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S. HRG. 108–241, PT. 3

DEPARTMENT OF DEFENSE AUTHORIZATION FOR APPROPRIATIONS FOR FISCAL YEAR 2004

HEARINGS

BEFORE THE

COMMITTEE ON ARMED SERVICES
UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

ON

S. 1050

TO AUTHORIZE APPROPRIATIONS FOR FISCAL YEAR 2004 FOR MILITARY ACTIVITIES OF THE DEPARTMENT OF DEFENSE, FOR MILITARY CONSTRUCTION, AND FOR DEFENSE ACTIVITIES OF THE DEPARTMENT OF ENERGY, TO PRESCRIBE PERSONNEL STRENGTHS FOR SUCH FISCAL YEAR FOR THE ARMED FORCES, AND FOR OTHER PURPOSES

PART 3
READINESS AND MANAGEMENT SUPPORT

MARCH 6, 13, 19; APRIL 1, 9, 2003

Printed for the use of the Committee on Armed Services

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DEPARTMENT OF DEFENSE AUTHORIZATION FOR APPROPRIATIONS FOR FISCAL YEAR 2004

THURSDAY, MARCH 6, 2003

U.S. SENATE,
SUBCOMMITTEE ON READINESS
AND MANAGEMENT SUPPORT,
COMMITTEE ON ARMED SERVICES,
Washington, DC.

MILITARY CONSTRUCTION AND ENVIRONMENTAL PROGRAMS

The subcommittee met, pursuant to notice, at 2:07 p.m. in room SR–232A, Russell Senate Office Building, Senator John Ensign (chairman of the subcommittee) presiding.

Committee members present: Senators Ensign, Inhofe, Allard, Cornyn, Akaka, Bill Nelson, and Pryor.

Majority staff members present: William C. Greenwalt, professional staff member; Ann M. Mittermeyer, counsel; and Lucian L. Niemeyer, professional staff member.

Minority staff members present: Maren R. Leed, professional staff member; Peter K. Levine, minority counsel; and Christina D. Still, professional staff member.

Staff assistants present: Leah C. Brewer and Jennifer Key.

Committee members' assistants present: John A. Bonsell, assistant to Senator Inhofe; Douglas Flanders, assistant to Senator Allard; D. Armand DeKeyser, assistant to Senator Sessions; D'Arcy Grisier, assistant to Senator Ensign; Lindsey R. Neas, assistant to Senator Talent; Russell J. Thomasson, assistant to Senator Cornyn; Davelyn Noelani Kalipi and Richard Kessler, assistants to Senator Akaka; William K. Sutey and Douglas Bush, assistants to Senator Bill Nelson; Andrew Shapiro, assistant to Senator Clinton; and Terri Glaze, assistant to Senator Pryor.

OPENING STATEMENT OF SENATOR JOHN ENSIGN, CHAIRMAN

Senator ENSIGN. Good afternoon. The Readiness and Management Support Subcommittee meets for the first time this year to receive testimony on fiscal year 2004 military construction, family housing, and environmental budget program requests. This is my first opportunity to serve the Senate and our military forces as a subcommittee chairman, and I look forward to continuing the legacy of commitment and dedication to our armed services exemplified by my senior colleague, Senator Akaka, who returns to this

subcommittee after 2 years as chairman. I feel confident that with his seasoned expertise and experience, we can continue this subcommittee's legacy of cooperation with the mutual goal of ensuring our forces are ready and supported with the best this country has to offer.

I would also like to take a moment to acknowledge the significant accomplishments of this subcommittee under the past leadership of Senator Inhofe. While he has assumed the chairmanship of the Committee on Environment and Public Works, I am indeed fortunate to be able to rely on his counsel and the advice of this subcommittee.

I would also like to welcome returning members as well as fellow new members to the subcommittee. I know Senator Akaka joins me in welcoming our witnesses, the Honorable Hansford T. Johnson, Acting Secretary of the Navy; the Honorable Mario P. Fiori, Assistant Secretary of the Army; the Honorable Nelson Gibbs, Assistant Secretary of the Air Force; and Raymond DuBois, Deputy Under Secretary of Defense.

