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H.R. 1497, A BILL TO REAUTHORIZE TITLE I OF THE SIKES ACT

LEGISLATIVE HEARING

BEFORE THE

SUBCOMMITTEE ON FISHERIES CONSERVATION, WILDLIFE AND OCEANS

OF THE

COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

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LEGISLATIVE HEARING ON H.R. 1497, A BILL TO REAUTHORIZE TITLE I OF THE SIKES ACT

Thursday, April 10, 2003
U.S. House of Representatives
Subcommittee on Fisheries Conservation, Wildlife and Oceans
Committee on Resources
Washington, DC

The Subcommittee met, pursuant to call, at 10:06 a.m., in room 1324, Longworth House Office Building, Hon. Wayne T. Gilchrest, Chairman of the Subcommittee, presiding.

Present: Representatives Gilchrest, Saxton, Pallone and Bordallo.

Also Present: Representative Cunningham.

Mr. GILCHREST. Good morning. The Subcommittee will come to order.

Today we will hear testimony on H.R. 1497, a measure introduced by Chairman Richard Pombo to extend the authorization for Title I of the Sikes Act.

STATEMENT OF THE HON. WAYNE T. GILCHREST, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND

Mr. GILCHREST. I ask unanimous consent that our friend and Colleague, Mr. Duke Cunningham, sit on the dais this morning for the hearing.

Without objection, it is OK, Duke. You are welcome.

The law, which was first enacted in 1960, is responsible for the conservation of fish, wildlife, and their habitat at some 25 million acres of military land. The Department of Defense has some 400 military installations throughout the United States that contain wildlife resources. In fact, nearly 300 Federally listed, threatened and endangered species reside on those lands under the jurisdiction of DOD. In many ways, those DOD lands are a unique ecosystem.

In 1997 this law was reauthorized and a number of significant changes were made to the underlying statute. The most significant modification was a requirement that the Department of Defense prepare a comprehensive integrated natural resource management plan for each of its installations that have plant and animal species. These plans would include an inventory of fish and wildlife resources, efforts to protect wetlands, how natural resource laws will be enforced, whether wildlife-oriented recreation will be permitted,

and how our vital fish and wildlife populations will be managed in the future.

In addition, the law now requires that the Department submit these plans for public review, and that they may be written in full consultation with the Fish and Wildlife Service and the affected States.

Finally, Public Law 105-85 stipulated that the Department must maintain a significant number of professionally trained natural resource management personnel to prepare and implement the integrated natural resource management plans.

During the course of this hearing I hope to learn from our witnesses how many integrated natural resource management plans have been implemented, whether the consultation process is working, if a sufficient number of professionally trained personnel have been retained as employees and not contractors for the Department of Defense as the law requires, and whether the Disabled Sportsmen's Access Act has been a success.

I look forward to hearing from our witnesses this morning on both panels.

[The prepared statement of Mr. Gilchrest follows:]

Statement of The Honorable Wayne T. Gilchrest, Chairman, Subcommittee on Fisheries Conservation, Wildlife and Oceans

Good morning. Today, the Subcommittee will hear testimony on H.R. 1497, a measure introduced by Chairman Richard Pombo to extend the authorization for Title I of the Sikes Act.

This law, which was first enacted in 1960, is responsible for the conservation of fish, wildlife and their habitat at some 25 million acres of military land. The Department of Defense has some 400 military installations throughout the United States that contain wildlife resources. In fact, nearly 300 Federally listed threatened and endangered species reside on those lands under the jurisdiction of DOD. In many ways, these DOD lands are a unique ecosystem.

In 1997, this law was reauthorized and a number of significant changes were made to the underlying statute. The most significant modification was the requirement that the Department of Defense prepare a comprehensive integrated natural resource management plan for each of its installations that have plant and animal species. These plans would include an inventory of fish and wildlife resources, efforts to protect wetlands, how natural resource laws will be enforced, whether wildlife-oriented recreation will be permitted and how our vital fish and wildlife populations will be managed in the future.

In addition, the law now requires that the Department submit these plans for public review and that they be written in full consultation with the Fish and Wildlife Service and the affected states. Finally, P.L. 105–85 stipulated that the Department must maintain "a significant number of professionally trained natural resource management personnel" to prepare and implement integrated natural resource management plans.

During the course of this hearing, I hope to learn from our witnesses how many integrated natural resource management plans have been implemented; whether the consultation process is working; if a sufficient number of professionally trained personnel have been retained as employees and not contractors for the Department of Defense as the law requires and whether the Disabled Sportsmen's Access Act has been a success.

I look forward to hearing from our distinguished witnesses and I am pleased to recognize the Ranking Democratic Member, the Honorable Frank Pallone.

Mr. GILCHREST. I will yield now to the gentleman from New Jersey, Mr. Pallone.

STATEMENT OF THE HON. FRANK PALLONE, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. PALLONE. Thank you, Mr. Chairman. It is especially appropriate for the Subcommittee to examine the Sikes Act at a time when our military preparedness is being put to the test, and when the Department of Defense is pursuing efforts to procure exemptions from some environmental laws, and today we will examine the requirements of the Sikes Act with regard to the management of natural resources in military installations, as well as whether the DOD has successfully implemented those requirements.

Few people realize that the Pentagon is the third largest Federal land manager in the U.S. Even fewer people would dispute that the multipurpose management of 25 million acres of military land is a huge responsibility and a tremendous challenge when considering the limited funding and often conflicting missions.

In light of these multiple responsibilities the Sikes Act was intended to clarify the military's natural resource obligations, and today I look forward to hearing from our witnesses on whether the policies of the Sikes Act are clear, effective and well implemented by DOD. I believe thorough implementation of the Act's requirements is critical to conservation and the maintenance of environmental quality on these important Federal lands, and it is the responsibility of this Subcommittee to address any shortcomings in the implementation of this law should we find any.

Mr. Chairman, I am particularly interested in the development and implementation of the required integrated natural resource management plans or INRMPs. Thoughtful consultation between the military, U.S. Fish and Wildlife and State wildlife agencies is vital to ensure that INRMPs are effective at protecting natural resources and flexible enough to accommodate military operations. However, the DOD has recently claimed that environmental laws, especially the Endangered Species Act, have encroached on and diminished military readiness and training activities. In the request for legislative relief, the Department has sought to substitute INRMPs for critical habitat designations made under the ESA.

I cannot help but wonder do we have enough information at this time about the effectiveness of INRMPs in order to render an intelligent judgment on such a proposal? I remind my colleagues that the track record for INRMPs is woefully short and incomplete as many INRMPs have been completed only in the past 18 months. Furthermore, numerous critics contend the Department has purposely outsourced civilian environmental specialists responsible for implementing INRMPs in an effort to weaken or compromise its internal ability to implement the Act.

I would like to understand why the DOD is outsourcing these positions when the Federal Activities Inventory Reform Act of '98 and the A-76 regulations require the preferential use of qualified Federal employees for such positions. These concerns are not trivial. Before making a decision on whether INRMPs would be an appropriate alternative to critical habitat designations, we first need to evaluate objectively and fairly the effectiveness and value of the INRMPs, and any action prior to a thorough analysis would be premature and could undermine the large share of the Nation's

natural resources that are now managed by the Department of Defense.

I just wanted to say, Mr. Chairman, I look forward to hearing from today's witnesses so we can begin an unbiased analysis of these issues and ultimately make an informed recommendation to the Congress. Thank you.

[The prepared statement of Mr. Pallone follows:]

Statement of The Honorable Frank Pallone, a Representative in Congress from the State of New Jersey

Thank you, Mr. Chairman, for holding this hearing. It is especially appropriate for the Subcommittee to examine the Sikes Act at a time when our military's preparedness is being put to the test, and when the Department of Defense is pursuing efforts to procure exemptions from some environmental laws. Today we will examine the requirements of the Sikes Act with regard to the management of natural resources in military installations, as well as whether the Department of Defense has successfully implemented those requirements.

Few people realize that the Pentagon is the third largest Federal land manager in the United States. Even fewer people would dispute that the multi-purpose management of 25 million acres of military land is a huge responsibility and a tremendous challenge, when considering the limited funding and often-conflicting missions.

In light of these multiple responsibilities, the Sikes Act was intended to clarify the military's natural resource obligations. Today I look forward to hearing from our witnesses on whether the policies of the Sikes Act are clear, effective, and well-implemented by the Department of Defense. I believe thorough implementation of the Act's requirements is critical to conservation and the maintenance of environmental quality on these important Federal lands—and it is the responsibility of this Subcommittee to address any shortcomings in the implementation of this law, should we find any.

I am particularly interested in the development and implementation of the required Integrated Natural Resource Management Plans, or INRMPs ("inramps"). Thoughtful consultation between the military, the U.S. Fish and Wildlife Service, and State wildlife agencies is vital to ensure that INRMPs are effective at protecting natural resources and flexible enough to accommodate military operations.

However, the Department of Defense has recently claimed that environmental laws, specifically the Endangered Species Act, have encroached on and diminished military readiness and training activities. In their requests for legislative relief, the Department has sought to substitute INRMPs for critical habitat designations made under the ESA.

I cannot help but wonder; do we have enough information at this time about the effectiveness of INRMPs in order to render an intelligent judgment on such a proposal? I remind my colleagues that the track record for INRMPs is woefully short and incomplete, as many INRMPs have been completed only in the past 18 months. Furthermore, numerous critics contend that the Department has purposefully "outsourced" civilian environmental specialists responsible for implementing INRMPS, in an effort to weaken or compromise its internal ability to implement the Act. I would like to understand why the Department is outsourcing these positions when the Federal Activities Inventory Reform Act of 1998 and the A–76 regulations require the preferential use of qualified Federal employees for such positions.

These concerns are not trivial. Before making a decision on whether INRMPs would be an appropriate alternative to critical habitat designations, we first need to evaluate objectively and fairly the effectiveness and value of the INRMPs. Any action prior to a thorough analysis would be premature and could undermine the large share of the Nation's natural resources managed by the Department of Defense.

I look forward to hearing from today's witnesses, so that we can begin an unbiased analysis of these issues and ultimately make an informed recommendation to Congress.

Thank you.

Mr. GILCHREST. Thank you, Mr. Pallone.

Opening statement, Mr. Saxton?

Mr. SAXTON. No, Mr. Chairman.

Mr. GILCHREST. The gentlelady from Guam?

STATEMENT OF MADELEINE Z. BORDALLO, A DELEGATE TO CONGRESS FROM GUAM

Ms. BORDALLO. Good morning, and welcome to all of our witnesses, and thank you, Chairman Gilchrest and Ranking Member Pallone. I would like to also welcome our colleague, Duke Cunningham, from the State of California.

I thank you, Mr. Chairman, for holding this hearing on reauthorization of the Sikes Act. The Sikes Act, Mr. Chairman, is particularly important to Guam, an island of only 212 square miles, as nearly one-third of our land is owned and managed by the Department of Defense. Furthermore, we have a particular challenge before us with the recent U.S. Fish and Wildlife Service proposal to designate new critical habitat on roughly 30,000 acres of land in Guam. This is land outside the current Guam wildlife refuge overlay. This proposal includes Navy land that does not currently contain endangered species, and which has been heavily utilized for critical special forces jungle training.

This critical habitat proposal has been the source of much consternation in Guam within both the military and the civilian communities given Guam's past experiences with military land condemnations, critical habitat designation in the north at Ritidian in 1993. The jeopardy this new proposal poses for military readiness and the fact that it is not the actions of the Department of Defense or the people of Guam that threaten the restoration of endangered species such as the Marianas fruit bat, the Marianas crow and Guam Micronesian kingfisher, but rather the predatory behavior of the invasive brown tree snake, which arrived in Guam in 1950 by military cargo.

This is why the DOD request to allow INRMPs under the Sikes Act to serve as adequate substitutes to critical habitat designation under ESA is an important matter for the people of Guam. Guam remains ready and willing to work with the military to strengthen INRMPs, and I support a strong and up to date Sikes Act, that reflects both the growth of DOD's conservation programs and the ability to manage natural resources in an integrated approach with public involvement in the process and in support of the military mission.

Thank you, Mr. Chairman. I look forward to the testimony of our witnesses.

Mr. GILCHREST. Thank you.

I will yield to the gentleman from California, Mr. Cunningham.

Mr. SAXTON. Mr. Chairman.

Mr. GILCHREST. Mr. Saxton?

STATEMENT OF THE HON. JIM SAXTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. SAXTON. Thank you, Mr. Chairman. I just wanted to take a moment to welcome the witnesses, Mr. DuBois, with whom we have worked over the past couple of years. I would also like to welcome my fellow New Jerseyan, Gene Rurka from I think it might be Mr. Pallone's district, I am not sure. And Gene is a great outdoorsman and sportsman, and member of the Safari Club, where he heads up the Humanitarian Service Committee, and the Committee under his leadership has made great strides in making it

possible for people with disabilities to take part in outdoor sports, hunting, photography, fishing, and so it is with great pleasure, Gene, that we welcome you here today. Thank you for your participation.

My unfortunate early departure—I was looking forward to hearing your testimony, but I have a 10:30 that I can't miss, so I am going to have to leave. Thank you.

Mr. GILCHREST. Thank you, Mr. Saxton.

Mr. Cunningham, you want to speak?

Mr. CUNNINGHAM. It is good to see Gene again. I attended Safari Club with Gene up in New Jersey. I had never been in New Jersey before that.

Mr. SAXTON. Hasn't been back since either. He wore out his welcome.

[Laughter.]

Mr. CUNNINGHAM. But I am here. One of the reasons I attended is I served on this Committee as a freshman when the Committee was a little different.

Mr. GILCHREST. Merchant Marine Committee.

Mr. CUNNINGHAM. Merchant Marine Committee. Sat right here at this desk, and we did a bill for disabled sportsmen, and Lew Deal, Colonel Deal was here, and that is the reason I mainly came is to just give my best wishes to Colonel Deal and the program that he is doing for disabled sportsmen. You can imagine somebody in a wheelchair, pulling up to a dock and wanting to go fishing where there is no rail for safety. It is very dangerous for them. Or establish outdoor recreation for disabled sportsmen, both in the military and civilian, and I just wanted to compliment him and his program, and it is going great guns. So that is the main reason I came, Mr. Chairman.

Mr. GILCHREST. Thank you, Mr. Cunningham.

Our three witnesses on the first panel this morning are Mr. Raymond DuBois, Deputy Under Secretary of Defense for Installations and Environment; Mr. Benjamin Tuggle, Chief, Division of Federal Program Activities, U.S. Fish and Wildlife Service; and Mr. John Baughman, Executive Vice President, International Association of Fish and Wildlife Agencies.

Gentlemen, thank you very much for coming this morning. We look forward to your testimony.

Mr. DuBois, you may begin, sir.

STATEMENT OF RAYMOND F. DuBOIS, DEPUTY UNDER SECRETARY OF DEFENSE FOR INSTALLATIONS AND ENVIRONMENT, U.S. DEPARTMENT OF DEFENSE

Mr. DUBOIS. Thank you, Mr. Chairman, and distinguished members of this Committee. On behalf of Secretary Rumsfeld, I want to thank you for this opportunity to discuss with you the Sikes Act and its importance to the military.

As has been mentioned, DOD has control or ownership of roughly 25 million acres of land. Many of these acres of land are extraordinarily rich in biological resources, and the Sikes Act has been the—underline "the"—major contributor to DOD's success in managing these resources. For more than 40 years the Sikes Act has proven instrumental in helping our installations, in coordination

with the U.S. Fish and Wildlife Service, and State fish and game agencies, to develop many cooperative plans and projects that have benefited fish and game and other natural resources on DOD lands.

Even more important today, the Sikes Act is needed to help ensure our ability to provide for the increasing complexity of the military mission and the concentration of training and readiness activities on remaining DOD installations.

Now, under the 1997 amended Sikes Act, each integrated natural resource management plan is designed and implemented to ensure no net loss in the capability of the installation to support the military mission. We believe these plans provide the best possible management for our lands and our resources. Management under the Sikes Act allows us more flexibility to use our training lands as we need them, while still protecting over 300 threatened and endangered species and other natural resources. We believe that a well-designed and implemented INRMP makes critical habitat designation on military installations in most cases unnecessary. DOD expended over $91 million in fiscal 2002, as I reported to Congress, to prepare and implement the INRMPs.

I would like to turn to four specific areas quickly on which the Subcommittee specifically requested my comment.

No. 1: the preparation process for the first round of INRMPs. DOD, as well as the Fish and Wildlife Service, and the State fish and game agencies faced a rather big challenge when Congress passed the Sikes Act in November 1997. Those daunting challenges to prepare and coordinate nearly 373 new INRMPs caused, needless to say, somewhat of a bottleneck in the Department, and although we did not fully achieve this goal, most of our installations had INRMPs approved by the 2001 November deadline.

The implementation of INRMPs. We intend, the Department intends that its new INRMPs be dynamic and fully functional planning tools for natural resource management. This desire for enhanced long-term performance was a driving force behind the establishment of detailed installation by installation metrics. In October of 2002 I specifically sent instructions to the service secretaries in this regard. This new guidance requires each installation to track its INRMP implementation.

Now, Section 103 of the Sikes Act specifically authorizes the Department to provide persons with disabilities access to the same outdoor recreation as the general public. We have worked closely with the Paralyzed Veterans of America and other organizations to accept portable elevating hunting blinds and other specialized equipment for use by disabled sportsmen.

DOD also conducted a one-time survey of natural resource functions in 2001, and that survey identified 868 in house positions that perform natural resource management functions and associated services. This gets to your question, Mr. Chairman, about the so-called outsourcing issue.

Now, these natural resource management professionals--and let me be very clear about this—are essential in our view to the long-term oversight and management of the valuable natural resources entrusted to our care. Public and regulator confidence in DOD's commitment to conserving natural resources entrusted to us depends both upon our retaining this cadre of natural resource

professionals, and on our using most efficiently all the tools available to us. In some cases competition is the proven method to determine the best source whether Government or private sector. In no case, however, will we make any decision that would threaten our ability to preserve these important natural treasures.

This Subcommittee is keenly aware of our ability to ensure access to its lands for military preparedness purposes, and we know and you know that it sometimes is becoming difficult to do so.

In response to these concerns, the Administration submitted to Congress the Readiness and Range Preservation Initiative. Mr. Chairman, your interests with respect to the Sikes Act has a direct bearing on one RRPI provision, a provision that would permit approved INRMPs in appropriate circumstances to substitute for critical habitat designation. I look forward to responding to your, and especially Mr. Pallone's questions pursuant to his opening remarks in this regard.

We believe that designated critical habitat on military installations under the Endangered Species Act is for the most part duplicative because our Sikes Act mandated INRMPs already provide the, quote, "special management or protection needed to ensure the survival and eventual recovery of listed, threatened and endangered species." Critical habitat designation overlaid on top of existing and approved INRMPs, in our view, unnecessarily limits commanders on the ground and their abilities to manage an installation appropriately to accommodate and balance both the military mission and the protection of natural resources.

I want to just add briefly here at the end, Mr. Chairman, if I might, as luck will have it, last night I sat next to a former staffer for Congressman Bob Sikes, now departed, of Florida. I said, "I am testifying tomorrow before Congressman Gilchrest and the Subcommittee on Fisheries on the Sikes Act reauthorization. Tell me a little bit about the man who saw the light and saw the future in terms of his legislation back in 1960."

And this fellow, who is a little bit older than I am said, "You have got to remember, Ray, that Bob Sikes was first and foremost an outdoorsman, a man who loved sports fishing and loved the idea that sportsmen would have access to some of these magnificent undeveloped properties within the military inventory. He also, as you know, had Eglund Air Force Base, Tindall Air Force Base, Pensacola, some crown jewels in our military inventory in his district, and he saw that a balance could be achieved when he introduced that legislation now over 40 years ago."

So just as a personal aside, I was very touched to hear the story about how Congressman Sikes back in those days saw it, and here we are today discussing it and trying to improve upon it, and the Department of Defense wants to do everything it can to honor his memory and honor his legislation.

Thank you very much, Mr. Chairman.

[The prepared statement of Mr. DuBois follows:]

Statement of Raymond F. DuBois, Jr., Deputy Under Secretary of Defense (Installations and Environment), U.S. Department of Defense

INTRODUCTION

Mr. Chairman and distinguished members of this Subcommittee, I appreciate the opportunity to discuss with you the Sikes Act and its importance to the military.

BACKGROUND

The Sikes Act has been the major contributor to the success of the DoD's conservation program. For more than 40 years, it has proven instrumental in helping our installations, in coordination with the U.S. Fish and Wildlife Service (FWS) and State fish and game agencies, to develop many cooperative plans and projects that have benefitted fish and game resources and other natural resources on DoD lands. Even more important today, the Sikes Act is also needed to help ensure the Services' ability to provide for the increasing complexity of the military mission and the concentration of training and readiness activities on the remaining Defense installations.

In The National Defense Authorization Act for Fiscal Year 1998, Congress amended the Sikes Act to require installation commanders to prepare and implement Integrated Natural Resources Management Plans (INRMPs) by November 2001. The Department of Defense (DoD) strongly supported these amendments to the Sikes Act and worked closely with both the Department of the Interior's Fish and Wildlife Service and the International Association of Fish and Wildlife Agencies to recommend changes to Congress. DoD and the Military Services greatly appreciate the efforts of this Committee, as well as the efforts of the Department of the Interior and the International Association of Fish and Wildlife Agencies, in the development of these amendments to strengthen and improve the original Sikes Act.

