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Mr. Wilfredo A. Ferrer, U.S. Attorney
Southern District of Florida
99 N.E. 4th Street
Miami, FL 33132
via Certified Mail

Dear Mr. Ferrer,

In violation of 18 U.S. Code § 1001 and other laws, **officials of the U.S. Navy knowingly and willfully made a materially false statement in their October 31, 2013 Record of Decision (ROD) for the Naval Air Station (NAS) Key West Final Environmental Impact Statement (FEIS). *The fraud invalidates key findings of the FEIS.*** Please consider this a formal complaint.

The false statement is “*The 2003 Environmental Assessment (EA) for Fleet Support and Infrastructure Improvements at NAS Key West analyzed potential impacts to the human environment, including noise and flight paths resulting from all transient aircraft operations, including the F/A-18E/F operations. As a result of that analysis, the DoN reached a Finding of No Significant Impact on April 14, 2003, which completed and satisfied the NEPA [National Environmental Policy Act] requirements associated with the introduction of the F/A-18E/F Super Hornet at NAS Key West.*”

In fact, the EA evaluates the potential impacts of dredging, and modernizing ship- and aircraft-support facilities, **not** the “...impacts to the human environment...from all transient aircraft operations, including the F/A-18E/F operations ...” as claimed.

The evidence:

1. The complete document history for this 2003 Environmental Assessment consists of more than 500 pages, beginning with the October 2, 2002 “brief letter,” required of Navy Commanding Officers anticipating the need for an Environmental Assessment, through the final document—the Finding of No Significant Impact (FONSI)—signed April 14, 2003. The Super Hornet was only mentioned on three pages (less than 1% of the documentation); those three pages did **not** analyze “...potential impacts to the human environment, including noise and flight paths resulting from all transient aircraft operations, including the F/A18E/F operations...”; and therefore the Navy did **not** satisfy the NEPA requirements.
2. Officials of the Navy fabricated a connection between the Super Hornet and the EA well after the EA was published, perhaps as long as four years afterward, in 2007. There is no prior public record of any connection between the Super Hornet and the EA. Despite a specific inquiry, the Navy has refused to correct this assertion.
3. NEPA Environmental Assessment documentation requires identification of a Proposed Action and a listing of Alternatives. There is no mention of the Super Hornet in either the Proposed Action or the Alternatives and therefore the EA did not complete and satisfy the NEPA requirements as claimed.

4. The FONSI does not mention the Super Hornet. Their claim that the FONSI "...completed and satisfied the NEPA requirements..." for analysis of "...all transient aircraft operations, including the F/A-18E/F operations..." at NAS Key West cannot be true, since it does not mention the aircraft.

5. Among ten pages of references dealing with potential impacts of dredging—more than 160 entries—one lone reference in the EA pertains to airplanes: the "Wyle Laboratories Draft Noise Study for Forecast CY07 Conditions at NAS Key West." In response to a FOIA request, the Navy sent me a CD with a PDF of the Wyle study, in which the cover page that presumably would have a publication date was missing. However, the Adobe Reader "document properties" revealed that the "creation date" of the study was "Apr 24, 2003," ten days AFTER the signing of the final NEPA document. The Navy has refused to explain the anachronism. Unsubstantiated reports are that the original EA—that did not include the reference—was replaced with one that included this single reference line.

6. Despite a rejected FOIA request and an appeal, five different offices of the Navy, including the Department of the Navy Office of General Counsel, could not find a copy of the Draft Environmental Assessment, which was distributed to the public and at least eleven state and federal reporting agencies for comments before publication of the EA itself. Subsequent to the Navy's failure—acting alone—I located a copy, which revealed a stunning fact—neither the Draft EA, nor any other preceding document contains any mention of the Super Hornet. **Thus, there is no evidence whatsoever that the Environmental Assessment process that began on October 2, 2002 was ever intended to evaluate the impacts of the Super Hornet, despite the Navy's false assertions—years after the fact.**

7. While reluctant to use the charged word, a conspiracy seems likely. Versions of the same false statement have appeared in several places, first in a 2007 response from B.J. Penn, Assistant Secretary of the Navy (Installations and Environment) responding to Richard Grosso, Esq., General Counsel of The Everglades Law Center, Inc., in which Secretary Penn states, "...the Navy complied with NEPA for transient aircraft operations at NAS Key West by completing an Environmental Assessment (EA) for Fleet Support and Infrastructure Improvements. That EA, and its incorporated references, analyzed impacts to the human environment, including noise and flight paths resulting from all transient aircraft operations, including the F/A-18E/F. As a result of that analysis, the Navy reached a Finding of No Significant Impact...". Over a seven-year period, the Navy has made false statements and concealed important documents in an attempt to keep their fraud from being revealed.

8. Some have suggested that the statute of limitations applies, because the evidential EA was published ten years ago. The fact is, however, that the alleged crime occurred in 2013 and the date of the evidence is irrelevant. Furthermore, the last act in this scheme was four months ago, well within any statute of limitations.

References:

All corroborating documentation can be downloaded from this link: http://johnhammerstrom.com/Sustainable_Keys/Click_for_Blog_Page/Entries/2013/11/3_Record_of_Decision_-_The_Fraud_Persists.html

A complete investigation of this matter would include DODIG Cases #105900 and #113851; and GAO Control #51428, which are likely to reveal important details to FBI investigators that are not visible in the heavily redacted public reports.

Sincerely,

John G. Hammerstrom
Commander, USN (Ret)