I appreciate the efforts of Secretary Johnson to be present in his role as the Assistant Secretary of the Navy for Installations and the Environment after his testimony this morning to the full committee as the acting Service Secretary. I am sure you have spent more than a few hours getting ready for today. My thanks for your participation this afternoon.

This year's budget request for military construction and family housing continues the same stagnant funding trends as last year. Mr. DuBois, the Department keeps setting goals for facility revitalization that on paper look like vehicles of change moving in the right direction, but end up sidetracked by other priorities.

In 2001, the Secretary of Defense directed the Department of Defense (DOD) components fund facilities to achieve a 67-year recapitalization rate, the number of years required to regenerate a physical plant. The fiscal year 2001 budget request reflected a positive step in reversing years of decline, but in the fiscal year 2004 budget request the recapitalization rate for the Services will range from 145 to 180 years, a substantially regressive slide from the fiscal year 2003 budget.

Another issue of concern is that the majority of military construction funds requested by the Department for fiscal year 2004 actually adds more square footage to support new missions, rather than recapitalizing or replacing existing deteriorated facilities and infrastructure. That means more facilities that will eventually have to be recapitalized. This trend has a more significant impact in the Reserve and Guard components, where their substantially smaller construction programs are consumed by new mission projects to the point where only one or two recapitalization projects can be funded per year.

In August 2002, the Department published a facilities recapitalization front end assessment, establishing a standard measurement and proposed procedures for using data to aid in budget development. The goal stated in this assessment was to achieve the desired 67-year recapitalization rate by 2007. This goal has now slipped to 2008, and it is proposed in the Future Years Defense Program (FYDP) to be achieved by tripling the level of military

construction investment by 2008 to levels never seen before in the military budget requests.

We continue to see underfunded budget requests, with the promise of more adequate levels in the outyears, but those years never seem to materialize. One glimmer of hope for this trend is the 2005 round of base closure and realignment, which will allow the Department to remove excess capacity and facilities while maximizing warfighting capability and efficiency. This reduction will result in a more realistic rate of facility recapitalization, assuming the Department follows through with their plans to increase funding for military construction and restoration accounts through fiscal year 2009.

The Department has proposed an average facilities sustainment funding level, the maintenance and repairs necessary to keep facilities in working order, at 93 percent of the requirement, just shy of the goal of 100 percent. This is an excellent strategy to keep the infrastructure from getting worse, and we support this request, but the proposed budget request for the restoration and modernization accounts does little to address the 70 percent of Army facilities, or 66 percent of Air Force facilities, that are rated C–3 or worse in the installation readiness report, meaning that major deficiencies exist in a facility that significantly degrade mission effectiveness. These deficiencies can only be corrected with substantial facility restoration and modernization funds from both the military construction (MILCON) and operations and maintenance (O&M) accounts. Those funds are not currently proposed.

The Services have historically responded to this restoration underfunding by diverting sustainment dollars to critical repair projects, some costing tens of millions per project. This is the migration the General Accounting Office (GAO) recently observed in a February 2003 report, where obligated sustainment funds at the installation levels range from 35 percent to 77 percent. The high sustainment funding level has not been realized at the installation level.

Both the Army and the Navy are addressing this migration of funds in part by establishing new installation agencies with regional offices to centrally manage facility accounts. We applaud their attempts to find efficiencies through regional management and look forward to hearing about the resulting increased funding levels at the installation level over the next year.

During this hearing, we will also review the Department's fiscal year 2004 environmental programs. I would like to hear about the environmental budget reductions between fiscal years 2003 and 2004, the status of Federal standards of perchlorate and trichloroethylene, and other environmental initiatives that support quality of life and the mission.

It is my understanding that many of the funding reductions are as a result of management efficiencies and environmental cleanup successes. I look forward to hearing more about each one of your success stories in this area.

I am concerned, however, about the ongoing controversy among regulators, commercial developers, defense contractors, and the Department of Defense over the Environmental Protection Agency's (EPA) consideration of drinking water standards for perchlorate, a

soluble, oxygen-rich chemical used in rocket fuel and other explosives. Perchlorate has been detected in the Colorado River in Nevada, Arizona, and California. As a result, I am sensitive to the need to regulate perchlorate. However, I believe that Federal drinking water standards should be based on sound science.