IMPLICATIONS OF RECENT SIKES ACT AMENDMENTS

Under the 1997 amended Sikes Act, each integrated natural resources management plan is designed and implemented to ensure "no net loss" in the capability of the installation to support the military mission.

These plans consequently provide the installation commander with an effective management tool for integrating operational requirements with natural resource management goals and projects. Land management decisions reflect and support operational requirements, and focus on maintaining the viability and sustainability of the land to support the training and readiness activities.

The principal changes reflected in the re-authorized Sikes Act:

- provide for more comprehensive and up-to-date INRMPs that embody emerging principles related to biodiversity protection and adaptive management;
- enhance the ability of installation commanders to manage natural resources and ensure that mission requirements can be met; and
- allow DoD to take full advantage of the expertise of the Fish and Wildlife Service (FWS) and the State resource agencies in preparing integrated natural resource management plans for military lands, while neither jeopardizing the installation commander's discretion to ensure the preparedness of the armed forces nor the ability of the FWS and the States to exercise the legal authority they each possess apart from the Sikes Act.

A Sikes Act amendment passed in Fiscal Year 1999, to provide hunting and fishing access to military lands for disabled sportsmen.

We know that the future will pose new challenges to the Department in its continuing effort to integrate the military mission of ensuring troop readiness while meeting the obligations of responsible natural resources stewardship. Installation-level natural resource professionals within the Components must continue to demonstrate that these two goals are compatible and that with up-front planning, adequate biological inventories, good communication, and the use of "lessons learned," conflicts can be avoided. Conflicts range from keeping tanks 50 feet from the habitat for red-cockaded woodpecker habitat to scheduling deer hunting and training for the same areas on an installation.

To meet these goals, the Sikes Act now requires the military to employ the principles of ecosystem management at nearly 373 installations "using INRMPs to provide the blueprint for such management. Every one of our installations with natural resource requirements are required to have one of these plans in place. Further, the plans must reflect the mutual agreement of the U.S. Fish and Wildlife Service and appropriate State fish and wildlife agency concerning the conservation, protection, and management of fish and wildlife resources..

In October 2002, we released new guidance for these INRMPS that will improve coordination with stakeholders and provide performance metrics to ensure the long-term viability of these plans. This updated guidance is based on the lessons learned from preparing and implementing these plans over the past several years. These plans, designed to embrace emerging scientific principles related to ecosystem management and biodiversity protection, provide a broad focus on the maintenance of healthy and fully functional ecosystems.

We believe that these plans provide the best possible management for our lands. We also believe that they provide excellent management for imperiled plant and

animal species. Management under the Sikes Act allows us more flexibility to use our training lands, as we need them, while still protecting the over 300 threatened and endangered species that are now part of the management requirement for the lands under the administrative control of the Components. We believe that a well-designed and implemented, INRMP, makes critical habitat designation on military installations in many cases unnecessary.

IMPLEMENTATION OF SIKES ACT AMENDMENTS

I would now like to turn to the four specific areas on which the Subcommittee requested comments:

- How the INRMP preparation process worked for the first round of INRMPs.
- How DoD intends to implement the new INRMPs and adapt to new information.
- How DoD has implemented the provisions of the Disabled Sportsmen's Access Act.
- Where DoD stands on outsourcing natural resources-related positions.

The Preparation Process for the First Round of INRMPs

The Department of Defense, as well as the Fish and Wildlife Service and the State fish and game agencies, faced a daunting challenge when Congress passed the Sikes amendments in November 1997—to prepare and coordinate nearly 373 new INRMPs. Although we did not fully achieve this goal, most of our installations had INRMPs approved by the November 2001 deadline.

We and our partners learned a great deal over the past five years that led to a steady improvement in how INRMPs are prepared and coordinated. I would like to share a few of the most important lessons we learned:

- Headquarters-level oversight is essential. We formed a Sikes Coordination Group in January 2001 including representatives from the DoD Components, the U.S. Fish and Wildlife Service, and the International Association of Fish and Wildlife Agencies to oversee plan preparation and review, and to mediate any unresolved issues. This group continues to meet to track INRMP revisions and implementation.
- Staggered preparation and coordination of INRMPs would eliminate review bottlenecks. Many INRMPs reached review offices during the first six months of 2001. This caused a significant resource strain on these offices. We issued new policy guidance in October 2002, that will eliminate this bottleneck.
- Other stakeholders need an effective voice in updating INRMPs. Although our initial implementing guidance specified that military installations should coordinate their INRMPs with military trainers and the public, as well as with Fish and Wildlife Service and State fish and game agencies, the Sikes Coordination Group determined that we could improve our outreach to these groups. Our new October 2002 policy includes specific metrics for ensuring this coordination occurs and asks each installation to report on the disposition of comments received from each group of stakeholders.

Implementing INRMPs and Adapting to New Information

The Department intends that its new INRMPs be dynamic and fully functional planning tools for natural resources management. This desire for enhanced long-term performance was a driving force behind the establishment of detailed installation-by-installation metrics in October 2002. This new guidance requires that each installation report a series of metrics intended to track its effectiveness in INRMP implementation. Specifically, each installation must report annually:

- Whether the INRMP contains a list of projects necessary to meet plan goals and objectives, as well as timeframes for implementation.
- Funding requirements to implement the INRMP, including dollars required for and funded for both "must fund" (Class 0 and 1) and "nice to have" (Class 2 and 3) projects.
- A list of all unfunded Class 0 and 1 project requirements in excess of $50,000.

In addition, we plan to initiate a study on INRMP implementation at selected military installations by the end of the fiscal year. This Legacy-funded project will identify both successes and opportunities for improvements in how to implement our INRMPs best.

The Department expects that INRMPs will be modified as needed to address changing natural resource priorities and mission requirements. Each INRMP must be reviewed annually and updated as appropriate every five years or sooner if conditions warrant. DoD's conservation policy requires that projects be monitored and evaluated for effectiveness.

Implementing the Disabled Sportsmen's Access Act

Section 103 of the Sikes Act authorizes the Department to provide persons with disabilities access to the same outdoor recreation opportunities (including fishing, hunting, trapping, wildlife viewing, boating, and camping) as the general public. This legislation also permits DoD to accept the volunteer services of individuals and organizations, as well as donations of property to facilitate these provisions. The Department reaffirmed its support for disabilities access in an August 2002 policy memo to the Military Departments that encourages our installations to implement these provisions.

The Components have worked closely with the Paralyzed Veterans of America (PVA) and other organizations to accept portable elevating hunting blinds and other specialized equipment for use by disabled sportsmen. PVA donated various items of equipment to Camp Lejeune, Naval Weapons Station Yorktown, Little Rock Air Force Base, and Naval Air Station Meridian in 2002, and plans to donate additional equipment at Fort Chaffee, Fort Benning, Fort Bragg, and MacDill Air Force Base this year.

Competition of Natural Resources–Related Positions

DoD conducted a one-time survey of natural resource functions in 2001. That survey identified 868 in-house positions that perform natural resource management functions and associated services, including 259 devoted to the inherently governmental work of enforcement and policy-related natural resource management activities.

These natural resource management professionals are essential to the long-term oversight and management of the valuable natural resources entrusted to our care. These trained professionals implement a wide variety of valuable functions for our military installations, including:

- Coordinating with military operators to ensure the fullest possible use of our lands and waters for training and testing.
- Working with environmental regulators to minimize the restrictions on the use of our lands, while ensuing that we conserve our natural resources for future use.
- Identifying and implementing across-the-fence-line partnerships with stakeholders in surrounding communities, including noxious weed control, fish and game management, and natural resources law enforcement.
- Improving mission safety and realism by improving vegetation cover, reducing fire threat and bird and wildlife aircraft strike hazard potential.
- In 2001, we concluded that more than 500 of our in-house positions do not require the discretionary exercise of government authority; as a consequence, these positions were determined to be "subject to review for competition." Nevertheless, public and regulator confidence in DoD's commitment to conserving the natural resources entrusted to us depends both on our retaining an adequate cadre of natural resources professionals and on our using most efficiently all the tools available to us to do the job well. In some cases, the private sector may have expertise unavailable to us in-house or be able to accomplish certain field work more efficiently than can we; it these cases, competition is the proven method to determine the best source, whether government or private sector. In no case, however, will we make any decision that would threaten our ability to preserve these important natural treasures.

EMERGING CHALLENGES

As this Committee knows, DoD's roughly 25 million acres of land are extraordinarily rich in biological resources. This biodiversity may be attributed to:

- Active stewardship by DoD's extensive professional natural resources staff;
- Requirements that military lands remain undeveloped in order to serve as maneuver areas, impact areas, or buffer zones;
- DoD installations occurring in virtually every ecosystem in the nation; DoD lands are the only Federal holdings in some ecosystems; and,
- Surrounding property being developed so quickly that DoD lands have become comparatively richer in many plants and animals that have been extirpated elsewhere.

However, this Committee is also keenly aware that DoD's ability to ensure access to its lands for military preparedness purposes is becoming increasingly difficult because:

- At the same time, new weapons with greater stand-off distances and changes in war-fighting tactics require DoD to provide realistic training over much larger areas; and,

- Development outside our installation borders often triggers the imposition of more pervasive restrictions on DoD lands, which have become the "last refuge" for many threatened and endangered plants and animals.

Installations and ranges are often forced to implement "work-arounds" to meet new natural resource restrictions and still ensure that our soldiers, sailors, airmen, and marines are adequately trained.

In response to these concerns, the Administration submitted to Congress last year an eight-provision legislative package, the Readiness and Range Preservation Initiative (RRPI). Congress enacted three of those provisions as part of the National Defense Authorization Act for Fiscal Year 2003. We are grateful to Congress for these provisions.

Last year, Congress also began consideration of the other five elements of our Readiness and Range Preservation Initiative. These five proposals remain essential to range sustainment and are as important this year as they were last year—maybe more so. The five provisions submitted this year reaffirm the principle that military lands, marine areas, and airspace exist to ensure military preparedness, while ensuring that the Department of Defense remains fully committed to its stewardship responsibilities.

Mr. Chairman, your interests with respect to the reauthorization of the Sikes Act and the importance of the Sikes Act to the military mission have a direct bearing on one of the five remaining RRPI provisions, a provision that would permit approved Integrated Natural Resource Management Plans in appropriate circumstances to substitute for critical habitat designation.

Mr Chairman, I would briefly like to describe how the work by your Committee to reauthorize and strengthen the Sikes Act makes this proposal not only possible, but makes it a sensible approach for both military responsibilities—readiness and environmental stewardship.

Designation of Critical Habitat

Under the Endangered Species Act (ESA), the Secretary of the Interior is required to designate "critical habitat" at the time a species is listed as threatened or endangered.

While critical habitat designation can provide some benefit to species that are already listed, the Fish and Wildlife Service believes that such additional benefits are less than those a species receives from the initial act of adding it to the list of threatened and endangered species. For example, under Section 7 of the ESA, Federal agencies are already prohibited from taking actions that may jeopardize the continued existence of a listed species.

Despite its view that critical habitat designation typically duplicates the protections already provided by the jeopardy standard for most species, the FWS has been inundated with citizen lawsuits challenging its failure to designate critical habitat.

DoD believes designating critical habitat on military installations is duplicative, for the most part, because our Sikes Act-mandated integrated natural management plans already provide the "special management considerations or protection" needed to ensure the survival and contribute toward the eventual recovery of listed Threatened & Endangered (T&E) species.

Critical habitat designation overlaid on top of existing and approved INRMPs unnecessarily limits a commander's ability to manage an installation appropriately to accommodate both the military mission and protection of the natural resources.

DoD would like to be given express credit for approved INRMPs, as we have requested as part of our Readiness and Range Preservation legislative proposal. We believe the rationale for this proposal is compelling:

- INRMPs already provide adequately for the conservation and rehabilitation of natural resources on military bases, including the habitats necessary to support T&E recovery.
- INRMPs must be prepared "in cooperation with" the FWS and must reflect the "mutual agreement" of the parties (i.e., DoD, FWS, and the State) concerning the conservation, protection, and management of fish and wildlife resources.
- The public must be afforded the opportunity to comment on proposed INRMPs (in accordance with our October 2002 policy on INRMPs, the Military Services are following the NEPA process to promulgate their INRMPs).
- Most INRMPs for bases where listed T&E species are present either will be the subject of a section 7 consultation or will incorporate pre-existing plans that were themselves the product of an ESA consultation.

When the Sikes Act was last amended, it had two very innovative provisions:

- Recognition that certain public land has been dedicated by Congress to a military purpose—that is, its use as a location for training military personnel and

testing military equipment was recognized as both necessary and desirable ; and,

- Recognition that a partnership to manage these military lands involving the Department of Defense, the U.S. Fish and Wildlife Service, appropriate State agencies, and other stakeholders can create a synergism that is good for all concerned.

CONCLUSION

Mr. Chairman, DoD lands are intended to provide and must remain available to support critical military training, testing, and operations. This can be accomplished consistent with the maintenance of biodiversity on these lands, as DoD consistently has shown to be true.

It is in DoD's own interest to ensure that the lands entrusted to it remain in good health in order to provide for realistic training, now and in the future.

In closing, Mr. Chairman, I sincerely thank you for this opportunity to discuss the Sikes Act and its importance to the military. We appreciate your strong support of our military, and I look forward to working with you.

Mr. GILCHREST. Thank you very much. Thanks for those touching words about the original author of the legislation.

Dr. Benjamin Tuggle.

STATEMENT OF BENJAMIN N. TUGGLE, CHIEF, DIVISION OF FEDERAL PROGRAM ACTIVITIES, U.S. FISH AND WILDLIFE SERVICE

Mr. TUGGLE. Good morning. Thank you, Mr. Chairman, members of the Subcommittee. Thank you for this opportunity to present testimony regarding the reauthorization of the Sikes Act.

The Fish and Wildlife Service appreciates the Subcommittee's interest in conserving fish and wildlife resources on military installations, and we strongly support your efforts to reauthorize the Sikes Act.

The biggest land management challenge for the Department of Defense may be its need to use air, land and water resources for military training and testing, while conserving natural resources for future generations. The Sikes Act has provided the Fish and Wildlife Service and the affected States the opportunity to help DOD meet this challenge, and we are pleased to say that we believe DOD has embraced its stewardship responsibilities for its land management.

We have long recognized the value of conserving fish and wildlife resources on 25 million acres of DOD managed lands. Many military installations have been sheltered from adverse impacts and contain rare and unique plant and animal species and native habitats. These lands and the species they support are essential components of the Nation's biodiversity.

The last reauthorization of the Sikes Act in 1997 required the development and implementation of integrated natural resource management plans, which I will fondly refer to in the future as INRMPs, by November 18th, 2001. The law emphasized that INRMPs should be prepared by installations in cooperation with the Fish and Wildlife Service and the States. It anticipated a fully collaborative process to create plans that effectively conserved, protected, and managed fish and wildlife resource without compromising military mission.

Our work on INRMPs is conducted primarily by our staff in our field and regional offices. These employees have large workloads

and numerous responsibilities beyond the Sikes Act. Despite these challenges, our staffs exerted tremendous effort to assist DOD in meeting that November 2001 deadline, and we complete the majority of these INRMPs. We are proud of this effort and we continue to work extensively with DOD to complete INRMPs and revise these plans.

My written testimony provides some of the many examples of successful partnerships that have been forged with DOD through the Sikes Act, and as a result we have gotten meaningful conservation benefits. We offer the following thoughts as we look forward to reauthorization.

The key to successful INRMPs is early involvement of resource agencies in the development and revision of these plans. Resource agencies also need to be involved in the implementation and evaluation of INRMPs. We are working collaboratively with DOD to help achieve these goals by developing complementary guidance in terms of how we implement the Sikes Act.

We also want to maximize our efficiency in reviewing and approving INRMPs. Approval of INRMPs is important because it provides DOD with a heightened level of certainty that they are meeting their environmental responsibilities while continuing to provide military readiness training. TO aid in the timely completion and approval of these management plans and to improve the value of those plans to fish and wildlife conservation, the Fish and Wildlife Service and DOD have developed ways to facilitate funding transfers on a reimbursable basis to hire staff whose only duties are related to Sikes Act and other environmental coordination issues with DOD. We would like to continue and expand this partnership to ensure that our role in developing and implementing INRMPs is a meaningful and efficient process.

In conclusion, the Fish and Wildlife Service is looking forward to continuing our cooperation with DOD and the States. The conservation management expertise of the fish and wildlife service in the States, combined with the rich natural resources of DOD installations and DOD's knowledge of training requirements provides an unprecedented opportunity for cooperation, management and utilization of these natural resources. We want to continue our collaboration to development effective INRMPs that are designed to conserve natural resources and promote public access and recreation, while ensuring that military readiness is accomplished.

Mr. Chairman, once again we appreciate your efforts to authorize the Sikes Act. We are looking forward to working with you and members of the Subcommittee and our other partners during the legislative process to identify and enact any amendment that would approve this most important conservation law.

This concludes my remarks. I will be happy to answer any questions that you may have.

[The prepared statement of Mr. Tuggle follows:]

Statement of Dr. Benjamin N. Tuggle, Chief, Division of Federal Program Activities, Fish and Wildlife Service, U.S. Department of the Interior

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to present testimony on the Sikes Act Reauthorization Act of 2003. The Fish and Wildlife Service appreciates your interest in conserving fish and wildlife resources

on military installations, and the Subcommittee's leadership efforts to reauthorize the Sikes Act.

The biggest land management challenge for the Department of Defense (DOD) may be the need to use its air, land, and water resources for military training and testing while conserving natural resources for future generations. The Sikes Act has provided the Fish and Wildlife Service and the affected States the opportunity to help DOD meet this challenge, and we are pleased to say that we believe DOD has embraced its stewardship responsibilities for the lands it manages. The Fish and Wildlife Service, working with the State fish and wildlife agencies, has established numerous effective partnerships with the military through the Sikes Act, resulting in collaborative natural resource management on installations while the military continues to successfully carry out its missions. We strongly support the reauthorization of the Sikes Act during this Congress to continue and expand these cooperative efforts with military installations.

History of the Sikes Act

The Fish and Wildlife Service, the States, and DOD have long recognized the importance and value of conserving fish and wildlife resources on military lands. Prior to the enactment of the Sikes Act in 1960, the Fish and Wildlife Service worked with DOD on fisheries management programs to develop recreational fishing opportunities on DOD installations. Passage of the Sikes Act formalized these cooperative efforts and, most importantly, gave Congressional recognition to the significant potential for fish and wildlife management and recreation on DOD lands.

Over the decades, the Sikes Act has played an important role to ensure that fish, wildlife, and other natural resources on military installations are conserved in ways that are compatible with the missions of these installations. Subsequent amendments have expanded the authority of the Act to include improving fish and wildlife habitats, protecting threatened and endangered species, and developing multi-use natural resource management plans.

The Sikes Act Improvement Act of 1997 broadened the scope of DOD natural resources programs, integrated natural resources programs with operations and training, embraced the tenets of conservation biology, invited public review, and strengthened funding for conservation activities on military lands. Underlying this commitment to conserve natural resources is the concurrent commitment that the military mission cannot be compromised. The Act required the development and implementation of Integrated Natural Resource Management Plans (INRMPs) for relevant installations by November 18, 2001. The Act emphasizes that the plans are to be prepared in cooperation with the Fish and Wildlife Service and the State fish and wildlife agencies and anticipated a truly collaborative process with full involvement of natural resource agencies. INRMPs also provide for public access to installations for enjoyment of natural resources, when practicable, and DOD seeks public comments on the plans.

The Sikes Act states that INRMPs shall reflect mutual agreement of the installation commanders, the Fish and Wildlife Service, and the State fish and wildlife agencies. Ideally, all parties reach agreement on entire plans, but there is a minimum requirement that INRMPs reflect agreement on elements of plans for conservation, protection, and management of fish and wildlife resources. The Act neither enlarges nor diminishes each party's legal authorities. And it is important to note that INRMPs cannot, and do not, compromise the capability of installation lands to support the military mission.

Fish and Wildlife Service's roles and responsibilities under the Sikes Act

When implementing its responsibilities under the Sikes Act, the Fish and Wildlife Service focuses on: (1) evaluating the impacts of installation mission and activities on fish and wildlife; (2) ensuring that habitat important to fish and wildlife is taken into consideration in the development of INRMPs; and (3) identifying opportunities to enhance fish and wildlife resources for public benefits while accomplishing the missions of military installations. Several statutes guide our involvement in conservation planning, including the Fish and Wildlife Coordination Act, the Endangered Species Act, the Migratory Bird Treaty Act, and the National Environmental Policy Act.

