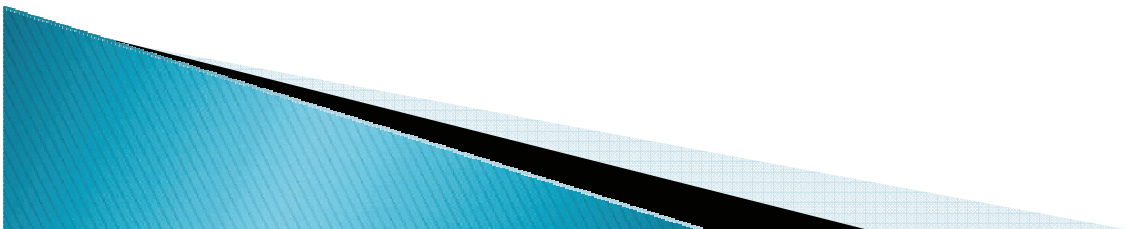
Supreme Court

- ▶ Justice Breyer and Chief Justice Roberts both mention the difficulty in resolving issues of national security
- ▶ Justice Ginsburg – lots and lots of facts here
- ▶ Remember procedural posture – preliminary injunction pending EIS that the Navy was already doing



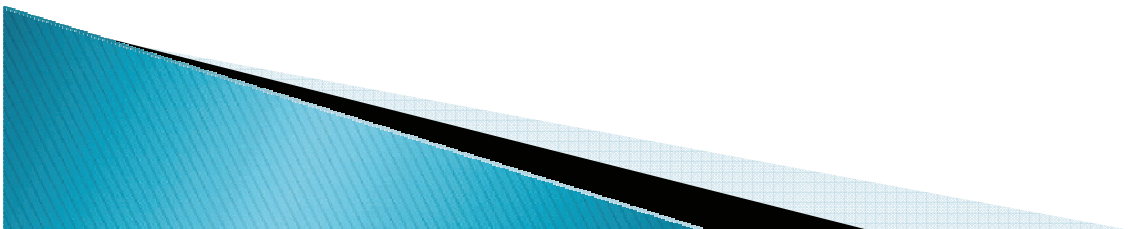
Quick Decision

- ▶ Vote was 5–2–2
- ▶ Some say 5–4, close decision, limited strictly to facts
- ▶ 7–2 that the courts below got it wrong