The EPA's January 2002 risk assessment document proposed a standard of one part per billion for perchlorate, despite the availability of new data that supports a higher risk base threshold. The EPA's process for trichloroethylene risk assessment is equally troubling, because it reflects major departures from EPA guidelines for carcinogen risk assessment. The cost implications of a lower cleanup level based on the assessments could be enormous, because trichloroethylene, or TCE, is such a pervasive contaminant.

I know the Department of Defense has worked hard to address both these regulatory concerns, and I am interested in hearing more about your effort. We understand that the Department is attempting to modernize, transform, improve morale, act as good environmental stewards, and evaluate its base structure while at the same time fighting a war in a constrained fiscal environment. These are the right things to do.

No doubt competing requirements and high priorities have resulted in some hard decisions. Military construction and facility O&M accounts have taken their share of the budget reductions. Future assessments may also negate facility recapitalization requirements, resulting in cost avoidance savings. The Department has used this rationale in justifying the recent low levels of military construction investment, and this subcommittee sees the rationale to want to make smart business decisions on the infrastructure we will retain.

This logic must be applied overseas as well. This budget contains requests for over $1 billion in overseas construction and installation support at a time when new initiatives are being vetted with the Department to establish the most efficient basing of our forces overseas. While the budget request supports limited consolidations of overseas forces, DOD may be proposing investments at locations that do not support the long term national security interests of our country.

While I am firm supporter of the process we have authorized for the Department to reduce and realign base structure within the United States, it will be difficult to defend that authorization if we do not know for sure what forces we plan on bringing home from overseas locations.

I look forward to hearing from all of you on these issues, and hope we can work together during this cycle to find ways to improve the quality of life and work environment for both our active and Reserve components. Your prepared statements will be made part of the record. Therefore, I urge you to keep your oral statements to not more than 5 minutes in order to allow sufficient time for questions.

Now, Senator Akaka, I turn the floor over to you for any opening statements, and before you got here I said what a great job you have done the last couple of years, and I am looking forward to working with you.

STATEMENT OF SENATOR DANIEL K. AKAKA

Senator AKAKA. Thank you very much, Mr. Chairman. I deem myself fortunate and look forward to working with a good friend, one that I have come to respect very much. I want to welcome you, Senator Ensign, as the new chairman of the Readiness and Management Support Subcommittee, and I know that together we can continue the valuable work accomplished by this subcommittee in support of our military missions and our men and women in uniform, as well as their families.

I would also like to welcome our newest members and recognize Senator Inhofe for his distinguished service as both past chairman and, most recently, ranking member of this subcommittee. Over the past several years I have had the honor of working with him to tackle many important issues together, and I know that all of us will benefit greatly from the wealth of knowledge he brings from his leadership on this subcommittee.

I thank our witnesses for joining us today to discuss the fiscal year 2004 budget request, military construction, family housing, environmental, and other installation programs of the Department of Defense. I look forward to your testimony and to your continued partnership with this subcommittee as we address the many significant readiness issues and challenges that we face both today and also in the future. I have had the experience of working with you already, and I look forward to working closely with you in this Congress.

I ask that you outline for the subcommittee not only the funding levels and major programs in this budget, but also the philosophy and priorities you used in putting this budget together. Our military is still adjusting to a new threat environment. Budget priorities have been placed on fighting the global war on terrorism, on transformation initiatives, and on modernization efforts in support of our critical military missions. While all of these are important priorities, they should not replace our previous commitment to improving the quality of life. Improvement to our military installations and the housing that we provide for our servicemen and women and their families remains important.

I am disappointed that the fiscal year 2004 budget request of $9 billion for military construction and family housing is $1.5 billion below the level provided by Congress last year. Without a sustainable funding path for our facilities and our housing, we risk undermining not only the mission goals we are working so hard to achieve, but also the quality of life we are working so hard to provide for our men and women in uniform, in both the short and long terms.

In an effort to prevent the continuing deterioration of installations and to improve and sustain the condition of our facilities moving forward, DOD has set forth several key objectives across the Services, including fully funding sustainment, reaching a 67-year average recapitalization rate by 2008, and eliminating almost all inadequate housing across the Services by 2007.

While progress has been made toward these facilities improvements, our ability to achieve these goals is based on unprecedented levels of investment in the budget outyears. Relying on large funding increases in the future is a risky and unrealistic strategy. Deci-

sions we make today regarding our installations will have significant long term consequences for our overall mission in the future, and I am confident that we will achieve a more realistic sustainable funding path for military construction as we move forward.