The Fish and Wildlife Service's work on INRMPs is conducted primarily at the Field and Regional Office levels. The Fish and Wildlife Service staff that do this work have large workloads and numerous responsibilities. Despite this, the Fish and Wildlife Service, working with State fish and wildlife agencies and DOD, has had significant accomplishments related to the Sikes Act. In Fiscal Year 2001, the Fish and Wildlife Service expended in excess of $920,000 of appropriated funds and staff hours equal to over 34 full-time employees for work done pursuant to the Sikes

Act. In Fiscal Year 2002, the Fish and Wildlife Service expended over $897,000 of appropriated funds and staff hours equal to approximately 30 full-time employees for this work. The Fish and Wildlife Service's expenditures involved the following activities:

- reviewing and processing INRMPs;
- Endangered Species Act consultation;
- conducting site reviews and interagency meetings;
- providing technical assistance in planning and developing INRMPs;
- providing field technical assistance, such as fish and wildlife surveys and habitat assessments and restoration; and
- conducting INRMP implementation actions, such as population assessment and evaluation, fish stocking, exotic species control, and hunting, fishing, and environmental education programs.

Most often, the Fish and Wildlife Service becomes involved in the INRMP process when a draft INRMP is sent to a field office by a military installation for review and comment. When a Fish and Wildlife Service field office receives an INRMP, it conducts a complete programmatic review of the plan within the Fish and Wildlife Service, including review by the Endangered Species, Fish and Wildlife Management Assistance, National Wildlife Refuges, and Migratory Birds programs. This ensures that the breadth of expertise in various programs is brought to bear on these plans and ensures compliance with the environmental laws administered by the Fish and Wildlife Service.

After comments are exchanged, revisions made, and agreement reached (specifically in regards to the conservation, protection, and management of fish and wildlife resources) between a Fish and Wildlife Service field office and a military installation, the military installation sends a final draft INRMP to the Fish and Wildlife Service's Regional Office. The Regional Sikes Act Coordinator is responsible for ensuring timely review, coordination, and processing of the final draft INRMP and facilitating Regional Director approval of the plan. The Fish and Wildlife Service's agreement to an INRMP is signified by the approval of the Regional Director.

The Fish and Wildlife Service and State cooperation and coordination on INRMPs are a continuing process beyond the agency approval of a plan. INRMPs are reviewed by military installations on a yearly basis and our feedback is requested during the review concerning the implementation and effectiveness of the plans. Every 5 years INRMPs go through a formal review and approval process that involves a public comment period and coordination again with the Fish and Wildlife Service and State fish and wildlife agencies.

The benefits of INRMPs to fish and wildlife resources

The Department of Defense manages approximately 25 million acres of land on its major military installations in the United States, of which 19 million acres are dedicated to Fish and Wildlife Conservation. Limits on access due to security and safety concerns have sheltered many of these lands from development and other adverse impacts. Military lands contain rare and unique plant and animal species and native habitats such as old-growth forests, tall-grass prairies, and vernal pool wetlands. Over 300 threatened and endangered species live on DOD-managed lands. These lands and the species they support are an essential component of our Nation's biodiversity. Recognizing this, the Fish and Wildlife Service has worked extensively with the State fish and wildlife agencies and military installations to develop plans that will effectively conserve fish and wildlife resources and promote compatible outdoor recreation, while enhancing military preparedness through improved stewardship of the land.

The technical expertise of Fish and Wildlife Service employees combined with State fish and wildlife agencies' expertise and responsibilities for resident species and DOD's knowledge of training requirements and their installation's natural resources, allows for an unprecedented opportunity for cooperative management of substantial natural resources. Some examples of how we have seized upon this opportunity follow below:

In August of 2002, the Fish and Wildlife Service, three naval installations (Naval Air Station, Kingsville, Naval Station Ingleside, and Naval Air Station Corpus Christi) and the Texas Parks and Wildlife Department signed a charter for the "South Texas Natural Resources Partnering Team." The vision of this partnering team is to work cooperatively to achieve environmental compliance and maximize natural resources stewardship in South Texas, while meeting national defense requirements. The team has many goals including fostering open communication, promoting habitat stewardship, coordinating natural resource protection into active programs, and integrating natural resource protection in other programs.

The Fish and Wildlife Service has enjoyed a long, productive relationship with Fort Carson, Colorado. Over approximately 50 years, Fort Carson and the Fish and Wildlife Service have partnered to provide sport fishing opportunities, native plant and wildlife research, and native species restoration programs. We have formed a spirit of cooperation and friendship that has assisted both parties in overcoming management barriers. By addressing the entire scope of problems faced by native species, the Fort Carson environmental program is a model for progressive natural resource planning. As part of their habitat conservation efforts, Fort Carson provides full funding for 10 Fish and Wildlife Service field staff positions. This partnership between Fort Carson and the Fish and Wildlife Service provides professional habitat monitoring, INRMP development and implementation, and National Environmental Policy Act review. By funding Fish and Wildlife Service positions dedicated to working on Ft. Carson's environmental management issues, the base has significantly reduced regulatory conflicts and increased the value of its natural resources, while ensuring its mission is not compromised.

The Fish and Wildlife Service and DOD working relationships

Coordination on implementing the Sikes Act has led to productive relationships between the Fish and Wildlife Service, State fish and wildlife agencies and DOD. Following the enactment of the 1997 amendments, the Fish and Wildlife Service and State fish and wildlife agencies exerted tremendous effort to help the DOD meet the November 2001 statutory deadline for the completion of INRMPs for all relevant military installations (approximately 380 installations across the Nation). A majority of these INRMPs were completed and approved by the deadline.

As part of the process of attempting to meet the statutory deadline, in 1999, the Fish and Wildlife Service signed a Memorandum of Understanding with DOD for the "Ecosystem–Based Management of Fish, Wildlife and Plant Resources on Military Lands." It established a policy of cooperation and coordination between the DOD and the Fish and Wildlife Service for the effective and efficient management of fish, wildlife, and plant resources on military lands. The MOU defined what INRMPs must address, identified areas in which the Fish and Wildlife Service has expertise and may be of assistance, and identified the respective responsibilities of DOD and Fish and Wildlife Service.

In Fiscal Year 2001, 32 military installations provided over $4 million to the Fish and Wildlife Service and $402,000 to the State fish and wildlife agencies to support natural resource conservation work on military installations. In Fiscal Year 2002, 21 military installations provided $2.2 million to the Fish and Wildlife Service and $143,000 to the State fish and wildlife agencies. Of the funds provided to the Fish and Wildlife Service in both fiscal years 2001 and 2002, over 60% was provided to support 12–14 full time Fish and Wildlife Service field employees working exclusively on Fort Carson and Pueblo Depot installations in Colorado.

The Fish and Wildlife Service continues to be actively engaged in coordination with the military and State fish and wildlife agencies through the Sikes Act Core Group. The Core Group includes representatives from the DOD and each of the military services, the International Association of Fish and Wildlife Agencies, and the Fish and Wildlife Service's National Sikes Act Coordinator. The interagency Core Group is continuing work on a number of efforts to improve coordination and cooperation among our agencies. For example, in Fiscal Year 2002, the Core Group assisted the DOD in developing revised Sikes Act guidance for the military services. The Fish and Wildlife Service is in the process of finalizing similar national guidance to provide consistency between agencies in interpretation, and direction for implementation, of Sikes Act requirements. Our revised guidance will emphasize the importance of internal and external coordination, conducted in an expeditious manner, to effectively conserve, protect, and manage fish and wildlife resources on military lands.

Additional Opportunities under the Sikes Act

The Fish and Wildlife Service believes that the Sikes Act has provided an important process for affording meaningful conservation benefits to fish and wildlife on military lands. We offer the following thoughts as we look forward to reauthorization.

The Fish and Wildlife Service would like to be more involved in the development and revision of INRMPs, and in the evaluation of the effectiveness and implementation of INRMPs. We are working collaboratively with DOD to help address this. Revised DOD Sikes Act guidance to the military services, issued October 2002, states that military installations will inform the Fish and Wildlife Service and State fish and wildlife agencies of their intent to prepare or revise an INRMP 30 days in advance, and will request our participation. The Fish and Wildlife Service field offices

will participate in the development of INRMPs as much as feasible. The Fish and Wildlife Service wants to work more closely with the State fish and wildlife agencies and to facilitate three-way dialog between military installations, State fish and wildlife agencies, and the Fish and Wildlife Service.

We would also like to perform more thorough reviews of INRMPs, leading to plans that are more robust in terms of providing benefits to fish and wildlife resources, while not compromising the military mission.

Approval of INRMPs is important because it provides DOD with a heightened level of certainty that they are meeting their environmental responsibilities while continuing to provide military readiness training. To aid in the efficient and timely completion and approval of management plans, and to improve the value of those plans to fish and wildlife conservation within constrained resources, the Fish and Wildlife Service and DOD have developed ways to facilitate funding transfers on a reimbursable basis to hire staff whose only duties are related to Sikes Act and other coordination issues with DOD. We would like to ensure that our role in developing and reviewing INRMPs is meaningful and efficient.

Finally, we note that the Administration's National Defense Authorization Act for Fiscal Year 2004 includes DOD's Readiness and Range Preservation Initiative (Section 316). This initiative includes a provision which states that INRMPs developed pursuant to the Sikes Act and that address threatened and endangered species on a military installation, will provide the special management considerations or protection required under the Endangered Species Act and will obviate need for designation of critical habitat on military lands for which such plans have been completed. The Fish and Wildlife Service notes that INRMPs may serve as an effective vehicle through which the military services can comprehensively and pro-actively plan for the conservation of fish and wildlife species and their habitats.

Conclusion

The Fish and Wildlife Service looks forward to continued participation and cooperation with the DOD and State fish and wildlife agencies in maximizing fish and wildlife management potential on military lands, and integrating this potential into broader resource protection, restoration, and management efforts. We will continue our efforts with the military to develop effective Integrated Natural Resource Management Plans that are designed to conserve natural resources and promote public access and recreation, while enhancing military preparedness through improved stewardship and sustainability of DOD lands.

Mr. Chairman, we appreciate the opportunity to share with the Subcommittee this information on the significant opportunities provided under the authority of the Sikes Act. Again, we appreciate and support your efforts to reauthorize the Sikes Act, and look forward to working with you and our partners to identify and enact any amendments that would improve this important law. I will be pleased to answer any questions you may have.

Mr. GILCHREST. Thank you very much, Dr. Tuggle.

Mr. John Baughman, sir.

STATEMENT OF JOHN G. BAUGHMAN, EXECUTIVE VICE PRESIDENT, INTERNATIONAL ASSOCIATION OF FISH AND WILDLIFE AGENCIES

Mr. BAUGHMAN. Thank you. Mr. Chairman, members of the Committee, I am John Baughman, Executive Vice President of the International Association of Fish and Wildlife Agencies. As you know, all 50 of your State agencies are members of our association, along with Guam.

I am here today to share with you the strong support of our association for H.R. 1496, Reauthorization of the Sikes Act, as it applies to military installations.

The 1997 amendments to the Sikes Act, which provide for enhanced management of fish, wildlife and recreational resources on military installations remain of great significance to the State fish and wildlife agencies. Although the opportunity for management of fish and wildlife resources on military installations has always

existed, the 1997 Sikes Act Improvement Act amendments mandate that these resources be managed for the benefit of the public, the natural resources of the installation, and in cooperation with those responsible for management of surrounding land areas.

The principal means of doing this is by the development and implementation of integrated natural resource management plans through cooperation of the Department of Defense installation, the U.S. Fish and Wildlife Service and the respective State fish and wildlife agency.

The many exemplary installations on which integrated management plans embody the congressional intent and direction in the Sikes Act are most often the result of early and excellent cooperation between the three statutory parties, adequate funding to the respective agencies, and the availability of professional staff in all of the agencies with the time and dedication to devote to fulfilling the integrated management plan's objectives.

I can firmly assure you of the commitment of the State fish and wildlife agencies in cooperating with the Department of Defense and with the Fish and Wildlife Service to advance fish and wildlife and habitat conservation on military installations.

There are three areas where we suggest improvements can be applied to the Sikes Act on the ground, none of which require statutory amendments in our opinion. First, the cooperation and consultation among the three statutory partners needs to begin at the earliest stages of conception and design of the integrated management plan for the individual installations as Congress originally intended. Second, the Department of Defense needs to request and Congress needs to appropriate the necessary funds to successfully implement management plans. And third, the Department of Defense needs to ensure that they retain the professional civilian staff necessary to successfully design, develop and implement the management plans.

It seems apparent to us that where mutual agreement on integrated management plans has not been achieved, it is most often because the management plan has been more or less unilaterally prepared by the installation or a contractor, then presented to the Fish and Wildlife Service and State fish and wildlife agencies for concurrence. The two principal statutory tenets of the integrated management plans require that they be prepared, "in cooperation with the Secretary of Interior acting through the Director of the Fish and Wildlife Service, and with the head of the State fish and wildlife agency for the State in which the military installation is located."

The law further provides that the resulting management plans, "shall reflect the mutual agreement of the parties concerning conservation, protection and management of fish and wildlife resources."

Obviously, cooperation of the statutory parties at the earliest stages of conception and development of the management plans is the contemplation of the statute. The Association strongly encourages the Department of Defense to continue to remind the Armed Services of the need for and value of early consultation and cooperation by all three parties. We appreciate the revised Sikes Act implementation guidance published by Department of Defense last

October which makes it clear that early consultation is instrumental in achieving meaningful and successful integrated management plans.

The second recommendation of the association is to encourage the Department of Defense to request and Congress to appropriate additional funds for Sikes Act management plan development and implementation. The Association further suggests that some of these funds be used by the Department of Defense to contract with the State fish and wildlife agency to develop the integrated management plan for the installation in cooperation with the Fish and Wildlife Service and the base.

Third, there are continuing concerns regarding the loss of civilian professional natural resource positions in favor of contracting or outsourcing these functions. We strongly encourage the Department of Defense to reexamine the basis for outsourcing as opposed to retaining civilian staff in these capacities. We believe the functions performed by the Department of Defense professional biologists on military installations are appropriate Government functions. These are long-term programs on public lands, and the fish and wildlife resources found on these lands are held in trust by the State and Federal Governments for the benefits of the citizens.

While some labor-type conservation positions can certainly be contracted out, we strongly support the retention of professionally trained civilian biologists to oversee fish and wildlife and natural resource conservation programs on installations.

In summary, the Association strongly supports H.R. 1497 and reiterates our commitment to working closely with both the Department of Defense and the Service in successful development and implementation of meaningful integrated management plans on installations. The security of our Nation and its fish and wildlife resources both are well served by the application of the Sikes Act to military lands.

Thank you, Mr. Chairman, for the opportunity to share the association's perspective, and I would be pleased to answer any questions.

[The prepared statement of Mr. Baughman follows:]

Statement of John Baughman, Executive Vice Preisdent, International Association of Fish and Wildlife Agencies

Thank you, Mr. Chairman. I am John Baughman, Executive Vice–President of the International Association of Fish and Wildlife Agencies, and I'm here today to share with you the strong support of the Association for H.R. 1497, reauthorization of the Sikes Act as it applies to military installations. The Association applauds the significant progress for fish and wildlife conservation that has been made through the cooperation of the Department of Defense (DoD) installations, U.S. Fish and Wildlife Service (USFWS) and State fish and wildlife agencies since the passage of the Sikes Act Improvement Act in 1997. While improvements can and should be made, and we will suggest some areas for attention, I believe we can all be proud of the conservation benefits achieved from this often unknown and unheralded success story of public lands management on approximately 25 Million acres. Our successes have certainly substantiated that not only is achievement of the military preparedness mission and sound stewardship of the land and its fish and wildlife resources not mutually exclusive, they are indeed mutually necessary and beneficial.

The International Association of Fish and Wildlife Agencies was founded in 1902 as a quasi-governmental organization of public agencies charged with the protection and management of North America's fish and wildlife resources. The Association's governmental members include the fish and wildlife agencies of the states, provinces, and Federal Governments of the U.S., Canada, and Mexico. All 50 states are

members. The Association has been a key organization in promoting sound resource management and strengthening Federal, state, and private cooperation in protecting and managing fish and wildlife and their habitats in the public interest.

The 1997 amendments to the Sikes Act, which provide for enhanced management of fish, wildlife and recreational resources on military installations, remain of great importance to state fish and wildlife agencies. States, as you know, have primary management responsibility and authority for fish and wildlife resources found within state borders, including on most public lands.

Although the opportunity for management of fish and wildlife resources on military installations has always existed, the 1997 Sikes Act Improvement Act amendments mandate that these resources be managed for the benefit of the public, the natural resources of the installation, and in cooperation with those responsible for management of the surrounding land areas. The principal means of doing this is through the development and implementation of the Integrated Natural Resource Management Plans (INRMPs) through the cooperation of the DoD installation, USFWS and respective State fish and wildlife agency. With respect to the fish and wildlife conservation provisions of INRMPs, the Act compels mutual agreement of the 3 statutory partners. The Sikes Act was intended to assure continued and active participation and cooperation with state fish and wildlife agencies for all phases of fish and wildlife management on military installations, from planning and design to implementation and monitoring of the plans.

The many exemplary installations on which INRMPs embody the Congressional intent and direction in the SAIA of 1997 are most often the result of early and excellent cooperation between the 3 statutory parties, adequate funding to the respective agencies, and the availability of professional staff in the 3 agencies with the time and dedication to devote to fulfilling the INRMP objectives. While all of the 3 statutory partners will acknowledge that some problems and issues remain unresolved at some individual installations, I believe that all of the partners are committed to finding solutions to those problems. I can firmly assure you of the commitment of the State fish and wildlife agencies to cooperating with DoD and the USFWS to advance fish, wildlife and habitat conservation on military installations.

There are 3 areas where we suggest improvements can be applied to the application of the Sikes Act on the ground, none of which require statutory amendments in our opinion. First, the cooperation and consultation among the 3 statutory partners needs to began at the earliest stages of conception and design of the INRMP for the individual installation, as Congress originally intended in the SAIA amendments mandating the preparation and implementation of INRMPs. Second, DoD needs to request and Congress needs to appropriate the necessary funds to successfully implement INRMPs. And third, DoD needs to ensure that they retain the professional civilian staff necessary to successfully design, develop and implement INRMPs in cooperation with the USFWS and State fish and wildlife agencies.

First, let me compliment and thank DoD for the revisions to their Sikes Act Implementation Guidance which was published in October of last year. The revisions to this guidance make it clear that early consultation between the 3 parties is instrumental in achieving meaningful and successful INRMPs.

Without belaboring the point, it seems apparent to us that where mutual agreement on INRMPs has not been achieved, it is most often because the INRMP had been prepared essentially by the installation or its contractor, and then presented to the USFWS and State fish and wildlife agency for concurrence. The 2 principal statutory tenets of INRMPs require that they be prepared "in cooperation" with the Secretary of the Interior, acting through the Director of the USFWS, and with the head of each appropriate State fish and wildlife agency for the state in which the military installation is located. The law further provides that the resulting INRMP "shall reflect the mutual agreement of the parties concerning conservation, protection and management of fish and wildlife resources". Obviously, cooperation of the statutory parties, begun at the earliest stages of conception and development of the INRMP, is the contemplation of the statute. Such cooperation should go far to reconcile potential differences, and consensus building and problem solving throughout the process will most likely facilitate the "mutual agreement" required by the statute. The Association strongly encourages DoD to continue to remind the Armed Services of the need for and value of early consultation and cooperation by all 3 parties.

I will acknowledge that some of our State fish and wildlife agencies have not had the staff or budget to participate as fully in the development of INRMPs as the law contemplates. This leads me to the second recommendation of the Association which is to encourage DoD to request, and Congress to appropriate, additional funds for Sikes Act INRMP development and implementation. And, the Association would further suggest that some of the these funds should be used by DoD to contract with

the State fish and wildlife agency to develop the INRMP for the installation in cooperation with USFWS and the base. Mutual agreement would still be required, of course, and the State fish and wildlife agency would have to review the plan through its appropriate chain of command, but especially in circumstances where State fish and wildlife agency budgets are a limiting factor, this contracting by DoD to the state would greatly facilitate arriving at an INRMP that will engender mutual agreement.

Finally, we are aware of continuing concerns regarding the loss of civilian professional natural resource positions in favor of contracting or out-souring these functions. We strongly encourage DoD to re-examine the basis for doing this as opposed to retaining civilian staff in these capacities. We believe that the functions performed by DoD professional biologists on military installation are appropriate governmental functions. These are public lands, and the fish and wildlife resources found on them are held in trust by the state and Federal Governments for the benefit of all citizens. While some "laborer" type skills in carrying out conservation programs can certainly be contracted out, we strongly support the retention of professionally trained civilian biologists in permanent career positions to oversee the fish and wildlife and natural resource conservation programs on installations. We see no difference between the need to retain these functions under permanent professional staff on a DoD installation and retaining these functions under similar type staff on a National Wildlife Refuge.

In summary, the Association strongly supports H.R. 1497 and reiterates our commitment to working closely with both DoD and USFWS in successful development and implementation of meaningful INRMPs on installations. The security of our Nation and its fish and wildlife resources both are well-served by the application of the Sikes Act to military installations.

Thank you, Mr. Chairman, for the opportunity to share the Association perspectives with you, and I would be pleased to answer any questions.

Mr. GILCHREST. Thank you, Mr. Baughman.

What I would like to do is try to clear up some ambiguity that I have regarding the integrated natural resource management plans and a number of other statutes that are probably much older. For example, you have the Marine Mammal Protection Act which impacts a number of military installations, and you have the Endangered Species Act which impacts those installations as well, and you have this integrated natural resource management plan which is to create a management plan for the natural resources and fish and wildlife and also for endangered species.