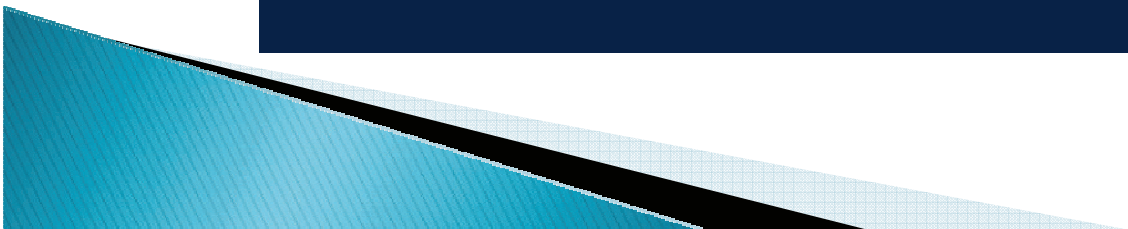
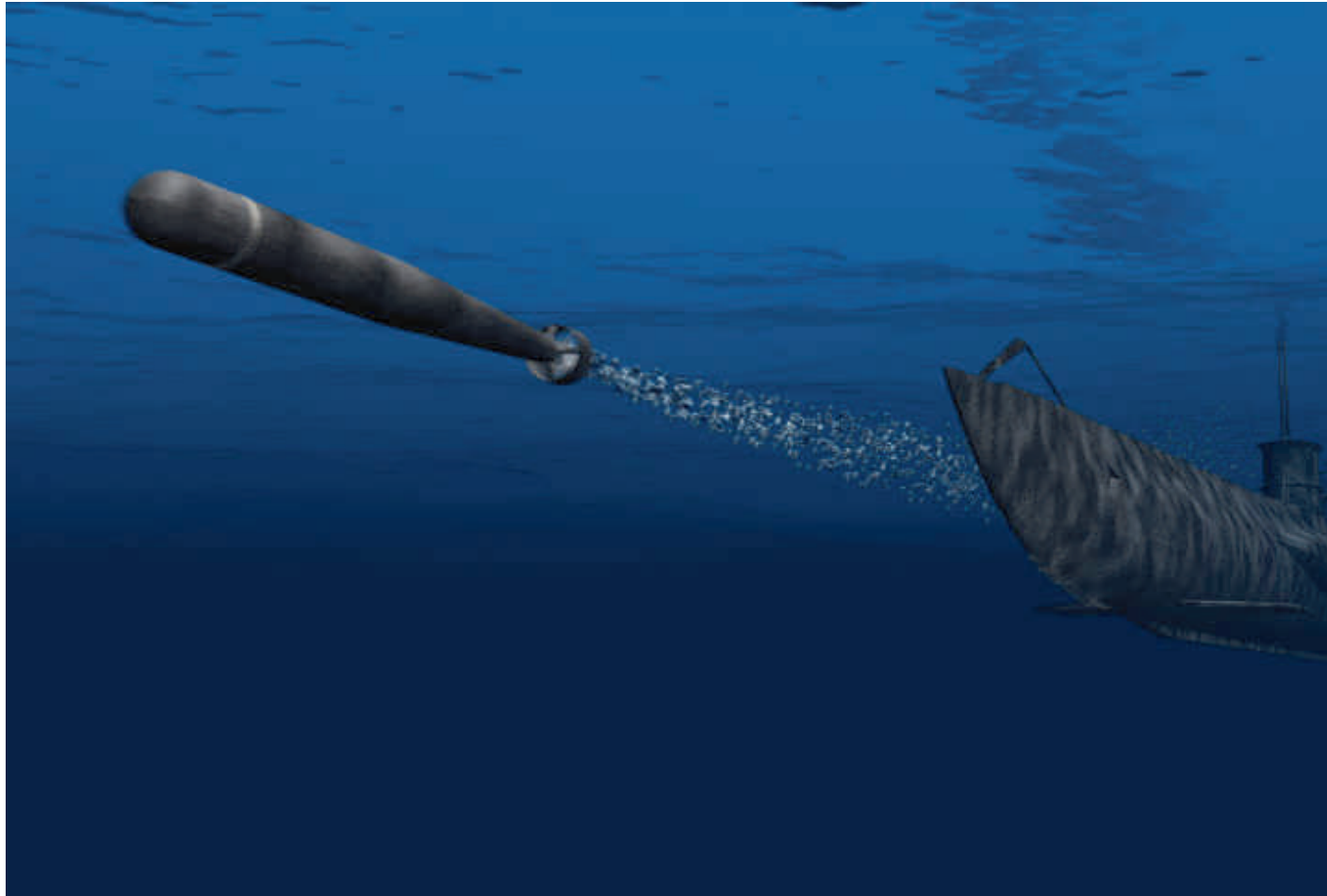


So, now what?

- ▶ Does NEPA still apply to military operations?
- ▶ Military bases?
- ▶ Land use?
- ▶ Other federal lands?
- ▶ Is Winter a remedies case? NEPA case?
National Security case?



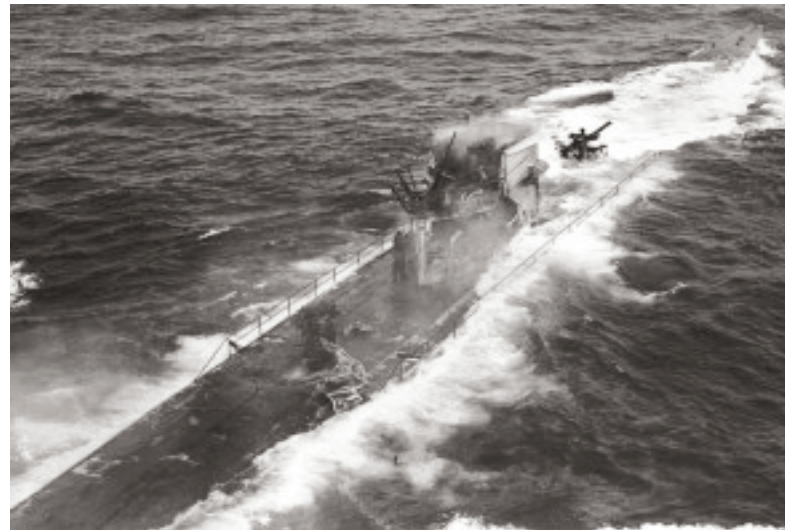
Side Bar – the Admiral's Brief



SOCAL and Other Geography



Threat to Carriers?



Threats? –China, Iran, North Korea