Turning now toward environmental programs, the Department as a whole has spent roughly $45 billion on its environmental programs over the last 10 years, and each of the military Services has worked hard to ensure that it can comply with applicable environmental laws and regulations in a manner that has a minimum impact on military training and readiness. Looking at the past decade, I do not question the Department's environmental record, but I am concerned that this year's budget proposes a reduction of $400 million, or almost 10 percent in the Department's environmental programs.

I recognize the successful execution of environmental programs and how it can reduce costs over time. However, this reduction comes at a time when we face huge problems with cleanup of unexploded ordnance (UXO), which we have hardly begun to address, and when we continue to move back the deadlines for addressing environmental problems with formerly used military sites. Accordingly, I am deeply disappointed by the Navy's decision to reduce the budget for its environmental programs by more than $200 million, or almost 20 percent.

I am even more disappointed by the Army's decision to deliberately underfund its environmental compliance program, providing only 79 percent of the funding which the Army itself has determined is necessary to assure compliance with applicable environmental laws and regulations. Even the Department's proposed budget for pollution prevention and environmental technology, the spending that will help us address the environmental problems of the future, is down by more than $125 million, or almost 30 percent from last year's appropriated level.

Four years ago, when a previous administration proposed to underfund a number of key environmental accounts, this committee issued the following warning in our report on the National Defense Authorization Act for Fiscal Year 2000, and I am quoting:

"The environmental programs of the DOD and Military Departments are essential for the protection of human health and safety of installation personnel and the public. Moreover, good faith support for funding levels necessary to meet environmental requirements, enables the DOD and Military Departments to sustain installation and training operations through and establish credibility as responsible stewards of over 25 million acres of public lands. If that credibility is placed in doubt because of inadequate funding for environmental programs, public support could fade, and regulatory scrutiny could intensify, potentially resulting in unnecessary operational impediments."

This year, the Department of Defense has once again asked Congress to enact a range and readiness preservation initiative which would exempt certain DOD activities from a number of environmental laws. One of the arguments the Department makes in support of the legislative proposal is that its track record as a good environmental steward of Defense lands demonstrates that it can be

counted upon to act in an environmentally responsible manner even if it is exempted from the environmental laws.

I do not believe that the funding decisions that I have described in this year's budget are consistent with the kind of good environmental stewardship which the Department has made a centerpiece of its case for legislative exemptions from the environmental laws. I believe it is our responsibility to carry out our activities in a way that protects the environment and earns the trust of the American people, especially those who live on and near our installations.

I hope that the witnesses will be able to address these concerns, as well as any challenges that they may face or other questions we might have regarding this year's budget request. I look forward to your testimony.

Thank you very much, Mr. Chairman.

Senator ENSIGN. At this point, unless any Senators have an overwhelming desire to make an opening statement, all opening statements will be made a part of the record. We look forward to the testimony from our panel, and we will start with Secretary Johnson, and your full testimony will be made a part of the record.

Secretary JOHNSON. Sir, if I may, I would like to defer to our Deputy Under Secretary of Defense. He has some overarching comments, if he may.

Senator ENSIGN. Try to keep your comments within the time period.

STATEMENT OF RAYMOND F. DUBOIS, JR., DEPUTY UNDER SECRETARY OF DEFENSE (INSTALLATIONS AND ENVIRONMENT)

Mr. DUBOIS. On behalf of the Secretary of Defense, Donald Rumsfeld, I am very pleased to be here, and thank you for very much for this opportunity to appear with my three colleagues, the Assistant Service Secretaries for Installations and Environment (I&E).

I want to make a quick reference to Senator Akaka's comment about philosophy and not just numbers. I think it is important to note at the onset of this hearing that Secretary Rumsfeld has adopted a different way of approaching, managing, and investing in the so-called installation and environment portfolio, or as some have referred to, the "quality-of-life" portfolio.

It is more than just military construction appropriations and family housing. It also includes utilities and energy management, safety, occupational health, environmental funding both in the cleanup arena and conservation programs arena. It also includes contributions from other appropriations account, such as the personnel account, the O&M account, especially the research and development (R&D) account, and also other appropriated funds such as the working capital funds.