I think it is a job for us to try to understand which is the best route to take in order to protect wildlife, natural resource areas, and endangered species. One of the best ways, in my mind, to protect endangered species is to create habitat for those species, but habitat in a way that is somewhat different from the statute I guess because a statute deals with an individual species and an individual critical habitat for those species. I think if we get away from the idea of individual species and individual habitat for that species, and just look at a broad range of areas, we would be doing fish and wildlife a favor.

So I guess the question is, when you develop these integrated natural resource management plans, and I cannot get the acronym, INRMP, I guess that is what it is, INRMP? It sounds like Enron. INRMPs or something, I'll say integrated natural resource management plan.

When you are developing these management plans with DOD, with State fish and game, with Interior, how well does ESA and MMPA complement or complicate these management plans?

Mr. DUBOIS. Mr. Chairman, let me go first on that if I might. You have accurately outlined some of the relationships between,

and specifically between the Endangered Species Act and the Sikes Act, and it is important I think to understand why we, in the Department of Defense, believe, and I believe the Department of Interior concurs, why we believe that the integrated natural resource management plans, as mandated by Congress on the Department for the purposes of managing habitat on our installations, why is it better?

Yesterday I was discussing this with Jim Connaughton, the Chairman of the Council of Environmental Quality, and we were looking at it not just as the Sikes Act, per se, but in a more general way, how best to manage habitat and manage wildlife resources. Jim was very good, I think, in saying that it is critical—and this is where the key differences occur between Endangered Species Act and the Sikes Act—it is critical to deal with these issues in an integrated, in a multi-species approach. The Endangered Species Act looks at species, by species, by species. Critical habitat for that particular species, critical habitat for that particular species. On the other hand, the Sikes Act—and I would submit is a better way to manage—it looks at ecosystems. It looks at this issue holistically, and it looks at both ecosystems and land planning.

Now, we could take the Sikes Act, take it out of the context of the military, and one could conclude that is a fairly intelligent way to do it whether it was a military installation or a wildlife refuge, but I would submit that the long-term planning, as I think has been outlined here by Dr. Tuggle, the proactive aspect of Sikes vice the reactive aspect of the Endangered Species Act, points out a very useful difference, if you will, useful to us, useful to the Fish and Wildlife Service, useful for the State and local regulators with whom, as has been testified, we must coordinate. Mr. Baughman's comment that in the past some installations did not do the coordination that they should. I appreciate the fact that Mr. Baughman did refer to my October 2002 memo, where I made it absolutely clear or as clear as I could possibly make it, to the service secretaries that an approach which included the coordination with other stakeholders was the only way to go.

Mr. GILCHREST. Thank you, Mr. DuBois.

Dr. Tuggle, could you comment on how the integrated natural resource plans, these managements complement or complicate ESA or Marine Mammal Protection Act?

Mr. TUGGLE. Mr. Chairman, there is no question that the stewardship responsibilities that the Department of Defense have often times run afoul or run in conflict to some of the other land management activities that we would like to put in place in terms of trying to preserve our natural resources.

I think to echo some of the things that Mr. DuBois has said, we have approached these plans from the standpoint of looking at it as an opportunity to look at the ecosystem and try to manage the ecosystem from the standpoint of what the species actually require. The species by species management of these kinds of properties is extremely difficult because in some instances you may be in a situation where you are managing against one at the expense of the other.

The integrated natural resource management plans provide a fair amount of certainty to the DOD installations primarily because

they have the opportunity to examine what their military preparedness needs are, and at the same time look long term in terms of what they may be trying to manage for particular ecosystem management principles.

We support these plans, I think, primarily because it gives the service an opportunity to look at these habitats from an oversight standpoint and a consultation standpoint with DOD, and help them make sure that the management principles that they are applying on their installations don't compromise the main mission for the military, but at the same time, provide the augmentation that ensure that these resources will have habitats into the coming generations.

Mr. GILCHREST. Thank you very much.

Mr. Baughman, would you care to comment?

Mr. BAUGHMAN. Thank you, Mr. Chairman. I think all of us would be derelict if we didn't look for some opportunities between the Endangered Species Act, the Marine Mammals Act, and the Sikes Act, to come up with some efficiencies and better ways of doing business, and certainly the concept in the Sikes Act offers that avenue to look at the habitats and the species as a community. Those are things we should seize upon, look at ways to be more efficient to streamline the Act.

As important as looking at the relationship to the Endangered Species Act, which may actually require some additional policy work to get things working smoothly, even more important I think are some of those species at risk that are not on that list yet that could be, and to come up with ways that the Department of Defense and the bases receive credit and recognition and some assurances that what they are doing will keep them out of that Endangered Species arena, and we have worked with the States and with the service on some methods for developing what we are calling State Conversation Agreements, and I think the technical part of preparing these plans fits very nicely with what we anticipated in other areas and States to protect some of these key habitats and the assemblages of species in there. So I think we have a tremendous opportunity, and actually some of the work done on these bases can be a model for some of the things we can do with endangered species, and preventing endangered species elsewhere in the country.

Mr. GILCHREST. Thank you very much, Mr. Baughman. Maybe we can replicate that in other areas, and hopefully not get to the point where the sole open space in any community happens to be the military facility. So these integrated management plans might be replicated in other places, so there is more than just the military base for critical habitat that is left.

I will yield now to the gentleman from New Jersey, Mr. Pallone, for any questions he may have.

Mr. PALLONE. Thank you, Mr. Chairman.

My questions are to Mr. DuBois, and I have a few of them, so if you could try to answer quickly. I know I shouldn't say that, but I am going to because the time is limited.

As you know, a DOD memorandum was leaked in the beginning of the year that laid out a long-term strategy of which the Readiness and Range Preservation Initiative is an integral part. This

year exemptions for the military to five environmental laws including RCRA, CERCLA, Marine Mammal Protection Act, ESA and the Clean Water Act have been requested, and one of these exemptions alluded to for the future would be a national security exemption for the Sikes Act.

My first question is, is the effort by the DOD to substitute INRMPs for critical habitat designation simply the precursor to then seeking exemption from the Sikes Act all together?

Mr. DUBOIS. Mr. Pallone, I just wanted to clarify. We are not seeking any exemptions under the Clean Water Act. We are seeking a clarification to the Clear Air Act with respect to the time necessary to achieve air quality within certain areas.

Mr. PALLONE. OK, but what about Sikes?

Mr. DUBOIS. We are not addressing the Sikes Act in our Range and Readiness Preservation Initiative. We did not request a national security exemption under the Sikes. We did, in response to last year's questions to me from the Congress with respect to the Marine Mammal Protection Act, which is one of the statutes that does not currently have a national security exemption or waiver. We have in this year's submission to Congress included language which would afford a national security exemption under the Marine Mammal Protection Act, in response to questions—

Mr. PALLONE. So it is definitely not Sikes, even though that has been alluded to?

Mr. DUBOIS. Correct. It is not Sikes.

Mr. PALLONE. We can rest assured.

Mr. DUBOIS. Yes. And point of fact, as I indicated, we would like to see the Sikes Act be the operative act, as Congress mandated originally, with respect to habitat designation and land use management on installations and not the Endangered Species Act.

Mr. PALLONE. Let me ask you in that regard. I understand what you are saying, but I guess I have two questions. One is, what is the legal basis at this point for using INRMPs instead of critical habitat or ESA designation? And then I guess secondarily, why not do both?

Mr. DUBOIS. Well, we asked a similar question because when we were honoring our obligation under the Sikes Act, the mandate of Congress to execute those integrated natural resource management plans on installations in coordination with the Fish and Wildlife Service, we were under the impression by virtue of the legislative history here, that the INRMPs under the Sikes Act would suffice with respect to habitat designation. Now, according—

Mr. PALLONE. Wasn't there a court opinion recently that said the opposite?

Mr. DUBOIS. The court case quite correctly—actually, I think it pertained to the Forest Service, but we see it as applicable to our situation also—where a Federal judge held that no matter how good an integrated natural resource management plan, no matter how well received, designed, approved by Fish and Wildlife, concurred with the State regulators, no INRMPs could ever substitute for critical habitat designation.

Mr. PALLONE. So that is the law. Are you still—you are obviously—

Mr. DUBOIS. That is why we have asked Congress to clarify.

Mr. PALLONE. In other words, you want us to change the law, I understand.

Mr. DUBOIS. That is correct.

Mr. PALLONE. But right now you do both essentially. In other words, right now you feel that you are doing the INRMPs because you want to but you still—

Mr. DUBOIS. Well, Congress mandated that we do the INRMPs.

Mr. PALLONE. But in other words, right now you are doing both essentially?

Mr. DUBOIS. We are doing the INRMPs, as mandated by Congress to the military, and there are situations where we could get sued or—excuse me—the Fish and Wildlife Service gets sued for having approved or concurred in our INRMPs, and they are then stopped or enjoined from, as we both are, from moving forward with the implementation of that INRMPs because the Endangered Species, they say, the third party—

Mr. PALLONE. I don't mean to keep interrupting. I am just running out of time.

So what you are saying, if I understand it, is where the ESA is applicable and the critical habitat designations are being made, then you don't do the INRMPs; where that is not the case, you do the INRMPs?

Mr. DUBOIS. We do the INRMPs, and we were suggesting that the INRMPs are a better way to designate habitat and manage it, not the ESA.

Mr. PALLONE. What you would like to do is get rid of the critical habitat designation and just do the INRMPs.

Mr. DUBOIS. We would like Congress to clarify that INRMPs are the best way for the military to pursue habitat management and designation, not ESA.

Mr. PALLONE. And you would not advocate continuing with the status quo where you have to do the critical habitat where applicable and you do the INRMPs where it isn't?

Mr. DUBOIS. Our view would be that the INRMPs is better to manage and designate.

Mr. PALLONE. For all situations, for all those situations?

Mr. DUBOIS. For the situations—remembering too that—

Mr. PALLONE. Just tell me why again. What is the problem in doing both? What is the problem of the status quo in the sense that you would have to do the critical habitat where it is applicable and doing the INRMPs where it isn't? Why do you see that as a problem?

Mr. DUBOIS. Well, as a practical matter, if we have designated habitat under the Sikes Act and are accomplishing an objective that the ESA would like us to accomplish, but doing it better, as we discussed, multi-species not individual species, and—I will be very blunt about this—Congress needs to clarify the law by virtue of the fact that we are now being restrained by certain court actions brought by third parties with respect to the utilization of lands designated by Congress for military training, such as the Camp Pendleton situation. The Fish and Wildlife Service and the Marines had agreed upon an INRMPs at Pendleton. They were sued. Fish and Wildlife Service was sued. That was insufficient. The Endangered Species Act, where it to be allowed—and I will

defer to Dr. Tuggle here—but 57 percent of Camp Pendleton could arguably, under the Endangered Species Act, be totally restricted from training. The integrated natural resource management plan would say that there can be a balance with respect to the management and use of that land, not totally restricted as would be the case under Endangered Species. But I want to defer to Dr. Tuggle in this regard.

Mr. TUGGLE. I am not sure that I want to be referred to. I think our position primarily is one that we look for the conservation benefits. The integrated natural resource management plans give us a lot more flexibility in terms of how we deal with these species on an ecosystem basis. The plans that we have that are in place that truly do address our special management considerations and protections, we feel very strongly would substitute for critical habitat designation.

Mr. PALLONE. Thank you.

Mr. GILCHREST. Thank you, Mr. Pallone. And we can have a second round of questions if there are any more that you might have.

Mr. Cunningham?

Mr. CUNNINGHAM. Mr. Chairman, I am a guest, and I wouldn't take my position before the gentlelady from Guam, and I would yield to her. And then as a guest, I would like to ask some questions, but I would yield to the gentlelady if that is all right with the Chairman.

Mr. GILCHREST. The gentlelady from Guam is recognized.

Ms. BORDALLO. Thank you very much, Congressman.

I have a couple of questions for Mr. DuBois. Is that the way to pronounce your name?

Mr. DUBOIS. Yes, ma'am.

Ms. BORDALLO. In follow up to Mr. Pallone's questions, in light of perhaps DOD's pursuit in the future to provide for a national security exemption in the Sikes Act. If the Department is concerned with critical habitat designation, why hasn't the Department utilized the national security exemptions already provided for in the ESA and the Sikes Act?

Mr. DUBOIS. This is a question, of course, that we have been asked many times. One must remember that the Presidential waiver or a secretarial national security waiver is to be used in extremis. In other words, when the paramount interests of the United States, as the lawyers will tell you, is at stake, and one must remember that we cannot come to the President or the Secretary of Defense on a daily basis asking for and exemption for a training exercise at Camp Swampy tomorrow afternoon.

One of the other problems that we face—and I don't mean to be flippant about this—one of the other problems that we face is that asking for an exemption is asking for relief almost after the fact. If we are sending, as we are today, our sons and daughters into harm's way in Iraq, I would submit that asking for an exemption for training them, it is a bit late. They are already on their way. We need to be able to train them every day, nearly 365 days out of the year, in anticipation that some day, unfortunately, the President will have to commit troops into combat. Again, you have on either end of the spectrum—on the one end you could say, well, use your national security exemptions for all your training exercise.

Well, that would mean every day going into the Secretary and into the Oval Office, where it is a Presidential exemption requirement, asking for a training exemption or waiver.

On the other hand, if we were to ask for a very broad waiver, all training exercises at Fort Irwin or Anderson Air Force Base in Guam for an entire year, the breadth of that kind of request would inevitably foster lawsuits trying to enjoin us from doing so. So it is a useful tool but in a very narrow sense, and we do not believe its utility works in the situation that we are facing today.

Ms. BORDALLO. Perhaps there wouldn't be any need for this particular exemption.

Mr. DUBOIS. The only national security exemption that we are asking for this year, and it was quite frankly in response to a request from I believe the Senate Armed Services Committee, was to include it where it didn't exist in the Marine Mammal Protection Act. So at their request, we included it, but as I indicated, I don't think that it has a high degree of utility with respect to the issues that we are faced with every day.

Ms. BORDALLO. The second question I have, Mr. Chairman, is also for Mr. DuBois.

You mentioned in your opening statement the RRPI request of the Department of Defense to amend the ESA to, quote, as you said, "prevent duplicating conservation management work," and you further stated that INRMPs would serve as adequate substitutes for ESA critical habitat designation under appropriate circumstances.

Where and when might there be inappropriate circumstances?

Mr. DUBOIS. Not being clairvoyant I don't know that there are—most of the circumstances that I can think of that I have been exposed to—and I have been exposed to and I visited 92 or 93 military installations and training ranges in this responsibility that I now have. I believe that INRMPs are going to be applicable in almost all circumstances. I would submit, however—and this may be in partial answer to Mr. Pallone's question—there may be situations where the Endangered Species Act is more appropriate, but we think the primary responsibility for critical habitat designation and management ought to be mandated to the Department from the Sikes Act and not the ESA. I suspect however that in the consultation, which is required under Sikes, with Fish and Wildlife Service, with State regulators, there might be circumstances where they say aspects of the Endangered Species Act need to be incorporated in the INRMPs program that we would be designing, and that I would not reject.

Ms. BORDALLO. Thank you.

Thank you, Mr. Chairman.

Mr. GILCHREST. Thank you.

The gentleman from California?

Mr. CUNNINGHAM. Thank you, Mr. Chairman, and thank the Committee for allowing me to even be here.

Years ago we established a program with Lew Deal. It was based on Lew Deal's entire program. I didn't invent it. I wasn't the originator of it. It was Colonel Deal's. But what it did, it enabled disabled sportsmen to participate in recreational activities on military bases. I think it has been marvelous. I have witnessed individuals

with disabilities and seen firsthand the things that they can do, like I mentioned going down on a dock with a wheelchair and having a rail there so you could fish and not be afraid that you were going to fall in.

But one of the concerns is that many of the base commanders aren't aware of the program, and I would say, Mr. DuBois, that if you could, in a directive or something, push this for our disabled sportsmen, both military and civilian, I think it would help the issue. Would you be willing to do that?

Mr. DUBOIS. Of course, Mr. Cunningham. In fact, last summer, in August of 2002, in response in no small measure to letters that I had received from paralyzed veterans and others who wanted to use, where appropriate, our lands and piers and so forth, I issued a policy memo to the service secretaries, to the military departments, and I didn't want to tell them, as they say in the old country, how to suck eggs, but I said to them, "Look, you have the encouragement of the Secretary of Defense to implement the provisions of the Sikes Act," and I enumerated them Section 103, "that is to say, provide persons with disabilities access to the same outdoor recreation opportunities, including fishing, hunting, trapping, wildlife viewing, boating and camping, as it is afforded to the general public."

Now, we have worked closely with these organizations, the PVA and others, as I indicated, to accept donations of various items of equipment the would enable disabled folks to use these installations, and just as an example, Camp Lejeune, Naval Weapon Station Yorktown, Little Rock Air Force Base Arkansas, Naval Air Station, Meridian, Mississippi, all have accepted donations. There are plans at Fort Chaffee, Fort Benning, Fort Bragg, MacDill. This is a program that is not only enthusiastically, as you have indicated, sir, enthusiastically received by sportsmen, but there are also various Members of Congress, in particular yourself, who have reminded us and help us in this regard, and I do thank you.

Mr. CUNNINGHAM. Thank you, Mr. Secretary, and I would say I went through flight training at Meridian. The only thing open on Friday night is Sears.

[Laughter.]

Mr. CUNNINGHAM. So you have to find something to do there.

My next heartburn I think is I also sit on the Defense Appropriations Committee and every single one of the four stars have testified that training has been inhibited on their bases, both in the air, the land and the sea, to extreme measures in some case. Pendleton was, for example, mentioned. Right now if you want to use a sea invasion, and coming ashore, they actually have to climb out of their landing craft, after they hit the beach, they have to walk through a very narrow path to go over onto the other side where they can train. They can't even dig foxholes. You see on TV these kids—I mean there is an art to it, especially in different kinds of terrain. They can't even dig foxholes, and in some areas the troops are literally carrying cardboard boxes to simulate tanks. And this type of training is why I am alive today. I flew in two war zones, and I am alive today, even coming down in a parachute, the training of how to land in the water, and they didn't want us to use dye. I wanted to use shark repellant myself coming down. Those kind

of things keep our kids alive, and I think there is a strange dichotomy in Members of the Congress, and quite often you will find members, because of their districts or whatever it is, have a very low rating on supportive defense, but a very high rating on environmental issues which often are in conflict.

I love to hunt and fish, and most of the game wardens I grew up with in Missouri were outdoorsmen and fishermen, but it seems to me that many of them have been replaced with young kids that come out of our colleges and universities who have more of an environmental non-use, anti-hunting, than people like Mr. Sikes, that love the outdoors, and I think there is a conflict there, and that is why I support having a waiver for military training because I believe it keeps our kids alive.

The Endangered Species Act in California has stopped us from doing a lot of things. In some areas that is good, but I can name for you 100 different things that have hurt people that manage the land better than anybody else, and they are our ranchers, our farmers and our military. They can't, in Pendleton, the only are we really have desert tortoise is where we have been training for the last 80 years, in Pendleton, and the tortoise love it there. They survive there. They have been there in all of this training, with tanks and things running around, for 80 years, but yet they want to stop the training in a lot of these areas, and it is a strange dichotomy as far as wanting to train our kids.

I would read to you here. It said, "INRMPs must be prepared in cooperation with FWS," and then up here it says in the testimony, "Critical habitat designation typically duplicates the protections already provided in jeopardy, and FWS has been inundated with citizen lawsuits challenging its failure to designate critical habitat." That is what I am talking about. Even though we meet the requirements, the extreme environmental groups still come in with lawsuits which inhibits our training.

Mr. DUBOIS. Yes, Mr. Cunningham. And this refers I think in some measure to Chairman Gilchrest's comment about, are we in conflict or not? There is a conflict. Now, no one in the Defense Department, certainly not myself nor Secretary Rumsfeld, has suggested that we are trying to exempt ourselves from the activities that normally take place with respect to the environmental statutes of this country. We are carefully, narrowly crafting clarifications that we hope Congress will adopt that pertain solely to operational ranges and training and readiness activities.

Now, you and Chairman Gilchrest and I share something. We were all soldiers once and young, and we all trained with live-fire ammunition, we all trained before we went into combat, all three of us in Vietnam, and I suspect that in some way, as you have indicated, the three of us are sitting here today because of that effective live-fire training. No greater obligation does the Secretary of Defense have than to provide that to the young people in uniform today.

Camp Pendleton, as you pointed out, 17 mile beach, less than 1,500 meters today are unrestricted for training. The artificiality that now takes place at places like Camp Pendleton, coming ashore as a combat unit to effectively storm an area inland, they have to stop, either walk down a path with like police ribbons on either

side of it, then start their combat training again, stop, get in a truck, go on a road, get out. This kind of artificiality is clearly not good. What is the level of not good, I can't tell you.

Let us be perfectly clear. Our troops in Iraq have demonstrated absolute superb performance. The question is not whether those units have a high level of readiness by virtue of the training they received here in the United States, but whether or not the training lands that have been set aside by Congress for this purpose can continue to provide a high degree of fidelity where we can continue to use live ammunition. This is what we are really faced with today.

