

**American Lung Association * American Oceans Campaign
American Rivers * Center for Biological Diversity
Center for Public Environmental Oversight * Defenders of Wildlife
Earthjustice * Endangered Species Coalition
Environmental Defense * Friends of the Earth * Military Toxics Project
National Audubon Society * National Environmental Trust
Natural Resources Defense Council * The Ocean Conservancy
Physicians for Social Responsibility
Public Employees for Environmental Responsibility * Sierra Club
* US Public Interest Research Group * The Wilderness Society
World Wildlife Fund**

April 24, 2002

Re: Environmental Law Exemptions in the Defense Authorization Bill

Dear Representative:

We strongly urge you to oppose any provisions in the Defense Authorization Bill that are designed to exempt the Department of Defense (DOD) from the Clean Air Act, the Resource Conservation and Recovery Act, Superfund (CERCLA), the Endangered Species Act, the Migratory Bird Treaty Act, or the Marine Mammal Protection Act. The American people have long supported these important environmental and public health laws that already include exemptions to address national security interests. Additional exemptions are not necessary. They would undermine the role of states that administer pollution control laws, and local communities that are directly impacted by DOD operations. No federal agency should be granted special reprieve from the laws which individuals and businesses are required to adhere.

While we understand the Department of Defense's need to prepare for military action, such as efforts to protect national security, additional exemptions are not necessary to accomplish this goal. Many of these laws already have specific provisions that allow requests by the Department of Defense for waivers in the interest of national security. For example, section 7(j) of the Endangered Species Act gives the Secretary of Defense the authority to secure an exemption from the ESA's provisions whenever the Secretary finds that such an exemption is necessary for reasons of national security. Moreover, Title 10 U.S.C. 2014 specifically empowers the President to resolve any conflicts between the DOD and other executive agencies that effect training or readiness. These waivers should be invoked on a case-by-case basis rather than giving the Department of Defense a blanket exemption to ignore our laws. In addition, some of the armed services have already shown that much can be done through cooperative efforts with federal agencies that protect the environment and public health, to accommodate the missions and mandates of both.

We firmly believe no government agency should be above the law – including the laws that protect the air and water in and around our military facilities, the health of the people who live on and nearby bases, and America's wildlife and public lands. This principle was endorsed by the Congress in 1992 when it passed the Federal Facilities Compliance Act. Eliminating environmental and public health

protections would grant special protections for an agency which contributes significantly to the nation's pollution problems.

The Department of Defense has taken the approach of proposing this language in the Defense Authorization bill at the last minute without sufficient input from all concerned. The National Governors' Association, the National Association of Attorneys General, the National Conference of State Legislatures, community groups and environmental organizations were all denied an opportunity to testify at the only House Armed Services subcommittee hearing on these broad environmental and public health issues. In addition, these important laws are under the jurisdiction of other House committees, including Resources, Energy and Commerce, and Transportation and Infrastructure. Any amendments should be thoroughly examined by these committees before any changes to environmental laws are considered.

These landmark laws made history by changing the way America cares for its environment—dramatic alterations and exemptions must be examined thoroughly in a public process where all stakeholders, including community groups, environmental organizations, and state interests are represented. We support a process where all stakeholders can work together on these issues to develop creative and collaborative solutions.

The language proposed by the Defense Department would:

- Exempt the Department of Defense from government regulation of hazardous wastes such as explosives and munitions under the Resources Conservation and Recovery Act (RCRA). This allows DOD to leave toxic substances lying on the range where they can leach into groundwater, surface waters, or air, posing a risk to public health and environmental quality. With such exemptions the Department of Defense would provide its own oversight, taking away virtually all the states' and EPA's authority to oversee clean up of munitions and explosions under RCRA. While this language appears to be intentionally broad and vague it could potentially block the use of RCRA to issue binding administrative orders for investigation and clean up both on and off the range, even if there was an imminent and substantial endangerment to human health.
- Exempt the Department of Defense from oversight and regulation under CERCLA (Superfund) of munitions contamination of groundwater, air, and soil at its operational ranges until the contamination migrates off-range or the range is permanently closed. The language would allow the DOD to contaminate groundwater to any extent without any independent oversight or regulation until the contamination leaves DOD land. This would dramatically increase cleanup costs and needlessly endanger public health and safety by postponing any investigation or response until the contamination is already significant.
- Permit the Department of Defense to pollute our air by exempting DOD from conforming to federal or state implementation plans for attaining public health air quality standards (the National Ambient Air Quality Standards, or NAAQS) for any activities. This means that those living in areas with military bases could breathe dirtier air, which could result in more premature deaths, asthma attacks, and other adverse health and environmental effects.
- Exempt the Department of Defense from critical habitat designations for which an Integrated Natural Resources Management Plan (INRMP) has been developed. Although the US Fish and Wildlife Service (USFWS) has excluded some bases from critical habitat designation based on their INRMPs, in numerous other critical habitat decisions, USFWS has expressly found that INRMPs would not provide adequate protection to justify reliance on these plans in

lieu of critical habitat designation. With over 300 federally listed species living on DOD lands where in many cases these lands are crucial to their survival and recovery, the proposed exemption would automatically eliminate a vital protection for these species on all military lands.

- Allow the Department of Defense to kill migratory birds and destroy their nesting areas with a blanket exemption from the Migratory Bird Treaty Act as long as DOD characterizes its activities as “military readiness activities.” DOD could completely eradicate unlimited numbers of migratory birds and destroy their nesting areas without any assessment of biological impacts, oversight or accountability as long as those impacts are not the purpose of the activity.
- Allow the Department of Defense to harm marine mammals without review by the Fish and Wildlife Service and the National Oceanic and Atmospheric Administration by changing the definition of “harassment,” one of the underpinnings of the Marine Mammal Protection Act, to a vague and subjective definition. The proposed change, by increasing the threshold necessary to seek a permit for activities that harass a marine mammal, is a significant departure from the existing precautionary premise of the Act. The result is likely to ensure more debate, less enforcement, less mitigation and monitoring of impacts and less transparency.

Our existing laws already provide the proper balance between military readiness and environmental protection. These issues need to be addressed under our current laws that already allow consultation and involvement from state and local interests. Broad sweeping exemptions, as proposed by the Defense Department, would likely result in irreparable harm to public health and the environment. We urge you to contact House Armed Services Committee members and voice your opposition to such language, and to oppose any language that grants broad, new exemptions to the DOD to avoid complying with environmental and public health laws when the bill reaches the House floor.

Sincerely,

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