Now, with this definition in mind, the fiscal year 2004 budget request in support of the total DOD I&E portfolio is nearly $20 billion, when one defines it as I have, and if you add base operations on top of it, that is to say, the O&M funding that we invest in all of our installations around the world, you are closer to $40 billion. In short, one should not judge the quality-of-life investment solely on military construction appropriations.

Now, one of the cornerstones, as both the chairman and the ranking member have addressed, of that portfolio is military family housing. The President and the Secretary of Defense early on in this administration made it a top priority, and to that end, we have employed a three-pronged approach to eliminating inadequate housing: 1) increase the basic allowance for housing; 2) increase housing privatization; and 3) sustain military construction for housing. The fiscal year 2004 budget request is on a glide path to reduce out-of-pocket expenses for our military personnel to zero in 2005. It reduces from 7.5 percent in 2003 to 3.5 percent in 2004, and zero out-of-pocket housing expenses in 2005.

The housing privatization efforts have gained traction. The calculus of housing privatization, the rate of increase, is increasing. We are achieving success, and by the end of fiscal year 2004, the budget that the President presented to Congress will have in excess of 102,000 military family units contracted to be privatized.

Now, military construction, as I said, is the third leg of this very important approach to resolving inadequate military housing. We are requesting $4 billion in new budget authority for family housing construction and operations and maintenance, and we believe this will enable us to continue to achieve our goal of reducing all inadequate housing, or nearly all, by 2007.

Now, we are also focused on improving the work environment, and thus the readiness of our military, through proper facilities sustainment and recapitalization. There is no question that full sustainment does improve the performance of our facilities. It reduces those life cycle costs. We maximize our return on capital investments in new footprint construction only by maintaining an appropriate level of repair and replacement. These facilities deteriorate over time. They also become obsolete at some point in the future. We must not only repair, we must replace.

Now, sustainment in the repair sense is, however, not enough. As I indicated, restoring and modernizing and replacing is also quite crucial to our program. Our request of $3.4 billion for restoration and modernization (R&M) does maintain, in the Secretary's view, his commitment to improving that work environment and achieving the 67-year recap rate by the goal of 2008.

You mentioned, Mr. Chairman, overseas basing and overseas presence strategy, and I would be glad to address that in questions and answers. It has received a lot of attention lately, as well it should.

Now, on the environmental front, a number of references were made by both the chairman and the ranking member, to the readiness initiative with respect to our training ranges. We can certainly get into that during the questions and answers, and I understand we also have a hearing next week specifically focused on encroachment, and the details, of course, will come out, as it should in that hearing.

You mentioned, Mr. Chairman, the issue of perchlorate. I will be glad to answer the questions on perchlorate, as I have been intimately involved in discussions over the past several months with the EPA, the Office of Management and Budget (OMB), the Council on Environmental Quality (CEQ), the Department of Energy, and NASA on this very crucial issue. It is a science issue, it is a science

policy issue, and it is also an enormous issue pertaining to potential costs to the Department and to industry.

Briefly, as I indicated, both today we can address these issues on Range Readiness Preservation Initiative (RRPI), as well as next week, but we, the Secretary of Defense, and the President, have asked Congress again to address the five issues that were not embraced in the last legislative cycle, that is to say, our request on clarifications for the Endangered Species Act, the Marine Mammals Protection Act, and the three media statutes, the Resource Conservation and Recovery Act (RCRA), the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and Clean Air Act, and I and my colleagues are prepared to answer any of your questions in that regard.

In closing, this subcommittee—and I must say, Mr. Chairman, your opening statement and that of Senator Akaka represent a very clear articulation of the challenges and the complexities that we, the managers of the installation and environment portfolio, face every day, the hard choices that we and our colleagues at the Pentagon have gone through to determine what a suitable appropriation request will be. In that regard, this subcommittee is instrumental in helping us—yes, helping us come to the right conclusions and yes, helping the entire Department to an appropriate level of funding for infrastructure and sustaining quality-of-life investments.

Thank you very much.

[The prepared statement of Mr. DuBois follows:]

PREPARED STATEMENT BY RAYMOND F. DUBOIS, JR.