Mr. TUGGLE. Mr. Cunningham, may I add something to this?

Mr. CUNNINGHAM. Yes.

Mr. TUGGLE. I think that we continue to talk about Pendleton as if it is the epitome of this operation not functioning properly, and I—

Mr. CUNNINGHAM. I can talk to you about Mirimar also.

Mr. TUGGLE. And I would not disagree that we have our issues out there, and most of them are in California. But I would also offer that we have been working diligently to try to work out these problems with the military. The opportunity to talk to them early in the process, to be sensitized to what their military needs are, help us to stay out of these quagmires in terms of what the military needs to have their operations being run at a timely fashion, to train our young men and women for combat.

I don't want to be in a situation where we are simply saying that integrated natural resource management plans are not effective, because they are. They provide a mechanism for us to plan. They provide a mechanism for us to conserve, but they also provide an opportunity for us to identify problems, particularly as it relates to endangered species, early in the process so that we can develop methods by which we can employ these operations and still preserve these habitats, and I agree with you—

Mr. CUNNINGHAM. If the gentleman would yield, I support the integrated natural resource management plans. My problem is where they go awry and we allow the extreme issues to take over, override the training. That is my only heartburn issue.

Mr. TUGGLE. And I would agree with you, and I would submit that when we have the opportunity to sit down early in the process and consult with these military installations, the opportunity to work out those differences are a lot greater.

Mr. GILCHREST. Thank you, Mr. Cunningham.

I have just one other question. I would like to make a comment. If you are 85, then, Ray, we are still relatively young. So probably living quite a distinct different lifestyle now than we did 40 years ago. I was stationed at Camp Pendleton and Camp Lejeune and all these other places, and we drove tanks, and we used live fire, and we dug fox holes, and we did all this including in places like Vieques and numerous other facilities.

But we didn't have a concept or an understanding of an ecosystem back then, and it was also a lot more habitat back then for species 40 years ago. So it is the loss of habitat across the civilian areas of this country that makes it more critical and a sense of urgency to save species wherever we can, and fortunately or

unfortunately, many of our open spaces that are near built-up areas are military facilities. So what we will try to do as we go through a consideration for amending the Sikes Act is to understand the absolute urgency for training, which is critical, also understanding that an informed recognition of habitat for a species is an important arena for us to stay involved in, and so we will. We will try to make that critical balance between habitat and training on military installations, and in a broader sense, work even more diligently and harder to use those kind of ecosystem concepts that you are implementing on the military facilities for lands around the country. We had a concept of no net loss of wetlands about 10 years ago. I think that the concept of increasing wetland acreage and increasing habitat is an important issue that we need to deal with. But we will work with all of you to try to balance what is clearly an important issue here.

If you could all just briefly comment on outsourcing, which is another critical issue that we have, from your individual perspective, outsourcing of contracts for professional biologists, is it a good thing? Can it be done? Some people are asking for an amendment to establish a moratorium on contracting out and outsourcing authority. So just a quick comment on the idea of outsourcing.

We can start with Mr. Baughman.

Mr. BAUGHMAN. Thank you, Mr. Chairman. The thing that concerns us with outsourcing is that part of it is a lack of dedication, a lack of continuous dedication that you might get with a turnover of biologists overseeing these programs. Most companies just make a profit. When you have people on staff, you ensure the continuity of the program, and we feel that there is more of a dedication to that resource. Like it or not, I think a lot of these people, they develop a personal ownership for those resources, and we think it works better.

Mr. DuBois mentioned the fact that certainly we wouldn't want to not look at competition in some cases, and that competition which would involve the government as well as private contractors. I think there certainly is room for that competition in most cases. I think the Government can do that job very well and compete, but I think that dedication and continuity are our big concerns.

Mr. GILCHREST. Thank you.

Dr. Tuggle.

Mr. TUGGLE. I would echo my colleague from International's statements earlier, and I would defer to either of them. But I would also share with you that we have at least anecdotal evidence that when we receive integrated natural resource management plans in a draft condition for our initial review, generally they are better when they are prepared by these professionals that are at the installations for the very same reasons that we are talking about. They are the ones that are on the ground. They have the long-term memory. They are in a place where they understand what those management implications are in terms of not only what takes place on the installation, but also the surrounding environment outside of the fences of the installation.

Mr. GILCHREST. Thank you, Dr. Tuggle.

Mr. DuBois?

Mr. DUBOIS. I think that, as I indicated, in those cases where the natural resources management decisions to be made reflect issues of enforcement or reflect issues of value judgments at the managerial or policy level, policymaking levels, the Department will ensure that these decisions are made and continue to be made by Government employees.

But where the work to be done is more in the nature of a service, the performance of field surveys, the implementation of agreed-upon habitat improvement projects, routine timber stand thinning, for instance, I think it is appropriate to decide on a case-by-case basis whether the work ought to be performed best and most efficiently by civil servants or by Federal and State agencies, by NGO's or by the private sector.

But in no case, however, will we compromise our capability to ensure the protection of the resources entrusted to us.

Mr. GILCHREST. Thank you, Mr. DuBois.

I will yield now to my good friend from New Jersey, Mr. Pallone.

Mr. PALLONE. Thank you, Mr. Chairman. I wanted to ask Mr. DuBois a couple of questions, and then I wanted to go to Mr. Tuggle.

Mr. DuBois, does the DOD have data showing the difference in either military readiness or achievement of conservation goals when a critical habitat designation is in place as opposed to an INRMP? Do you have data that shows that difference?

Mr. DUBOIS. Mr. Pallone, as you know, you have asked I guess two important questions. One is data pertaining to military readiness. Pursuant to the GAO's request and Congress's request of me last year, I put into place an effort to try to quantify, as I indicated, there is military unit training readiness reporting, which we do have. But what we don't have—and GAO pointed this out—we don't have readiness reporting for the facility, the training range itself. The Marines and the Army, in separate efforts, have tried to quantify this and put into place ways to be able to effectively report to the Secretary and ultimately to the Congress. So that is one area that we are trying to do better.

Mr. PALLONE. Well, let me ask you this. You mention this GAO report. This is the one in March of this year?

Mr. DUBOIS. This was a GAO report from 2 years ago.

Mr. PALLONE. But the GAO report from 2 years ago said that the readiness reports didn't indicate the extent to which environmental regulations restrict combat training, right? But then there was another one in this March that said that a new comprehensive reporting system to improve the accuracy or readiness assessment is still years away. 2007, I guess. How are we going to evaluate to the extent to which these critical habitat designations have restricted training? I mean, we won't be able to—

Mr. DUBOIS. We have extensive evidence, and I believe the GAO report indicated there is a serious impact on the ability of these training ranges to provide—I think it is even on page 9, if I remember correctly, because I had to quote it when I was testifying in front of the Senate—there have been and continue to be impacts, negative impacts on training and readiness.

The extent to which—and I think it is important to clarify a mistake made by the Washington Post recently, where—

Mr. PALLONE. You can talk about the Washington Post, but you know what I am trying to get at. I understand there may be some impacts, but you are saying, "We would rather do the INRMPs than the critical habitat. We want legislation to clarify that." But how can I evaluate that as a Member of Congress unless we have something that says how one system versus the other impacts readiness? I am not going to get that. How do I move forward with any kind of legislative remedy until I have something to compare. That is what I am asking.

Mr. DUBOIS. It is a valid question, and we have evidence today, and we will have better evidence by the end of this year, on the impacts, the negative impacts on our ability to train, on our ability to use these training ranges effectively with a high degree of fidelity, negative impacts on the basis of the third party lawsuits that have been brought against us, whether it is under endangered species or CERCLA and RCRA, as was the case in Fort Richardson in Alaska, as was the case in the Migratory Bird Treaty Act that Congress did act on last year.

Mr. PALLONE. Are you going to put in place—again, I am not trying to be difficult, but are you going to try to put in place some kind of reporting system or some way for me to make this evaluation?

Mr. DUBOIS. Yes.

Mr. PALLONE. When do you think we will get that?

Mr. DUBOIS. I do not believe I will have that information even in its most preliminary form, until sometime in late summer or early fall.

Mr. PALLONE. OK.

Mr. DUBOIS. And I am answering you honestly.

Mr. PALLONE. No, that is fine.

Mr. DUBOIS. The issue is joined. I think Congressman Cunningham made the comment about years ago—excuse me—Chairman Gilchrest, we didn't know what an ecosystem was. 25 years Secretary Rumsfeld and I were in the Pentagon. Encroachment wasn't a term in our military—

Mr. PALLONE. I understand. I am not being critical. I am just saying, if you think that sometime later this year you will be able to put some system in place to make that evaluation, the end of this summer or—

Mr. DUBOIS. Yes. As I indicated, the Marines already have a system. We are trying to figure out is it applicable to the Army and the Air Force and the Navy. For those of you who know, each culture is slightly different, and they don't necessarily embrace one—

Mr. PALLONE. I know. I am preparing for my own purpleization at home with BRAC, so I know what you are talking about.

Thank you, Mr. Chairman.

Mr. GILCHREST. Thank you, Mr. Pallone.

The gentlelady from Guam?

Ms. BORDALLO. Thank you very much, Mr. Chairman. I have a couple of questions again for Mr. DuBois.

This is on contracting work. When contracting out work, have you used Circular A-76, and if so, in roughly how many instances have public employees won in those public/private competitions?

Mr. DUBOIS. Yes, ma'am. Under the Sikes Act my recollection is that we are proscribed from using A-76. Therefore, to the best of my knowledge, no A-76 action has been taken with respect to natural resources services or environmental services functions. Having said that, A-76 is not the only way that one can outsource or compete functions in the Department. Now, I understand, according to my notes here, during the past 5 years, there were 292 positions competed which fell under the category, quote, "Environmental and Natural Resources Services," end quote, function. 59 of those ended up being won by the private sector. Now, given that this function code is much broader than simply an INRMP position, I cannot answer you with details, but I would suspect that there are obviously fewer than 59 positions have gone to the private sector.

Ms. BORDALLO. Out of the 259?

Mr. DUBOIS. Out of the 292, fewer than 59—59 were positions that had gone to the private sector, but again, because it is a large general category, there would arguably be less than 59.

Mr. GILCHREST. Will the gentlelady yield just for a quick question?

Ms. BORDALLO. Yes, of course.

Mr. GILCHREST. Are there any private contractors doing any INRMPs right now?

Mr. DUBOIS. I don't know the answer to that. I take it for the record, Mr. Chairman, and will find out. I do not believe so, but if my colleagues have evidence to the contrary, I will take it under advisement.

Mr. GILCHREST. I yield back.

Ms. BORDALLO. Thank you, Mr. Chairman..

Do you believe, sir, that work that involves natural resource related activities is inherently governmental or that there is commercial for profit vested interest in conservation work?

Mr. DUBOIS. As I indicated, any time there is a managerial decision to be made, a policy decision to be made, an enforcement decision to be made, they are inherently governmental and will not be competed. But issues like timber land thinning, as I indicated, field surveys—

Ms. BORDALLO. Technical work.

Mr. DUBOIS. What I referred to as services that are not—excuse me, I don't mean to be tautological about this—but inherently governmental, I think we should have an opportunity to compete. Remember, in local areas, as in many cases in the country, there are environmental organizations that are every bit if not better qualified on a technical and scientific basis that give us advice and counsel and consult to us. Therefore, I see benefits by contracting out some of those functions.

Ms. BORDALLO. Thank you. Thank you, sir.

Mr. GILCHREST. Thank you. We have some other questions. We are running out of time. We have another panel. So what we would like to do, gentlemen, is to follow up over the next day or two, and send those questions to you, myself and Mr. Pallone and any other member on the panel, in the hopes of getting a timely response. And there are some other critical issues that we would like to continue to pursue via the mail or telephone conversations, so we can pursue all of these issues.

Thank you very much for testifying this morning. We appreciate your comments, and they have all been very, very helpful.

[Pause.]

Mr. GILCHREST. The next panel is Mr. Chester O. Martin, president, National Military Fish and Wildlife Association; Mr. Gene Rurka, Chairman, Humanitarian Services Committee, Safari Club International; Lieutenant Colonel A. Lewis Deal, USMC [Retired], director of Outdoor Sports Development, Paralyzed Veterans of America; Mr. Dan Meyer, general counsel, Public Employees for Environmental Responsibility.

Welcome, gentlemen. We look forward to your testimony. We appreciate your attendance here this morning, and we will take all of your comments into consideration as we go through this next round of reauthorization for the Sikes Act.

Mr. Martin, you may begin, sir.

STATEMENT OF CHESTER O. MARTIN, PRESIDENT, NATIONAL MILITARY FISH AND WILDLIFE ASSOCIATION

Mr. MARTIN. Good morning, Mr. Chairman and Committee members. As president of the National Military Fish and Wildlife Association, I thank the members and staff of this Committee and Subcommittee for the opportunity to testify regarding the Sikes Act and its impact to National Resources Management on military lands of the United States. I specifically thank Congressman Gilchrest for the invitation to speak at this hearing.

The National Military Fish and Wildlife Association is an organization whose mission is to support professional management of all natural resources on military lands and waters of the United States. Our membership represents the biologists, foresters, agronomists and other natural resource specialists who are responsible for professional management of fish and wildlife, forests and timber products, soils and ground cover, habitat restoration, rangeland stabilization, outdoor recreation and all other programs that relate to the conservation of natural resources on Defense lands.

As previously stated, the Department of Defense manages approximately 25 million acres of land in support of the military mission. These are lands dedicated to the purpose of national security and providing a training and testing platform for our Nation's soldiers, sailors, Marines and airmen who depend upon these lands to ensure their combat readiness.

As a Vietnam War veteran, I am well aware of the need for training on a natural landscape. If we are to sustain quality training and testing on the lands and waters that we currently possess, we must ensure that the military landscape is maintained in a condition where realistic training and testing can continue without interruption.

The centerpiece of natural resources management on military lands is the Integrated natural Resources Management Plan or INRMP, as I will refer to it in my testimony. The INRMP is a written document, developed in cooperation with the State wildlife agencies and the Fish and Wildlife Service that establishes management priorities for natural resources and ensures compatibility with the defense mission of the installation.

The intent of Congress was absolutely clear in the 1997 Sikes Act amendments. INRMPs must be implemented. Implementation of INRMPs is critical not only for appropriate conservation of natural resources, but also for protection of the military mission. The requirement for "no net loss" of military training and testing capability of the land ensures that our Defense needs will be sustained.

Unfortunately, while DOD has generally recognized the requirement to fund and implement INRMPs, the reality of the situation is that the services have failed to fully fund implementation of INRMPs. "Must Fund" designation means very little if DOD fails to fund the projects. We are, in fact, aware of cases where the services have provided funding for as little as 20 percent of the annual "Must Fund" INRMP requirements.

Failure to fund and implement the plans remains a threat, since the Sikes Act contains no compliance provisions. When compliance provisions were suggested during negotiations for the 1997 amendment, DOD made commitments to this Committee to fully fund and implement INRMPs, but the past 5 years has demonstrated that the services did not live up to the DOD's promise. Our association feels that it may be necessary to include some sort of compliance provisions in the Act should DOD fail to fully fund and implement INRMPs in the future.

Another issue of critical importance to us is the current Sikes Act requirement that DOD use "sufficient numbers of professionally trained Natural Resources management personnel and Natural Resources law enforcement personnel" to carry out the preparation and implementation of INRMPs. This is tied to the language in Section 1 of the Sikes Act, where the clear, concise language precludes the use of OMB Circular A-76 and any successor process to "contract out" services necessary for implementation and enforcement.

Some military branch leaders have implied that the Fair Act overrides the Sikes Act and that there is no requirement that onsite Government Natural Resources professionals implement the plans. The National Military Fish and Wildlife Association emphatically disagrees. We recommend that these two sections of the Act be brought together and that they further define onsite management and enforcement of natural resources as inherently governmental. We further recommend that Congress consider including language to establish a moratorium on further outsourcing of Natural Resources management positions at installations.

The Association also continues to support access to military lands for all appropriate public uses, such as hunting, trapping and fishing. We continue to support the requirements of the Disabled Sportsmen's Access Act of 1998. To the extent that public access is allowed, disabled sportsmen's access should remain a priority.

We also support the concept that the Sikes Act should continue to include an authorization for the Department of Interior and State agencies that assist DOD in preparation, review and implementation of INRMPs on military lands.

One final thing. The current Sikes Act has been amended many times over the last 40 years, but we consider the 1986 and 1997 amendments to be the most significant. Both amendments were championed by Congressman Don Young of Alaska, and we would

consider it entirely appropriate, should the name of the Act be changed to reflect Congressman Young's contribution. Whether the Act becomes known as the Sikes-Young or Young-Sikes, we believe it is an honor that is richly deserved.

In conclusion, next to our soldiers, sailors, airmen and Marines, our military lands, airspace and off-shore areas are our most valuable assets. The Sikes Act is critical to their protection.

The remainder of my testimony may be found in my written report. Thank you again for the privilege of speaking at this hearing.

[The prepared statement of Mr. Martin follows:]

Statement of Chester O. Martin, President, National Military Fish and Wildlife Association

Good morning Mr. Chairman, Committee members. As President of the National Military Fish and Wildlife Association, I thank the members and staff of this Committee and Subcommittee for the opportunity to testify regarding the Sikes Act and its impact to natural resources management on military lands of the United States. I specifically thank Congressman Gilchrest for the invitation to speak at this hearing.

The National Military Fish and Wildlife Association is an organization whose mission is to support professional management of all natural resources on military lands and waters of the United States. Our membership represents the biologists, foresters, agronomists, and other natural resource specialists who are responsible for professional management of fish and wildlife, forests and timber products, soils and ground cover, habitat restoration, rangeland stabilization, outdoor recreation (e.g., hunting, fishing, camping, wildlife viewing) and all other programs that relate to the conservation of natural resources on Defense lands.

The Department of Defense manages approximately 25 million acres of lands in support of the military mission. Although often overlooked, the Department of Defense is the third largest landholder and natural resource management agency in the Federal Government [1]. These are lands dedicated to the purpose of national security and providing a training and testing platform for our nation's soldiers, sailors, marines, and airmen who depend upon these lands to ensure their combat readiness as the world's premier fighting force.

As a Vietnam War Veteran, I am well aware of the need for training on a natural landscape. If we are to sustain quality training and testing on the lands and waters that we currently possess, must ensure that the military landscape is maintained in a condition where realistic training and testing can continue, without interruption.

The centerpiece of natural resource management on military lands is the Integrated Natural Resources Management Plan, or "INRMP" as I will refer to it in my testimony. The INRMP is a written document, developed in cooperation with State wildlife agencies and the U.S. Fish and Wildlife that establishes management priorities for natural resources and ensures compatibility with the defense mission of the installation. INRMP preparation requires extensive public involvement and review. These plans are reviewed annually and face a major revision not more than every five years. Most INRMPs include specific project lists, which provide the means to determine if implementation has occurred.

The intent of Congress was absolutely clear in the 1997 Sikes Act Amendments. INRMPs must be implemented. Implementation of INRMPs is critical, not only for appropriate conservation of natural resources but also for protection of the military mission. The requirement for "no net loss" of military training and testing capability of the land ensures that our Defense needs will be sustained.

Unfortunately, while Department of Defense has generally recognized the requirement to fund and implement INRMPs, the reality of the situation is that DoD and the services have failed to fully fund implementation of INRMPs. "MUST FUND" designation means very little, if DoD fails to fund the projects. We are aware of some installations, where the services have provided funding for as little as 20% of annual "must fund" INRMP requirements [2].

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[1] Department of Interior and Department of Agriculture are both considerably larger.

[2] For Example: At White Sands Missile Range, NM, the total recognized requirement for Conservation Program funding for fiscal year 03 is $5.9M, of which $4.7M is "MUST FUND". Of that total, only $749K was funded. This reflects only 16% of MUST FUND Requirements.

Failure to fund and implement the plans remains a threat, since the Sikes Act contains no compliance provisions. When compliance provisions were suggested during negotiations for the 1997 amendment, DoD made commitments to this Committee to fully fund and implement INRMPs[3], but the past five years have demonstrated that the services were unwilling to live up to DoD's promise. Our association feels that it may be necessary to include some sort of compliance provisions in the Act, should DoD fail to fully fund and implement INRMPs in the future.

Another issue of critical importance to us is the current Sikes Act requirement that DoD use "sufficient numbers of professionally trained natural resources management personnel and natural resources law enforcement personnel" to carry out the preparation and implementation of INRMPs[4]. This is then tied to the language in Section 1 of the Sikes Act where the clear, concise language precludes use of OMB Circular A–76 and any successor process to "contract out" services necessary for implementation and enforcement. Military service branch leaders have implied that the Fair Act overrides the Sikes Act and that there is no requirement that on-site, government natural resources professionals implement the plans. The National Military Fish and Wildlife Association disagrees. We recommend that these two sections of the Act be brought together and that they further define on-site management and enforcement of natural resources as inherently governmental. We further recommend that Congress consider including language to establish a moratorium on further outsourcing of natural resources management positions at installations.

This is not to say that implementation of all projects should be conducted with only government personnel. In fact, other existing provisions of the Act have been extremely useful in allowing us to outsource or contract specific, labor intensive projects and programs, where that is the most efficient mechanism. We wish to retain this ability as well. But the oversight and management of INRMP implementation should remain in the hands of professionally trained, on-site, government personnel.

The Association also continues to support access to military lands for all appropriate public uses, such as hunting, trapping, and fishing. We continue to support the requirements of the Disabled Sportsmen's Access Act of 1998. To the extent any public access is allowed, disabled sportsmen's access should remain a priority.

The National Military Fish and Wildlife Association supports continued authorizations in the amount of $1,500,000 for each of the next five years for the Department of Defense. We also support the concept that the Sikes Act should continue to include an authorization for the Department of Interior and State agencies that assist DoD in preparation, review, and implementation of INRMPS on military lands. The pass-through to the States should be part of the DOI authorization. This will partially reimburse the States for their work in development and implementation of INRMPs at the installation level. The authorization should be at not less than the current $3,000,000 per year, divided evenly between the States and the DOI.

One final thing—The current Sikes Act has been amended many times over the last 40 years, but we consider the 1986 and 1997 amendments to be the most significant. Both amendments were championed by Congressman Don Young of Alaska. We would consider it entirely appropriate, should the name of the Act be changed to reflect Congressman Young's contributions. Whether the Act becomes known as Sikes–Young or as Young–Sikes, we believe it is an honor that is richly deserved.

In conclusion, next to our soldiers, sailors, airmen, and marines, our military lands, airspace, and off-shore areas are our most valuable assets. The Sikes Act is critical to their protection.

Mr. GILCHREST. Thank you very much, Mr. Martin. I am sure Don will be happy to hear your comments. I will pass them along to him today.

Mr. Rurka?

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[3] Statement of Ms. Sherri W. Goodman Deputy Under Secretary of Defense (Environmental Security) Before the House Subcommittee on Military Installations and Facilities, House Armed Services Committee "Natural Resource Management on Military Lands"—June 29, 1994 (page 4 of testimony) and Statement of Sherri W. Goodman Before the House Resources Subcommittee on Fisheries, Wildlife and Oceans in Connection with H.R. 1141, Sikes Act Amendments—16 March 1995 (pages 1 & 2 of testimony).

[4] Section 107 of the Sikes Act. (16USC670e–2).

STATEMENT OF GENE RURKA, CHAIRMAN, HUMANITARIAN SERVICES COMMITTEE, SAFARI CLUB INTERNATIONAL

Mr. RURKA. Mr. Chairman and distinguished members of the Committee, thank you for giving me the opportunity to speak to you today.

I am here in support of the Sikes Act. I speak to you today not as a person with a disability, but rather as one who has been actively involved with physically handicapped and challenged individuals for numerous years.

During my high school and college years, I lived with and cared for an amputee. I have seen and been actively involved in the unique needs and challenges of a wheelchair-bound, physically handicapped person.

As Chairman of the Humanitarian Services for Safari Club International, Safari Club International Foundation, I have had the responsibility for all of our humanitarian programs for physically challenged individuals and have been extremely active in all of them. One of these programs, the Special Hunter Program, sparked the development of the Pathfinder Award. This award honors those handicapped and disabled individuals who have demonstrated the ability to overcome challenges and obstacles that so often prevent them from enjoying life's opportunities.

As an addition to my written report, let me comment that we present to these award winners what we consider to be a very important part of their unique needs. Normally, the family members have gone through economic sacrifices.

We present them with a chance to participate in a sport they have enjoyed by sending them someplace in the world with a family member or support staff so they can enjoy the photography, the hunting, the fishing that no one else would provide for them. So the private sector is coming to their, I don't want to say rescue, but to their help to allow them to make that decision to take a week or two or three. You would be surprised how beneficial that is not only for the State, but for the world to see these people out there doing the things they love to do.

Also, to help us along with these awards, General Norman Schwarzkopf, Chuck Yeager, and people of those caliber are on stage with us helping presenting them with the fishing rods, the rifles, the boat, et cetera, that make this thing a great, great program, and we are very, very proud of this.

I have had extensive involvement in the development of photography, and shooting and fishing apparatus for quadriplegics and paraplegics. I would like to, at this time, submit some evidence to you. This is, by no means, a full document of what we have, but if you have a chance to look at this, not only the brochure, but some of the equipment, this was developed for the paraplegic group.

Mr. RURKA. We can put cameras, again, you see a still camera on one still frame. We have a similar attachment for a video camera. We have a cross-bow attachment, we have fishing attachments, and I will add that this entire unit will be available in catalogues, such as Cabela's, Bass Pro, Orvis very soon, so that your fishing and hunting buddy can go with you. By just making a call

on a credit card and bring this home, it is installed on a wheelchair in 10 minutes.

The only addition I would add, which I don't have pictures here, is for the quadriplegic individual—man or woman or child—we have added 12-volt micro motors which are run by sip-and-puff switches and chin switches based on the disability. I don't have those here, but they are almost identical. But they use sip and puff to move, elevation, left and right, and then the chin switch for release. That can also be used for cameras.

I do a lot of work with National Geographic, and we were talking about this just recently in Manhattan, and we feel that these individuals may be our next major documentary winners, maybe even of an Academy Award. They have the abilities. They have, obviously, the composure, the demeanor to sit there and look at nature as we might not see it.

With this equipment, they can get out there, with a limited amount of help, and produce some fabulous, fabulous things for us. So that is an addition.

I have also been fortunate to have initiated numerous opportunities for our disabled sports people to enjoy the outdoors with the use of private facilities provided by numerous men and women of our hunting community. I know we can make a major difference.

We now need the access and property to provide our physically handicapped veterans and individuals with the chance to enjoy recreational opportunities of the great outdoors. It is with this in mind that I endorse the efforts of this Committee to permit access for our handicapped and disabled veterans and individuals to utilize military facilities for sporting opportunities.

This legislation fulfills many needs.

One, it promotes the opportunity for Government, through the Department of Defense, to partner with private organizations to construct facilities and operate programs for sports people with disabilities at no cost to the Federal Government.

No. 2, the legislation allows the Department of Defense to accept donations of materials and volunteers for construction of facilities accessible to sportsmen and women with disabilities. This partnership between the Department of Defense and the private sector has been a great success in the past and can be seen in operation at the Quantico Marine base in Virginia.

Disabled Sportsmen Access will provide increased opportunities for many disabled American sportsmen and women to overcome obstacles of their handicap. By giving them access to this unique part of our country, they can now enjoy and fulfill the adventures of the outdoors, which you and I may sometimes take for granted.

The United States Federal lands are a part of America's heritage and part of its living legacy to all citizens, including disabled sportsmen and women.

I hope you will vote in favor of this legislation, and I thank you for the opportunity to address the Committee, and I offer you the opportunity to have me answer any questions.

Thank you.

[The prepared statement of Mr. Rurka follows:]

Statement of Gene Rurka, Chairman, Humanitarian Services Committee, Safari Club International

Mr. Chairman and distinguished members of this Committee. Thank you for granting me the opportunity to speak to you today.

I am here to speak in support of the Sikes Act, particularly as it relates to the disabled sportsmen.

I speak to you today not as a person with a disability, but rather as one who has been actively involved with the physically handicapped and challenged individuals for numerous years.

During my high school and college years, I lived with and cared for an amputee. I have seen and been actively involved in the unique needs and the challenges of a wheelchair bound, physically handicapped person.

As chairman of the Humanitarian Services Committee for Safari Club International/Safari Club International Foundation, I have the responsibility for all of our humanitarian programs for physically challenged individuals, and have been extremely active in all of them. One of these programs, the Special Hunter Program, sparked the development of the Pathfinder Award. This award honors those handicapped and disabled individuals who have demonstrated the ability to overcome challenges and obstacles that so often prevent them from enjoying life's opportunities.

Not only have I had extensive involvement in the development of photography, shooting and fishing apparatus for quadriplegics and paraplegics, I have also been fortunate to have initiated numerous opportunities for our disabled sportspeople to enjoy the outdoors through the use of private facilities provided by the numerous men and women of our sport hunting community. We can make a difference.

We now need the access and the property to provide our physically handicapped veterans and individuals with a chance to enjoy the recreational opportunities of the great outdoors. It is with this in mind that I endorse the efforts of this Committee to permit access for our handicapped and disabled veterans and individuals to utilize military facilities for sporting opportunities.

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1) It promotes the opportunity for the government, through the Department of Defense, to partner with private organizations to construct facilities and operate programs for sportspeople with disabilities at NO COST TO THE FEDERAL GOVERNMENT
2) This legislation allows the Department of Defense to accept donations of materials and volunteers for the construction of facilities accessible to sportsmen and women with disabilities.

   This partnership between the Department of Defense and the private sector has been a great success in the past and can be seen in operation at the Quantico Marine base in Virginia.
3) The Disabled Sportsmen Access Act will provide increased opportunities for many disabled American sportsmen and women to overcome the obstacles of their handicap. By giving them access to this unique part of our country they can now enjoy and fulfill the adventures of the outdoors, which you and I sometimes take for granted.

The United States Federal lands are a part of America's heritage and part of its living legacy to all its citizens, including disabled sportsmen and women.

I hope you will vote in favor of this legislation and I thank you for the opportunity to address this Committee.

Mr. GILCHREST. Thank you, Mr. Rurka, and thank you for your dedication and your wonderful work.

Colonel Deal, good morning.

STATEMENT OF LIEUTENANT COLONEL A. LEWIS DEAL, USMC [RETIRED], DIRECTOR OF OUTDOOR SPORTS DEVELOPMENT, PARALYZED VETERANS OF AMERICA

Colonel DEAL. Good morning, sir. Mr. Chairman, members of the Subcommittee, I will keep my remarks brief. I would like to submit an attachment to my prepared statement. It is an article that appeared in PVA's magazine. It outlines our initial efforts to provide accessible equipment to the military installations.

Mr. GILCHREST. All material that is submitted this morning will be a part of the record.

Colonel DEAL. Thank you, sir.

[NOTE: The PVA article submitted for the record has been retained in the Committee's official files.]

Colonel DEAL. First, thank you for allowing the Paralyzed Veterans of America to be here today.

The journey that has brought us here to discuss the Disabled Sportsmen's Access Act started exactly 10 years ago. It started with the simple goal to allow disabled veterans the opportunity to hunt at Quantico. We have come a long way, and because of the Disabled Sportsmen's Access Act, the quality of life for our disabled veterans and military dependents with disabilities has vastly improved.

It is amazing the impact of having accessing to the great outdoors can have on someone with a physical disability. It is more than recreation. It is therapy. As we all know, there are thousands of our brave men and women in uniform going in harm's way to defend our great way of life. For those who will pay a heavy price for our freedom and come home to live with that sacrifice every day, the Disabled Sportsman's Access Act and the opportunities it provides should continue to be there for them.

PVA has been diligently working to make this historic law a reality. As you can see from my submitted statement, one of PVA's major national programs is donating adaptive outdoor equipment to military installations. The equipment list ranges from elevating stands to pontoon boats. Why? PVA views adaptive equipment as a critical bridge between accessibility and participation in traditional outdoor sports for the physically challenged. It is also an example of how we in the military are taking care of our own.

Additionally, we at PVA, from the national office to our 36 chapters across the country, are here to help any military installation with the procedures of how to expand their traditional outdoor sports programs to include disabled vets. We will also gladly assist with barrier-free designs. For example, PVA worked from Day One with Quantico on the design of the fully accessible Sergeant Joe Fox Fishing Facility. Joe Fox is the president of PVA and was a Marine in Vietnam and was wounded.

The Disabled Sportsmen's Access Act is, without a doubt, a success. I know because I have been on many military bases and have seen firsthand the results. As I stated earlier, we have come a long way, but we still have a long way to go. There are still thousands of disabled veterans waiting for their chance to do a little hunting and fishing aboard a nearby military base, and we at PVA want you to know that the Disabled Sportsmen's Access Act will remain one of our top priorities and that you can count on us to continue to support it.

Thank you, sir. Are there any questions?

[The prepared statement of Lt. Colonel Deal follows:]

Statement of Lt. Col. Lew Deal, USMC, Ret., Director of Outdoor Sports Development, Paralyzed Veterans of America

Chairman Gilchrest, Ranking Member Pallone, members of the Subcommittee, Paralyzed Veterans of America (PVA) would like to thank you for the opportunity to testify today regarding H.R. 1497, the Sikes Act Reauthorization Act of 2003. I

will focus my testimony today on the importance, success and future of the Disabled Sportsman's Access Act.

I am Lt. Col. Lew Deal, Director of Outdoor Sports Development for PVA and it is an honor and privilege to be invited to speak before the Subcommittee. PVA is a veterans service organization chartered by the United States Congress with members in all fifty states and Puerto Rico. All of PVA's members are veterans of the armed services and have experienced either spinal cord injury or dysfunction.

Let me begin with a brief overview of the history and background of the Disabled Sportsmen's Access Act. As I stated in my testimony of 14 May 1998, the genesis and foundation of the Disabled Sportsmen's Access Act (DSAA) began when I read an article in the March 1993 Outdoor Life magazine on sportsmen with disabilities. It occurred to me civilians could hunt at Marine Corps Base (MCB) Quantico but my disabled veteran friends could not. I approached the base commanding general with a plan to rectify this situation. His response was "Make it happen."

The very first organization I contacted was the Paralyzed Veterans of America. Together MCB Quantico and PVA initiated the now highly successful hunting and fishing program for disabled veterans. From this experience I put together a proposal to open all military bases for disabled veterans. As an active duty officer I could not approach Members of Congress with the idea. In 1998 after several years of frustration, I approached Tom Saddler of the Congressional Sportsmen's Foundation (CSF) with my concept. After reading the proposal he immediately took it to Rep. Duke Cunningham. In October I was invited by CSF to give a presentation on the Quantico program and the national program concept. That month legislation was introduced by Rep. Cunningham and Sen. Conrad Burns (H.R. 2760 and S. 1351, respectively). With a long list of co-sponsors and PVA providing key leadership with recruiting other organizations, support for the legislation quickly grew. In 1998 the Disabled Sportsmen's Access became law.

After retiring from the Marine Corps in 1999 I joined the PVA national staff. Immediately we launched a program to provide military bases with adaptive outdoor sports equipment. PVA views adaptive equipment as the critical bridge between accessibility and participation in traditional outdoor sports for people with disabilities. With generous annual funding support from Anheuser–Busch the list of military installations receiving adaptive equipment continues to steadily grow. To date PVA has donated various types of adaptive equipment outdoor sports equipment (pontoon boats, popup ground blinds, and elevating stands) to the following bases: Fort Hood, TX; Camp Lejeune, NC; Eglin AFB, FL; Fort A.P. Hill, VA; Fort Leonard Wood, MO; Fort Sill, OK; Little Rock AFB, AR; NAS Meridian, MS; NWS Yorktown, VA; Redstone Arsenal, AL; and MCB Quantico, VA.

In 2003 PVA has plans for additional equipment donations to Fort Bragg, NC; Fort Benning, GA; and MacDill AFB, FL. PVA also worked with MCB Quantico, VA in the construction of a fully accessible fishing facility. This site was named the "Sgt. Joe Fox Fishing Facility" in honor of PVA's current National President. As directed by the DSAA this equipment is available for use in the following order: disabled veterans, military dependents with disabilities, and all other people with disabilities. The DSAA, coupled with the adaptive equipment donations, is having a significant, positive effect on the "quality of life" for thousands of disabled citizens across the country. Last fall at the NWS Yorktown PVA equipment donation ceremony, Rep. Jo Ann Davis stated: "I can't imagine not being able to enjoy the outdoors. I think this Huntmaster is a step toward changing that for disabled veterans. With the help of this stand, they will be able to break down one more barrier".

PVA will gladly and enthusiastically continue to support the DSAA and provide adaptive outdoor equipment as needed. However, PVA has one request. We would like to work with the Deputy Under Secretary of Defense for Environment and Installations on streamlining the procedures for adaptive equipment donations to military installations. A uniformed set of approved procedures accepted by each service branch would be extremely helpful. It is essential that the Disabled Sportsman's Access Act be reauthorized as you consider the broader reauthorization of the Sikes Act.

In closing, PVA would like to thank those in Congress who have support this historic law. As we all know, thousands of our military men and women are around the world going "in harm's way" defending our way of life. For those who will pay a heavy price for our freedom and come home to live with that sacrifice everyday, the Disabled Sportsmen's Access Act and the opportunities it provides should be there for them. Representative Duke Cunningham said it best with his comment on the DSAA: "This is just one small thing we can give back to those who gave so much for their country."

This concludes my statement, on behalf of the Paralyzed Veterans of America, I again thank you for this opportunity to testify about the success and promise of the

Disabled Sportsman's Access Act. I will please to respond to any questions you may have.

Mr. GILCHREST. Thank you, Colonel Deal.

Mr. Meyer?

STATEMENT OF DAN MEYER, GENERAL COUNSEL, PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY

Mr. MEYER. Thank you, Mr. Chairman. I am Dan Meyer, the general counsel at Public Employees for Environmental Responsibility. Thank you for the opportunity to present to the Committee this morning.

My position offers me a unique opportunity, a unique perspective on the matter before you, as far as the Sikes Act is concerned. I am a veteran, and a labor and environmental attorney, so all of these issues mix on my desk on a daily basis. I am a former Naval officer, I was in Desert Storm, and I am wearing my Southwest Asia service pin today as a celebration of the work we completed or are about to complete in Baghdad right now.

PEER is a not-for-profit, based here in Washington, that provides services to Federal employees, State employees, and municipal employees who do environmental work. One of our subchapters, Military PEER, assists those stewards of the DOD lands when they are confronted with ethical challenges on the job.

One of my lead concerns, as mentioned in my written testimony, is that in addition to all of the work I do in other Federal agencies, the Department of Defense is the largest single block of time commitment in my docket. Of the roughly 33 cases I am handling, 11 handle DOD personnel with outstanding whistleblower or grievance matters related to their management of environmental natural resources issues on the DOD lands. So that is 11 cases with DOD. That compares with three I have right now with the Park Service, three with individual States, one with USAID, and only one with EPA, which has an agency with a wholly environmental mission.

I think, and my written testimony is pretty clear on this, the time has come to address the issue of the false dichotomy between readiness and environmental compliance. I think it is a part of the debate that we need to move beyond. I think, as both then-Secretary Cheney mentioned in the late 1980's/early 1990's, and as former Secretary of Defense Perry has also been on record discussing, the environment is a security issue in and of itself.

The INRMP process in the Sikes Act, as it is set up, is an excellent template to teach our Defense Department leadership how to incorporate the environment into their daily decisionmaking routine. It goes beyond preserving fish and wildlife and protecting our natural resources because it teaches a respect for environmental components as they affect national security.

Moving into the INRMP process, I think what we need to understand is that, as it is set up right now, obligations under the ESA, the MMPA, and other environmental statutes that are hooked budgetwise to individual components in the INRMPs, give the Sikes Act life.

So, without independent funding for the Sikes Act, the folks on the ground have been able to find obligations under the current environmental statutes, the ones they want to exempt themselves from, and they have tied those to the INRMPs to get funding for the INRMP process. The most successful INRMPs to do this were at Yakima Training Center in Washington State. The Fort Stewart and the Fort Bragg INRMPs accomplished this, to some extent, as well.

To see how the environment can work in tandem with excellent military performance, look at the U.S. Forces Command under General Ellis. These were the kids who went out and took the bridgehead at An Nasiryah last month, and one of the most progressive INRMPs right now in the Army is coming out of U.S. Forces Command. So the two can run in tandem quite well.

I would list three failures within the current statutory regime.

First, there is no mechanism to compel compliance. Second, there is a lack of protection for military stewards if they run into an ethical problem on the job about whether there is a violation of an environmental statute. Third, right now there is no playing field to understand the issue of outsourcing and how it is going to affect these jobs.

I am submitting for the record our survey from 2001 of Natural Resources personnel and the Department of Defense.

[NOTE: The 2001 survey submitted for the record has been retained in the Committee's official files.]

Mr. MEYER. One-third of those individuals surveyed indicated that at some point in their professional career, they have been asked to overlook actual violations of the environmental statutes, and that is a very important number to keep in mind. If you add a contractor to that equation, a contractor who wants that contract renewed on an annual basis, I think you are going to set up an equation where violations will be overlooked on a regular basis.

The solutions: I would like the Subcommittee to look at providing an enforcement clause to the act, providing a whistleblower protection clause to the Act to help those employees who find themselves in an ethical challenge, and to also understand that the Sikes Act is now set up as an excellent platform to instill an environmental ethic in our war-fighters.

Thank you very much, Mr. Chairman.

[The prepared statement of Mr. Meyer follows:]

Statement of Dan Meyer, General Counsel,
Public Employees for Environmental Responsibility ("PEER")

H.R. 1497, a bill to reauthorize Title I of the Sikes Act. Under P. L. 105–85, the Department of Defense is required to complete a comprehensive Integrated Natural Resource Management Plan (INRMP) for each of its installations. Enacted in 1960, this law has been extended a number of times with the current authorization of appropriations expiring on September 30, 2003.

On March 27, 2003, Chairman Richard Pombo introduced the Sikes Act Reauthorization Act of 2003. This measure will extend until September 30, 2008, the authorization of appropriations for Title I of the Sikes Act that involves all of the components of wildlife conservation on military lands. The authorization is extended at its current level that provides up to $1.5 million each year to the Department of Defense and $3 million to the Department of the Interior.