Mr. Chairman and distinguished members of this subcommittee, I appreciate the opportunity to discuss the President's budget request for fiscal year 2004 and the plan of the Department of Defense for improving its facilities. The Department is transforming its force structure to meet new security challenges and transforming the way it does business. In Installations and Environment, this translates into a renewed emphasis on taking care of our people, providing facilities to support the warfighter by eliminating facilities we no longer need and improving those that we do, and modernizing our business practices—all while protecting the environment and those assets for which we have stewardship responsibility.

To prevail in the global war on terrorism and to prepare for future threats to American security, the Secretary of Defense has argued forcefully that we must transform the military. Our military capabilities must become more lethal, agile, and prepared for surprise. This transformation was under way before the attacks on September 11. But, let us be clear, transformation is about more than new weapon systems, doctrinal innovation, and the employment of technology; it also is about changing our approach to the fundamental business practices and infrastructure of the Department of Defense.

The Department currently manages more than 620,000 facilities, valued at around $600 billion, and over 46,000 square miles of real estate. Within that portfolio of real estate and facilities, we manage threatened and endangered species, diverse geological features, and important historical resources, including 68 registered National Historic Landmarks and over 14,000 properties currently listed on, or eligible for, the National Register of Historic Places.

The Defense Facilities Strategic Plan is our roadmap for managing this portfolio and outlines our long-term plan—healthy, productive installations and facilities that are available when and where needed with capabilities to support current and future military requirements. In recent years, we have developed models to more accurately determine our requirements and a sound management plan for getting our facilities back on track.

Today, I will address our accomplishments and future plans for restoring readiness to our facilities by taking care of our people, taking care of what we own, improving our business practices, and transforming our bases and infrastructure.

THE ROAD TO RECOVERY

Military installations and facilities are an integral component of readiness. Installations are the "platforms" from which our forces successfully deploy to execute their diverse missions. Over many years, these "platforms" have deteriorated. For instance, each year the Major Commands of the Military Services rate the readiness of their facilities by category. In the 2001 Installations' Readiness Report (IRR), the Component Commanders—the force providers—collectively rated 68 percent of facilities categories C–3 (have serious deficiencies) or C–4 (do not support mission requirements), a slight improvement from the 69 percent rate in 2000. The 2002 IRR is roughly the same as 2001. Investments made since fiscal year 2002 will take several years before the affects are apparent. We are in the process of reversing the decay, but much remains to be done. From fiscal years 2002 to 2004, we will have put over $28 billion in the sustainment and revitalization of our facilities, and we are beginning to see the results.

The installations management approach of the Department led us to a different way to view our installations and environmental portfolio. This portfolio is more than simply military construction and family housing. It also includes environmental funding and other contributions from appropriations such as military personnel, host nation support, non-appropriated funds and working capital funds, in addition to operations and maintenance (O&M). This funding sustains our facilities through day-to-day maintenance and contributes to our restoration and modernization program. The fiscal year 2004 budget request includes over $19 billion in fiscal year 2004 to support our entire portfolio.

The Facilities Sustainment program funds the normal and scheduled maintenance and repairs for the inventory, using operations and maintenance funds primarily, supplemented by other sources. Sustainment preserves the inventory and allows it to reach its expected service life. For the O&M-funded sustainment requirement, we are sustaining our facilities at 94 percent of commercial benchmarks, slightly over the 93 percent requested last year. We plan to achieve full sustainment not later than fiscal year 2008.

Our Facilities Restoration and Modernization program repairs or replaces damaged or obsolete facilities and implements new or higher standards where necessary. The Restoration and Modernization program applies both military construction and operations and maintenance appropriations to recapitalize our facilities and housing.

Our fiscal year 2004 funding request allows us to achieve a recapitalization rate of 148 years for the Military Departments, down from 149 years in fiscal year 2003, meaning the Department renovates or replaces its facilities an average of every 148 years. We now include the Defense Logistics Agency, DOD Education Activity and Tricare Medical Activity in the calculations, resulting in a corporate rate of 136 years for fiscal year 2004. Our goal remains a 67-year recapitalization rate, consistent with commercial practices, and our current program would achieve that level in fiscal year 2008.