PEER thanks the Chair and Members of the Subcommittee for the opportunity to testify at this important juncture in Federal environmental and merit system law.

Twin Components of the Common Defense: National and Environmental Security

Good morning. I am Dan Meyer, General Counsel at Public Employees for Environmental Responsibility ("PEER"). I am wearing my Southwest Asia Service lapel pin today in support of our forces: the soldiers, sailors, aircrews and marines that will return from the current war—we hope—to a clean and safe environment in which they can raise their families and heal their wounds, physical and psychological.

Introduction. Twelve (12) years ago I was honorably discharged from the United States Navy as an unrestricted Officer of the Line (Lieutenant, U.S.N.) following Desert Storm and four (4) of the most rewarding years of my professional career. While onboard the battleship IOWA (BB–61), I served as the Turret One Officer and took that Division to a world record in naval gunnery at Vieques Island, Puerto Rico (1989). Three (3) months later I was required to lead that same crew through the worst peacetime accident in the history of the fleet, an equipment failure that took the lives of forty-seven (47) sailors, and our comrades, in an adjacent gun turret.

My next duty assignment was to the flagship of the Commander, Middle East Force, forward deployed in the Emirate of Bahrain. My year onboard the USS LASALLE (AGF–03) was even more challenging and character building, in the best tradition of serving one's nation. The "Sparks" in my "Radio Shack" broke all fleet records for handling message traffic, and did so for two (2) flag staffs as well as our own ship. We were first in the fight during the incident at Nakihlu Island, and we relieved the USS TRIPOLI (LPH–10) when it hit an Iraqi mine off Kuwait. LASALLE later liberated the port of Mina Ah'Shubayh, clearing free Kuwait's first safe access to the sea.

Public Employees for Environmental Responsibility (PEER). Serving the nation under arms gives one a unique perspective on the interchange between environmental and national security, a balance best measured by the Sikes Act of 1960, as amended. The Sikes Act legislation is the cornerstone of my clients' daily work.

PEER is a not-for-profit incorporated in Washington, D.C. PEER assists state, Federal and municipal employees with the legal challenges arising on the job, notably when they are asked to take an action in violation of rule, law or regulation; an action of gross waste and mismanagement; or an action constituting abuse of authority. PEER operates a network of ten (10) field offices around the country.

In addition, PEER works extensively on behalf of civilian natural and cultural resource specialists employed by Department of Defense agencies. Most of PEER's members in need of legal services work in areas where the nation's environmental resources are most endangered, including the "Defense lands" subject to the provisions of the Sikes Act. We also serve members in agencies that consult with the Defense Department to ensure its own environmental compliance, most notably the excellent professionals at the U.S. Fish & Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS).

The standards you write into the environmental statutes are the stars my clients steer by.

Working through PEER with Federal employees serving in all communities of the U.S. Armed Services, the U.S. Fish & Wildlife Service, and the National Marine Fisheries Management Service, I have noted the following regarding the Sikes Act.

Readiness and Environmental Compliance, Paired. There is a false dichotomy or distinction being made by the Pentagon between "Readiness" and "Environmental Compliance". My former service in the Navy and my current legal practice allows me to witness the incredible professionalism of the Department of Defense's environmental managers and their staff. It is a professionalism that mirrors the same standards of performance exhibited by our fighting men and women: they are one seamless whole, from the point of the sword to its pommel. As such, the remarks you are hearing from others today underscore a false dichotomy or division between readiness and environmental compliance. The two (2) actually go hand-in-hand. Our common defense has two (2) components: national security and environmental security. To sacrifice one is to diminish the other.

In pursuit of national security, the Sikes Act and other environmental statutes inculcate an understanding of the environment in our war fighters, so that they understand the impact of war fighting on the environment that sustains their men. In addition, the same statutes serve as benchmarks to define, in part, what we are defending. In pursuit of such "environmental security", we recognize that it does no good to win against an adversary in the Near East if—in training to do so—we are adversely wasting the health, safety and welfare of our citizens at home. These citizens would include those living closest to our Defense lands: the families of the soldiers, sailors, aircrews and marines you have been watching on the television for the past few weeks. Only a corrupted Republic would forego the draft, rely on

volunteers, and house those volunteers in a degraded environment reminiscent of Love Canal when they return home from the front.

Problems with the Sikes Act

In its execution of the mandate you established through the Sikes Act, the Department of Defense has faced a tremendous hurdle. As its inventory of natural resource assets and needs grows, the individual Services' capacity to protect wildlife is diminishing. We are facing a statutory crisis. The law is clear but the will to enforce it within the U.S. Government is fleeting. Before renewing or making substantive changes to the Sikes Act, one must also understand the Act's role through other environmental statutes—notably those from which the Defense Department currently seeks to be exempted. It is also helpful to understand the flow of Federal funds—or lack thereof—which determines how successfully the Act is executed. The Department of Defense formerly funded many of its Sikes Act requirements through the proceeds of "commercial activities" on Defense lands, such as timbering and farming. That is now a disfavored practice, and neither the Congress nor the Department has thought through the transition of that financial requirement to a new funding source.

Roughly ninety percent (90%) of the Department of Defense facilities now have Integrated Natural Resource Management Plans (INRMPs). The depth and quality of these plans varies greatly. Ironically, the most highly regarded plans are those written for facilities implemented, in part, by a Federal employee who was retaliated against for—among other things—having implemented the very INRMPs that are so successful. His case is now before the U.S. Court of Appeals for the Federal Circuit because the Federal judiciary is not giving effect to the Whistleblower Protection Act of 1989 in a manner that you, the Congress, intended.

Facilities with five (5) or more acres of Defense land, presence of an endangered species, or a minimum of one hundred (100) acres of land under commercial production generally require an INRMP. The general perception is that the two (2) most effective INRMPs in the country are those implementing the Sikes Act at the Yakima Training Center (YTC) and at Forts Bragg and Stewart. Many of the professionals who participate in these plans are veterans. They are former war fighters who understand that we are protecting our way of life, and not just playing games on the battlefield. The source of the Yakima, Bragg and Stewart excellence in planning is the U.S. Army Forces Command (FORSCOM) under the command of General Larry P. Ellis, U.S.A. General Ellis' men of the First Battalion, Third Aviation Regiment recently secured the Eurphrates bridgehead at An Nasiryah for the United States Marine Corps in southern Iraq. Those are the same Marine Units for whom the flagship LASALLE cleared mines off of Kuwait in 1991, allowing the battleships WISCONSIN (BB–64) and MISSOURI (BB–63) to conduct Naval Gunfire Support during the coastal run to Kuwait City.

The Yakima, Bragg and Stewart INRMPs are excellent models, and you should have the Defense Department produce them for review by your staffs. The Yakima INRMP was first drafted in 1996 and was revised in 2001. It was one of the first plans to integrate both Natural Resource and Cultural Resource requirements. Congress played a prominent role in the formation of the Yakima INRMP. The Yakima expansion of environmental compliance to include the National Historic Preservation Act of 1966 (NHPA) is a credit to the U.S. Department of the Army. The Bragg and Stewart INRMPs are products of excellence for another reason: they reveal the necessary connection between the Sikes Act and other environmental statutes from which other witnesses are asking you to exempt the Defense Department.

The Congress has provided no funding mechanism within the Sikes Act; it is a law with no means of execution without funding derived from the other environmental statutes. To properly implement the law, farsighted officials within the U.S. Department of the Army aligned the Environmental Program Report (EPR)—which drives funding of environmental compliance—with specific INRMP components in the Forts Stewart and Bragg Plans. Each "A106"—an individual budget entry—approved to meet a requirement of the Endangered Species Act or other environmental statute is matched in the EPR to a component in the INRMP. Take away the Defense Department's requirement to abide by the other environmental statutes, and the Sikes Act becomes all statement, no force.

So the experiences at Yakima, Bragg and Stewart offer a point of comparison from which to assess the weaknesses of the Sikes Act:

No Mechanism to Compel Compliance. Environmental management under the Sikes Act is, essentially, a voluntary self-regulating system. Lacking specific funding and a timely mechanism for feedback and external review, INRMPs cannot substitute for other acts of assessment, review and compliance under Federal law. Until

remedied, INRMPs are not appropriate replacements for civilian resource management laws.

No Protection for Military Stewards of Natural and Cultural Resources. The second weakness vitiating the effectiveness of the Sikes Act is the lack of protection for the professionals charged with its implementation. The Department of Defense extols its stewardship, but mistreats its stewards. This lack of protection falls into two distinct but overlapping zones. First is the failure of the Whistleblower Protection Act of 1989 to provide adequate coverage for the Department of Defense staff managing the environment. Second is the looming threat of job loss through replacement by private, paid consultants.

Professional Retaliation. Department of Defense natural and cultural resource specialists provide the single biggest source of whistleblower complaints in my nonprofit practice portfolio. Fully one third (1/3) of my docket of personnel cases at PEER consist of civilian Department of Defense specialists. In other words, the Department of Defense produces more environmental whistleblower challenges than any other agency. That is more challenges than even agencies such as the Environmental Protection Agency, whose administrative mission is dedicated solely to environmental issues.

These cases come to me when professionals face ethical crises on the job. Problems often arise over how to implement the Sikes Act or one of the environmental statutes. Recent decisions by the United States Court of Appeals for the Federal Circuit strip legal protection from employees who raise problems within the scope of their duties. These decisions mean that Defense specialists can be targeted for retaliation simply because they are doing their jobs—or doing their jobs too well.

Outsourcing. The Department of Defense has stated that it intends to outsource five hundred (500) of the roughly eight hundred (800) environmental stewardship positions within the Department. Under Part 32, Code of Federal Regulations, Section 169, such an action by Deputy Under Secretary Raymond Dubois would be a violation of law. See 32 C.F.R. § 169 ("the management and conservation of natural resources under DoD stewardship is an inherently governmental function"). This Code provision is actionable in Federal court, and my hunch is that the Defense Department will move to strike this provision of the Code now that the courts have given life to the words. Unless the language is transferred to the Sikes Act and made the voice of the Congress, another set of environmental protections will have been removed by this Administration.

The Bush Administration's drive to privatized Federal employment presents a huge challenge to effectively implementing the Sikes Act and the other environmental statutes. The perception in the field is that the Pentagon regards every decision outside the walls of the Pentagon as non-essential government functions, and therefore open to privatization. The traditional view was that functions such as surveying, monitoring and timber marking were open to privatization because they were ministerial, and lack a great deal of discretion. They were also acts that a Federal employee with discretion would supervise. This Administration wants to privatize all decisions made beyond the banks of the Potomac River, including the essential government functions of environmental assessment, review and compliance.

To understand the coming collision between privatization and the Sikes Act requirements, one must understand the conflict within the Defense establishment between the "Navy Model" and the "Army Model" of environmental assessment, review and compliance. The Army maintains highly professional environmental field operations, situated in and around the facilities under review. It is a decentralized model placing the decision-making Federal employee close to the resource. While the Navy has some exceptional environmental resource managers in the field, it has never decentralized its decision-making using the same model as the Army. For the most part, substantive decisions regarding the Endangered Species Act are made between the military stewards and their counterparts in the regional offices of the U.S. Fish & Wildlife Service (USFWS). By contrast, the regional National Marine Fisheries Service (NMFS) offices are not consulted to the same professional level on matters related to the Marine Mammal Protection Act. Those matters are largely decided by a cadre of Navy officials within the Pentagon.

The conflict between these two models—the "Army" model and the "Navy" model—must be understood before one can grasp the threat that privatization poses to effective execution of the Sikes Act. The Department of the Navy initiated the current statutory exemptions debate and also has less experience with INRMPs. The Navy's centralized decision-making process has allowed it to "not see" resources which would require assessment, review and compliance decision-making. The damage to Chinook Salmon habitat in Puget Sound and the bombing of a North Atlantic Right Whale off New England—both actions lacking environmental assessment—are

the genres of failure the "Navy Model" produces. The "Navy Model" would change very little following privatization because little is being done in the way of environmental assessment, review and compliance in the field. However the "Army Model"—which may produce a greater level of environmental compliance—would be destroyed by privatization. The people performing those essential government functions are the folks employed at the regional level. By privatizing those functions, a contractor will complete a task that is then subjected to an inherent conflict of interest: a private corporation must make a critical decision required to maintain fidelity to the law, and they must do so while contemplating whether its contract will be renewed next year by the base commander. To properly implement the current Sikes Act, and certainly to implement a stronger Sikes Act, Congress must block attempts to outsource the entire environmental staffs of specific Defense facilities.

Of particular concern are the following:

- Contracted natural resource people will be less likely to confront resource problems. If these positions are not governmental, then it is much easier to disregard their findings or just "hire another contractor". Merit System protections provide integrity and credibility to the execution of the law.
- The motives of contractors are profit and obtaining the next contract. Natural resource management is a long-term commitment. Contractors are conditioned by the market to focus on the short-term result.
- In cases that have been reported to PEER, the Department of Defense's motivation for obtaining private contractors has been to circumvent or obviate resource protection opinions from its own staff that have been deemed inconvenient or troublesome.

PEER is currently litigating against the natural resource contracting practices of the U.S. Department of the Air Force at Edwards AFB, California. We argue that Edward's management practices violate the prohibitions in the Sikes Act regarding contracting out inherently governmental natural and cultural resource management functions. The U.S. District Court for the Central District of California has just ruled against motions by the Air Force to dismiss the suit. In a ruling on March 31, 2003, Judge Margaret M. Morrow found that the Sikes Act restrictions on contracting out resource management is neither "suggestive" nor provides "guidance"; rather, it is law as it is decided in our courts. As a result of that ruling, our lawsuit will proceed to trial this summer.

Command Hostility to Resource Protection. The commanders of facilities with jurisdiction over Defense lands often lack training in natural resource protection. There are no career incentives for environmental compliance, and a diligent "Green" commander would not be seen as a "member of the club" if he was especially rigorous in the enforcement of our nation's environmental laws. That is not to say they do not exist; I have received at least two (2) calls on behalf of Flag Officers over the past twelve (12) months, thanking PEER for it efforts. In the Fleet we called such compliments "Bravo Zulus" or "BZs". These officials concerns centered on the political influence of regulated corporations in the environmental decision-making at their installations under the supervision of the Deputy Under Secretary of Defense for Installations and the Environment. But such comments could never be made publicly.

Two (2) examples of this stand out within the experience of the United States Navy. Last year PEER highlighted two (2) practices—both including the use of low-level munitions—that were impacting the habitat of endangered species. In one case, Brunswick Naval Air Station disregarded advisories about right whale migration and conducted aerial bombardment practice directly in the path of migrating whales. The right whale is one of the most endangered species on the planet, and American taxpayers already spend millions of dollars to aid in that species' recovery. Shortly after that exercise took place, the headless carcass of a right whale calf was discovered.

The other incident involved the repeated detonation of munitions in Puget Sound, the nation's second largest estuary, and a vital habitat for an array of protected marine mammals and fish including Endangered Species Act listed Puget Sound Chinook salmon and Hood Canal summer run chum and their prey, which rely on habitats within the training areas. The marine waters of Puget Sound are designated as Essential Fish Habitat under the 1996 Sustainable Fisheries Act. These activities had been ongoing for many years, and no environmental assessment was conducted. The culture had become so relaxed that the commanders in question did not even think they were violating the law.

This lack of command training is exacerbated by the frequency of command changes. With low environmental staffing levels, the prospect of contracting out

discouraging new recruits, and a new commanding officer every couple of years, there is no consistency in facility management.

Wisdom from the Field. In 2001, PEER conducted a survey of natural resource managers serving on Defense lands. It was the first national survey of civilian specialists working on military bases across the United States.

- More than four (4) out of five (5) civilian specialists reported that the natural resource challenges on their bases, ranging from invasion of exotic plants to development and recreation pressures, are on the rise. Compounding this threat is the unwillingness of base commanders to value the natural resources within their custody.
- Nearly one third (1/3) of all respondents reported they "have been directed to overlook resource violations or circumvent resource laws and regulations" while only one fourth (1/4) believe that "violations of resource regulations create negative career consequences for responsible officers."
- Less than half (< °) of specialists feel that resource protection "is a high priority with the current installation command."—and—
- One half (°) of specialists cite frequent changes of command as disrupting the base's resource protection efforts.

One civilian specialist described the prevailing attitude of the officer corps as an "apparent disrespect for DoD and other regulations and laws related to habitat and wildlife protection...Keeping the "grass well mowed" is always more important than any consideration of wildlife that may reside in the grass and depend upon it for survival." Another respondent supplied an example: "Another equally challenging problem is our BASH [Bird Airstrike Hazards Around Airfields] paranoia. If allowable, our command would eliminate all birds from our state." According to the specialists who implement the Sikes Act, military commanders too often regard laws protecting natural resources as a nuisance.

Solutions

In the re-authorization of the Sikes Act, PEER would urge Congress to also examine the following:

1. Make the Sikes Act enforceable. Unless there is some mechanism for external review of compliance, execution of the Sikes Act will remain uneven. Moreover, without such a mechanism and a demonstrated track record of its efficacy, any notion that the Sikes Act could serve as a substitute for natural and cultural resource laws of general application would be ill advised.
2. Protect Professionals Implementing the Sikes Act. The Whistleblower Protection Act of 1989 should be amended to undo the mischief created by the U.S. Court of Appeals for the Federal Circuit in the Huffman case two years ago. Huffman v. Office of Personnel Management, 263 F.3d 1341 (Fed. Circ. 2001). All employee disclosures to further the enforcement or administration of the Sikes Act should be classified as "protected disclosures" for purposes of civil service law. With respect to the threat posed by outsourcing, Congress could reaffirm its no-contracting policy. Otherwise litigation, turning on a question of Congressional intent, will be needed. This becomes doubly important if the Department is successful in passing amendments to the Code allowing them to outsource positions legally. The duties of some of these personnel may be delegated to the States. When this is done, the Whistleblower Protection Act of 1989 and the whistleblower provisions of the environmental statutes cannot protect State employees enforcing Federal laws. See Rhode Island v. United States, 304 F.3d 31 (1st Cir. 2003).
3. Instill Environmental Responsibility Within the Officer Corps. This last reform is central to my heart on this matter. Long before I considered myself an environmentalist, I was a warrior—and my work still exhibits the training I received in the Navy. In that same way, we need to inculcate the environmental ethic within our warriors as a component of readiness—not only because we value the resources the Sikes Act protects, but also because we value our soldiers, sailors, aircrews and marines.

When I see images of the chemical warfare equipment and protective gear worn by our fighters in Iraq, I am saddened by our lack of preparedness—or readiness—against environmental hazards during Desert Storm. The Gulf War Syndrome was a product of the way in which warriors think, or fail to think, about the world around us—what we inject into it, and what we take out of it. On the battleship IOWA, we sent damage control units into cyanide-saturated spaces without protective gear; again a failure of environmental security. If you neglect the environmental security advanced by the Sikes Act and other environmental statutes, you will ultimately comprise the effectiveness of the fighting force maintaining your national security.

Conclusion. It is time to end the false dichotomy or division between "readiness" and "environmental compliance". As stated by former Defense Secretary William Perry:

> "Protecting our national security in the post–Cold War era includes integrating the best environmental practices into all Department of Defense activities."

Environmental compliance is an indispensable element of readiness. A base commander trained to think in terms of rigorous INRMPs and skillfully prepared by his or her career Federal environmental staff will begin to think about the world around him as he plans for war. The INRMP encourages a process of thinking, a way of approaching the question of how the fighting unit impacts the Earth, and ultimately, the warrior who derives fighting sustenance from the Earth. A war commander trained in such disciplines, for instance, will think twice before ordering the haphazard destruction of a chemical weapons depot, or how he exposes his fighters to depleted uranium munitions or burning petroleum fumes.

The Sikes Act relates specifically to the management of natural resources, but it is the template for how we manage war-making and its environmental impact. Machines increasingly win our wars, placing the responsibility for the common defense farther from the average citizen. The soldiers, sailors, aircrews and marines who still fight our battles, however, do so under the belief that the nation will address the adverse effects of those wars on both themselves and their families. Most of us are familiar with the idea of an adverse impact beyond the familiar physical or psychological damage of warfare. The effects of Agent Orange and the Defense Department's nuclear testing have alerted us all to the fact that our neighbors and their sons may be paying more for our defense than we initially understand a war to cost. These adverse impacts need to be addressed not only because we are a caring nation, but also because we rely on volunteers. Who will volunteer for military service if the handling of the "Agent Orange phenomenon" is the model currently used by the Pentagon?

A decade ago, our generals and admirals failed to understand the environmental security impact of both the detonation of the Iraqi chemical weapons depot at Khismayah (1991), and the impacts of Kuwait's burning oil fields on our warriors. Three decades ago, the same mistake was made with respect to defoliants in South East Asia. Five decades ago, the same mistakes were made with radiation testing on our servicemen and women. These types of failures undermine the integrity of our fighting force, raising suspicions within the enlisted ranks that the military leadership, defense contractors, and their Congressional allies will avoid the costs of war by making our soldiers and their families bear the same. Your integrity and the integrity of the process by which Capitol Hill makes national and environmental security decisions are as much at stake here as is the health of the American environment.

Come back to the Sikes Act: a statutory regime that teaches our warriors to think of the environment as part of both their war fighting terrain and the resource they are defending, will change the way we approach environmental challenges in the field. The path to prevent future Desert Storm Syndromes travels by the nest of the Red–Cockaded Woodpecker and its endangered peers.

Remember, also, that the Defense lands are not the property of any one agency so much as they are assets entrusted by the people of the United States with a particular public instrumentality. The air, soil and water of those lands are no less part of our national heritage than those of national parks and forests. It is an institutional failure as well as a threat to public health and safety when groundwater is contaminated by Defense-related activities, or when already threatened wildlife is needlessly jeopardized. Ultimately, we ought to understand that we are not engaged in this season of war for the sake of making war, but rather to safeguard and protect a way of living in this country, a way of living dependent on the Sikes Act and the resources it protects.

Mr. GILCHREST. Thank you, Mr. Meyer. We should have had you on the first panel. We will have to do that the next time.

[Laughter.]

Mr. GILCHREST. Could you comment, you have 11 cases with DOD you mentioned. What are those 11 cases? Does it have to do with enforcement or whistleblowers or what are those case?

Mr. MEYER. To the extent that I can give out details, some of those are currently intakes which have not been moved into the

public record, I have to be careful about the details I give out because they are my clients.

The two most important cases are right now in front of the U.S. Court of Appeals for the Federal Circuit. One involves the Army and the Red-Cockaded Woodpecker down in the Southeast part of the country. The other involves PCBs in the soil at NTCS Cutler in Maine.

Mr. GILCHREST. So you are saying—I am not sure I understand—these cases are as a result of a Federal employee reporting that there are some environmental violations.

Mr. MEYER. In the case of the Red-Cockaded Woodpecker, my client was involved with the burn ratio that was required at Fort Stewart in order to accommodate the habitat of the Red-Cockaded Woodpecker.

Mr. GILCHREST. And this has to do with the INRMP plans.

Mr. MEYER. And working from the INRMP, and working in consultation with U.S. Fish and Wildlife Service, my client made a determination that a certain amount of acreage under the Fish and Wildlife Service's opinion, its biological opinion, had to be burned at Fort Stewart, and it set up a challenge, through the Army's inspection process, when they weren't achieving that burn rate.

As he was helping the inspectors to go through the books, there was a confrontation over whether the burn rate had been achieved, how it had been achieved and how much of an issue it was that they had not met the Fish and Wildlife Service's obligations.

In that, he received a 2-day suspension, a small matter. MSPB was not happy that I brought to them a 2-day suspension. But for a Federal employee who is a retired lieutenant commander and a formal Naval aviator, that was a huge offense to him, and I said, "You know Burt, you have a great case. We will take it, and we will test the law on it."

In the case of NTCS Cutler, there was a determination that there was not a need for an environmental assessment. Then my client figured out that there were PCBs in the paint, tried to push the issue of an environmental assessment through the command, and was retaliated against in that context. Then they had to go back and pay off a contractor. There was about $100,000 lost because they couldn't do that work. They had to go back and reschedule the job and take care of the PCB problem that had moved off the towers and was now in the soil itself.

Mr. GILCHREST. So you feel those 11 cases, in particular those two that you just mentioned to us, would benefit from an enforcement clause, a whistleblower protection and—go ahead.

Mr. MEYER. Yes, sir. I think there are three different needs there. An enforcement clause is necessary. If you lose the enforcement clauses in the environmental statutes, there needs to be some provision within the Sikes Act to make up for that.

Mr. GILCHREST. Do you think, looking at this from an overall perspective and all military bases that are trying to implement this new Integrated Plan System with the States, with Fish and Wildlife and with DOD, would you say, overall, it is working well or are there particular places and are those particular places maybe personality problems with the implementation of these good ecosystem plans?

Mr. MEYER. I think it is working well, but in working well, it is putting an incredible amount of pressure on the Natural Resources managers on the bases, who are now becoming the negotiators on the INRMPs between the Federal agencies that are consulting with the Defense Department.

Mr. GILCHREST. And you would have some concern about outsourcing some of this work?

Mr. MEYER. A very large concern about outsourcing, given the commercial incentives behind the contracting process.

Mr. GILCHREST. I see. Thank you very much, Mr. Meyer, and we will stay close to you, as we go through this reauthorization process, for your input.

Colonel Deal and Mr. Rurka, Quantico seems to be the poster child, the great example of your work, although I have to tell you I was 10 months at Quantico, and I don't think I ever saw any wildlife, other than the young ROTC people or I forget now what we called them, the young lieutenants running toward us, and we would either shoot blanks at them or, depending on the weather, we would throw snowballs at them.

[Laughter.]

Mr. GILCHREST. How many bases around the country have something similar to what you have established at Quantico?

Colonel DEAL. I couldn't answer that, and that is a question I would like to ask. The law has been in establishment since 1998. We, at PVA, know that they are extremely busy at those bases, and when we show up, we are there to help solve the equation. That is why the adaptive equipment is so important.

They are trying. That is why I said in my statements earlier we are here to help them establish those procedures. We are a reservoir of how to do it right. Believe me, when we started at Quantico, there were some rather humorous moments when we were trying to get folks in wheelchairs out into the rolling hills of Quantico to deer hunt, but we solved it, and we did it safely.

Where the rubber meets the road, I just got back from NAS Meridian. We found a spring turkey hunt with Congressman Pickering and one of our disabled vets for a Mossy Oak Hunting the Country—successful show. They are doing a great job down there, but a lot of it is they say, "Tell us how to do it," and that is what we are there for.

I also think that, at their level, they have worked very hard on lots of issues, and they need all of the help they can get to implement it.

All of the bases that we listed I think are the only bases that we know of that have received adaptive equipment, and we did that. We sure would welcome some support from Safari Club International maybe down the road on that, and we have talked about that.

A lot of them have programs, but it is not the quality program that we would like to see. If you have a fishing facility, are there rails? And we will supply the designs free if you want it.

Taking someone deer hunting is not taking them out and saying, "OK, get out of your vehicle, sit here in your chair looking at this field, while 45 people drive by going to the deep woods." That is the kind of issues, but that is all they can do. They don't have time

to make it a—and that is what we are here to do. It will take time. Just give us the opportunity, and we will make it happen.

Mr. GILCHREST. Certainly. Thank you very much, and we appreciate your dedication to this issue.

I yield to the gentleman from New Jersey.

Mr. PALLONE. Thank you, Mr. Chairman.

I wanted to ask Mr. Meyer a question. You heard—I think you were here earlier—did you hear the first panel?

Mr. MEYER. Yes, sir.

Mr. PALLONE. And you heard the DOD representative say he is seeking to prevent the services from designating critical habitat on any land owned or controlled by DOD if the INRMP has been developed.

And, of course, I expressed concerns about the adequacy of the INRMP, for two reasons; first, because the Sikes Act simply requires DOD to prepare INRMPs that protect wildlife to the extent appropriate, not necessarily the extent necessary to recover a threatened or endangered species and, second, because according to the Office of the Inspector General, Federal and State wildlife agencies have limited involvement in preparation of INRMP.

So there may be cases where it is appropriate to exclude a base from critical habitat requirements, but I guess I just wanted to ask you if you believe that INRMP should be substituted for critical habitat designations no all military bases, which is I think what they are proposing.

Mr. MEYER. I don't agree with the Defense Department's position on that. I think you actually have the great structure already together for a statutory pattern, and that is that Congress has identified specific environmental needs in those statutes, whether it is the Marine Mammals Protection Act, the Endangered Species Act or all of the hazardous waste acts. The INRMP should be looking at the requirements under those acts and the components of the INRMP should be following from those.

So, in a way, it is almost like a pyramid effect, and what you have is your individual blocks on the bottom which are experiences over the last 40 or 50 years regarding the environment and what we now know is the impact on the environment. Then the INRMP can become the vehicle that the Defense Department moves forward and meets its obligations under those.

Now, where you get this duality between the critical habitat designation and the INRMP and the Defense Department's difficulty in dealing with that, I really think what you are seeing is more pretext than it is what is going on, on the bottom.

What is happening is it is a breakdown of the consultation process that Jim Connaughton is in charge of. I think CEQ has for many years, and this is a bipartisan failure, not developed the kind of teamwork between Federal agencies, so that the consultation is done early and there is a lot of time to deal with the problem. Because there is a delay, you end up with a crisis at the end, which then the Defense Department thinks is affecting its training.

I think that if Congress wants to get to the issue of why people are stepping on each other's toes on the dance floor between critical habitat designation and INRMPs, they need to get to the heart of

what is the problem with the consultation issue, and it is a very complicated issue, Congressman.

I have had situations where, because one agency does not feel comfortable talking with the Defense Department, they will go through the Natural Resource manager on the base. So Fish and Wildlife will talk more with its contacts on the base than it will directly with the base and with the chain of command at the facility, in the same way, because the person on the base doesn't feel comfortable talking with a commander who is not pro environment, he will then have the issues raised through the Fish and Wildlife Service or through the National Marine Fisheries Service and come back to the base that way.

The consultation process is very complicated. I don't think it is well-understood and I think part of that is making your job more difficult on sorting out critical habitat designation and INRMPs.

Mr. PALLONE. Well, I know you made some suggestions about how we might amend the Sikes Act. You talked about the enforcement clause, whistleblower protection. Did you want to say anything, in that regard, about what we just discussed in terms of this consultation process or anything else that you think we might do in clarifying or amending the act?

Mr. MEYER. On enforcement, I would yield to Chester's group because I think NMFWA has a great understanding of where the Act needs to go.

On the whistleblower protection provisions, which is our bread and butter at PEER, due to a decision that came out of the Federal Circuit of Appeals in 2001, it is very difficult for a Federal employee who stays within his or her chain of command by reporting up through the commander and is retaliated against in that situation, to receive protection.

The Federal Circuit has set up a situation, under the WPA and all of the whistleblower clauses in the environmental statutes, that if you are a Federal employee, you only get protection if you go to the Office of Special Counsel or if you leak the information to the press. As a former military man, this horrified me when I figured out that you have more protection if you leak the information to the New York Times, than you do if you take the information to your base commander.

So the only way we are going to get around that, until somebody gets on the U.S. Court of Appeals, is if Congress starts inserting into its statutes disciplined whistleblower protection language that circumvents the Huffman case or corrects the record in the Huffman case.

And then the last position in here, which I think is very important, and I added late—it was a thought I had in the shower, actually, on Sunday morning—is that with the delegation agreement to the States, when you start moving Federal functions, to the States, whether it is law enforcement positions on the bases related to environmental violations or if you start moving review of environmental requirements to State agencies, there is this body of jurisprudence out of the Supreme Court, on the seminal line of cases, in which a State will be able to raise sovereign immunity any time a State employee, doing work for the Federal Government, sues the State for a whistleblower issue or matter.

So, if you are going to turn over your functions to the States and the Defense Department has been thinking about that, I think you need to think through whether the States need to waive their sovereign immunity so that your whistleblower clauses still have effect.

Those are the two technical parts of that.

Mr. PALLONE. That is very helpful. Thank you.

I don't know if we have time, but I was going to ask Mr. Rurka a question. Well, first of all, where do you live, actually?

Mr. RURKA. I live in Somerset, New Jersey, outside of Rutgers University.

Mr. PALLONE. So that is Franklin Township.

Mr. RURKA. It is, exactly.

Mr. PALLONE. You are in my district.

Mr. RURKA. I am. I am proud to see you doing such a great job here today.

Mr. PALLONE. Well, thank you. I don't know, maybe I shouldn't ask this question, now that you told me that.

[Laughter.]

Mr. PALLONE. But I guess it is obvious from the testimony of the first panel, Mr. Rurka, that the DOD has been struggling with addressing the issue of encroachment on military lands in recent years, and they are seeking legislative relief from a number of acts, including ESA.

I guess the question is, given the heightened alert that we have now in these times, where military readiness is placed at a premium, how do you propose to justify increased public access to military installations when the DOD finds encroachment a burden to readiness and training activities the way that they have said or the way that Mr. DuBois mentioned in the first panel?

Mr. RURKA. There is certainly no easy solution to this, and we can appreciate the efforts of our military men and women today, and they need the training and everything else. But you are looking at vast tracts of property.

I submit to you McGuire Air Force Base, we don't need the entire base. You have got millions and millions of acres. Would 100 feet of a stream, with one dockage area with a railing, make a tremendous impact?

Would 100 acres, out of 100,000 acres, impact dramatically what we are going to do with our men, women and service personnel? And I would submit to you, no, it would not.

When I look at the problems of getting access, just a phone call to McGuire is a joke. I love our people, but no one knows about the program. If we could dedicate certain areas, and I have to refer to Colonel Deal, it is an area where you don't want 45 cars an hour going by. It is an area that is more isolated, that a person with a handicap could bring a mom, a dad, a brother, a partner, a hunting buddy, a fishing buddy and say, "Hey, we have got access here. We are not sitting in a park being pushed around by whatever it might be. We can come here. We can enjoy a few hours, and we are not going to disturb anybody."

So we are not looking to encroach on anybody's terrain. We are not here to hurt our military personnel at all—just a little area.

Mr. PALLONE. Thank you. I appreciate it.

Mr. GILCHREST. Thank you, Mr. Pallone.

Ms. Bordallo?

Ms. BORDALLO. Thank you, Mr. Chairman.

First, I would like to commend those persons working on programs for persons with disabilities. Most of my life I have devoted to working with programs that have to do with persons with disabilities, and both the Chair and the Ranking Member did touch on questions that I was going to ask.

And you know we might keep in mind, when we are thinking of the disabled veterans, that after this war in Iraq, we will have probably a significant number. It will increase, certainly. And so we want to be able to keep on working for them and keep them always in the forefront.

Our Chairman asked how many bases have initiated these programs, and you answered in the negative. Would you possibly have remembered if Guam was on that list?

Colonel DEAL. No, ma'am, I don't.

Ms. BORDALLO. I would like to ask, then, Mr. Chairman, if you could look into this, provide us with this list and provide it to the Chairman, if that is all right, Mr. Chairman.

Another question I would like to ask is the accessibility for persons with disabilities on bases, generally, is it good?

Mr. RURKA. If I could address that, and he will add to this.

Ms. BORDALLO. Yes.

Mr. RURKA. We have members in every State of the Union and across the world. We are an international group. To my surprise, when chapters in various States make an effort to get onto a military base, we find ourselves with our hands tied. I am not going to say there aren't bases that do help, but I would say in most cases there is maybe a lack of knowledge of the program or an inability to set aside a small space for this effort, and it seems that we spin a lot of tires.

So we go to the private sector, and the private sector embraces us with open arms. So we are finding that where we hoped to be welcomed on our bases, we have better access privately. Unfortunately, that is not access 52 weeks a year because it might be a farming operation, it might be where a number of issues come in.

So, from my experience right now, I would say that we are not doing well in that area.

Ms. BORDALLO. But when you get onto the bases, is the accessibility there? Are they complying with the ADA Act?

Mr. RURKA. Well, we have not had, other than McGuire Air Force Base, which has been pretty good in a small segment, but with all of the efforts going on now, things have sort of shut down a little bit. So we are saying that maybe we could have a person designated on each base to just address that issue, whether it be for photography, still video, fishing, whatever it might be. We are not looking at access to the entire base, just small areas of it.

Ms. BORDALLO. Colonel?

Colonel DEAL. The specific language of the Disabled Sportsmen's Access Act, there are three levels, and it says: First priority goes to disabled veterans, and then to dependents with disabilities and then all others.

The other big issue, and having spent 24 years in Marine Corps security, you know, it is very difficult, if you are a civilian, to get on a base. Now, I can speak for Quantico.

They did a survey down there for able-bodied hunters. More civilians hunted Quantico than the Marines did—open access, but that is Quantico—mostly because the Marines didn't have time to go hunting. All right? So it depends.

But I agree, we are a reservoir. We could help solve that issue. But if I was a base commander and the law says, dependent upon operational commitments, I would be real hesitant about civilians coming on board. First of all, I am going to take care of my vets and then dependents. It can be worked out.

Ms. BORDALLO. So perhaps this would be the time, then, for you to look at future recommendations and provide us with legislation.

Colonel DEAL. Right.

Ms. BORDALLO. Thank you.

Thank you, Mr. Chairman.

Mr. GILCHREST. Thank you, Ms. Bordallo.

I think that pretty much concludes the formal part of the hearing. I would like to continue, Mr. Pallone, and I, and the other members of this Subcommittee would like to continue to have a dialog with you on a number of aspects; certainly, how we can improve the Act with the disabilities situation. And some of the material that you sent up to the desk is just extraordinary, almost to the point where only in America can this kind of thing happen, and we would like to make other bases certainly more accessible, and using Quantico as the best example of how it can be done.

We also appreciate, Mr. Martin and Mr. Meyer, your testimony, so that we can truly integrate the kind of best natural resource management, working through an ecosystem approach, and integrate the concepts of ESA and MMPA with the necessary training that is required and critical.

So we appreciate your testimony this morning and look forward to our continued dialog.

Thank you very much.

The hearing is adjourned.

[Whereupon, at 12:10 p.m., the Subcommittee was adjourned.]

[A statement submitted for the record by Hon. Felix P. Camacho, Governor, Territory of Guam, follows:]

Statement of The Honorable Felix P. Camacho, Governor, Territory of Guam

Guam would like to thank you for the invitation to provide oral testimony at the hearing on H.R. 1497 and regrets that travel logistics prevented a representative from being able to attend. Guam's perspective on H.R. 1497, the Sikes Act Reauthorization Act of 2003 in unique. Guam remains a strategic military location especially in these times of War with Iraq and the risks posed by North Korea.

Ultimately we recommend the reauthorization supports allowing both primary goals of protecting natural resource and meeting the U.S. military mission to be achieved. The Government of Guam has had a collaborative relationship with the Department of Defense for over 30 years and can show that it is this collaboration that has allowed the military mission to be met while maintaining prudent natural resource management. This is not to say there have not been disputed issues or disagreements on the suitability of both natural resource management needs and eligibility of selected military actions with respect to their impact on endangered species habitat. However, logic and commitment can find ways for these issues to coexist.

Guam residents have always been and continue to be strong advocates of the U.S. military efforts. Having significant U.S. Air Force and U.S. Navy Bases that occupy roughly 30% of the island's land area as well as significant representation by the U.S. Coast Guard, U.S. Marines, U.S. Civil Engineering Battalion and Army and Air Force Reserve Units makes the Sikes Act an important management tool.

The issue of endangered species further complicates this issue as many of Guam's native bird species have been extirpated, while quite a few others have been place at risk as a result of the introduced brown tree snake. This has resulted in significant Federal endangered species listing of Guam species and this triggers the critical habitat issue.

Critical Habitat designation does not guarantee preservation of habitat and there are numerous examples of habitat being "taken" because the data presented was not sufficient to render a jeopardy opinion or no Federal action was proposed and therefore there is no legal oversight. Additionally, critical habitat designation does not assure funding to manage such areas and this has in many cases made the long term goal of species recovery unreachable. Some have said the ESA protects the habitat but this is only true if the species is still present. In Guam's case, much of the previously occupied habitat is uninhabited by these species but there is still hope that these areas can once again hold these species. If the land available to recover species falls below the definition of what is needed in the Federal recovery plan to have a sustainable population, then the species can never be delisted and this clearly needs to be everyone's goal.

For this reason, the integrated natural resource management plan (INRMP) concept is the preferred approach with several considerations attached. This approach obligates the DOD landholder to commit to a natural resource management plan. They must commit funds and personnel to completing the plan and this is one of the primary failures of the critical habitat approach. The state fish and wildlife agencies must continue to have the ability to participate in the development and approval of the plan. This approach has also allowed management issues beyond ESA to be addressed. This also increases the likelihood of best management practices being applied that can avoid or minimize impacts while allowing the military mission to proceed. These plans are evolutionary documents and support adjustments being made as resources or missions change. It is critical in considering this approach that strong language is developed to hold the stakeholders to the agreement and to ensure that local stakeholders are entitled to participate in the development and approval of the strategy. This also requires that the protection intended to occur in critical habitat and the ESA are upheld in any alternative approach. In the case of DOD, their primary military mission is clear and it is critical that the reauthorization that it remain equally clear that DOD must uphold the ESA and critical habitat goals but that alternatives such as INRMPs can continue to be considered as substitutes.

To do anything that would preclude either goal from being achieved would have tremendous negative impacts on either side. Exempting DOD from having to meet CH concerns in their INRMP would potentially obligate species to endangered listing for a lack of habit to meet recovery needs. To obligate CH without alternatives like INRMP substitution would potentially prevent critical operations or preparedness by DOD.

This concept should be extended beyond DOD lands to local government or private lands. This should include safe harbor agreements or other alternatives as substitutes for critical habitat that provide better approaches to manage endangered species and associated critical habitat.

The animals and plants know no political boundaries and the SIKES has a long history of ensuring proper management of natural resources on Federal lands and also provides strong support for local stakeholders to have legal standing in managing such Federal areas. These issues continue to be essential elements of the Act while alternatives to achieve these goals should be broadened.

Thank you for the opportunity to comment and we look forward to continuing to work with your Committee on this and other issues.

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