In the near term, obsolete facilities pose risks to mission effectiveness, safety, quality of life, productivity of the workforce, and cost efficiencies, but these risks are mitigated to some degree by eliminating facilities through Base Realignment and Closure (BRAC), facilities demolition programs, and an aggressive acceleration of recapitalization rates in the Future Years Defense Program.

Facilities revitalization will take time. However, the indicators are trending in the right direction, showing that we are indeed making progress. With continuing attention to our Defense Facilities Strategic Plan and current planning guidance, we can achieve our goal.

Comparison of Military Construction and Family Housing Requests
(President's Budget in $ Millions – Budget Authority)

	Fiscal Year 2003 Request	Fiscal Year 2004 Request
Military Construction	4,054	4,480
NATO Security Investment Program	168	169
Base Realignment and Closure	545	370
Family Housing Construction/Improvements	1,341	1,237
Family Housing Operations & Maintenance	2,877	2,780
Homeowners Assistance	0	0
Family Housing Improvement Fund	2	0.3
TOTAL	**8,987**	**9,036**

TAKING CARE OF OUR PEOPLE

Our priority is to support the warfighter, ensure superior living and working conditions and enhance the safety of the force and quality of the environment. At the outset of this administration, the President and Secretary Rumsfeld identified military housing as a top priority for the Department. Sustaining the quality of life of our people is crucial to recruiting, retention and readiness. To that end, the Department is committed to providing quality housing using the established three prong approach—increased basic allowance for housing (BAH), increased housing privatization, and sustained military construction for housing.

In January 2001, the Department had about 180,000 inadequate family housing units. Today, through housing privatization and our military construction program, we have reduced that number to roughly 163,000. This number will continue to come down as we pursue the Secretary's goal of eliminating inadequate housing by 2007.

We remain committed to reducing—and then eliminating—the out-of-pocket housing costs for the average military member through changes in the basic allowance for housing, a key component of the Department's approach to quality housing. The fiscal year 2004 budget request includes necessary funding to continue lowering out-of-pocket housing costs for members living off-base from 7.5 percent in 2003 to 3.5 percent in 2004. By 2005, the typical member living in the private sector will have zero out-of-pocket housing expenses. Eliminating out-of-pocket expenses is good for military personnel, but also serves to strengthen the financial profile of the housing privatization program by providing members the ability to pay appropriate market rents.

Privatizing military housing is a priority for the President and the Secretary and is an integral part of the Administration's Management Plan. Our housing privatization program is crucial to providing a decent quality of life for our service members.

We believe our housing privatization efforts have gained "traction" and are achieving success. As of February 2003, we have awarded 18 projects, which include 27,884 military family housing units. We also have one award in its final stage of approval—Kirtland AFB, New Mexico—which we expect to award next month. We project more than 20 more privatization awards each in fiscal years 2003 and 2004—bringing our cumulative total to about 102,000 units privatized.

Projects at five installations have their renovations and construction completed: Naval Air Station Corpus Christi/Naval Air Station Kingsville, Texas, Naval Station Everett Phases I and II, Robins Air Force Base, Georgia, Lackland Air Force Base, Texas, and Dyess Air Force Base, Texas. During fiscal year 2004, we expect several other bases to have their renovations and construction completed or close to completion, including those at Fort Carson, Colorado and Naval Complex New Orleans, Louisiana.

Our policy requires that privatization projects yield at least three times the amount of housing as traditional military construction for the same amount of appropriated dollars. Recent projects have demonstrated that leveraging is normally much higher. The first 17 projects we've analyzed thus far reflect an average leverage ratio of over 10 to 1. Tapping this demonstrated leveraging potential through housing privatization has permitted the Department, in partnership with the pri-

vate sector, to provide housing for about $276 million of military construction funding that would otherwise have required over $2.7 billion for those awarded projects if the traditional military construction approach was utilized.

More important than the raw numbers is the reaction of uniformed personnel and their families to the housing developed under the initiative. It is overwhelmingly positive based on the high quality product produced by the projects.

Military construction is another tool for resolving inadequate military housing. In fiscal year 2004, we are requesting $4.0 billion in new budget authority for family housing construction and operations and maintenance. This funding will enable us to continue operating and maintaining the Department's family housing as well as meeting the goal to eliminate inadequate housing by 2007—3 years earlier than previously planned.

We also are improving housing for our unaccompanied service members through increases in bachelor housing funding. The Department's fiscal year 2004 budget request includes funding that would build or renovate over 12,000 bed spaces. The Services are making significant progress toward meeting, or have already met, the Department's previous goal for eliminating gang latrine conditions for permanent party unaccompanied members. Additionally, the Services are currently preparing Barracks Master Plans, similar to the Family Housing Master Plan, for managing their inventory and outlining their plans for eliminating inadequate permanent party barracks by 2007.

As we gain momentum in privatizing family housing, we also are exploring and encouraging the possibility of privatizing barracks that support our unaccompanied service members. The Department strongly supports barracks privatization and has attempted to overcome barriers that impede our ability to execute a program.

The Secretary of the Navy was authorized by the National Defense Authorization Act for Fiscal Year 2003 to execute a pilot program for barracks privatization that includes authority for the payment of partial basic allowance for housing. The Navy considers barracks privatization a key part of their "Homeport Ashore Initiative". We have discussed with the Navy some of their plans in this area, and we expect to review a pilot proposal later this year.

We recognize that a key element in maintaining the support of Congress and of the private sector is the ability to define adequately the housing requirement. The Department's longstanding policy is to rely primarily on the private sector for its housing needs. Currently, two-thirds of military families reside in private sector housing, and that number will increase as we privatize the existing inventory of housing units owned by the Military Departments. Only when the private market demonstrates that it cannot provide sufficient levels or quality of housing should we consider the construction, operation, and maintenance of Government-owned housing.

An improved housing requirements determination process, recently approved by the Deputy Secretary, combined with increased privatization, is allowing us to focus resources on maintaining the housing for which we have a verified need rather than wasting those resources duplicating private sector capabilities. The improved housing requirement process is being used by the Department to better determine the number of family housing units needed on installations to accommodate military families. It provides a solid basis for investing in housing for which there is a verified need—whether through direct investment with appropriated funds or through a privatization project.

By aligning the housing requirements determination process more closely with the analysis utilized to determine basic allowance for housing rates, the Department is better positioned to make sound investment decisions necessary to meet the Secretary's goal to eliminate inadequate housing by 2007. Further, as more military families opt to reside in the private sector as housing out-of-pocket expenses decrease for the average member, the Services on-base housing requirement should generally also decline. This migration should permit the Services to better apply scarce resources to those housing units they truly need to retain.

TAKING CARE OF WHAT WE OWN

Sustaining, Restoring, and Modernizing Facilities

The Department's program for modernizing military housing is well underway. We are also focused upon improving the work environment through proper facilities sustainment and recapitalization. As we have seen through the Installations' Readiness Report, the quality of our infrastructure directly affects readiness. Our first priority is to fully sustain our facilities, and we have made significant progress in this area. Full sustainment improves performance and reduces life cycle costs, maximizing the return on our capital investments. Repairing and replacing facilities once

they have deteriorated is more expensive. Our recent investments in sustainment and recapitalization, along with continued investment over time, will restore readiness, stabilize and reduce the average age of our physical plant, reduce operating costs and maximize our return on investment.

Despite the challenges, we have preserved funding for facilities sustainment and restoration and modernization. The Department is requesting $6.4 billion in fiscal year 2004 for sustainment. The budget funds sustainment at 94 percent of standard benchmarks. That is not an average of the Military Departments—it is the floor we established for all the Military Departments, an improvement over last year, and we have a plan to achieve full sustainment by 2008.

But sustainment alone is not enough. Even well-sustained facilities eventually wear out or become obsolete, and we have a lot of facilities in that condition now. So, in addition to sustainment, we must also restore and modernize facilities. Some of this recapitalization is critical and cannot wait. Our fiscal year 2004 funding request of $3.4 billion for restoration and modernization maintains our commitment to improving the work environment while weighing the requirements against other Departmental priorities.

We measure the rate of restoring and modernizing against an average expected service life of our inventories, which we calculate at 67 years. The fiscal year 2004 Military Department recapitalization rate is about 148 years, compared with 149 years for fiscal year 2003. With the Defense Agencies included, our corporate rate for fiscal year 2004 is down to 136 years, an improvement over last year's request. Our program funds the 67-year rate in fiscal year 2008, and between now and then we plan to follow a smooth glide path to that level. This past year, we thoroughly reviewed and standardized our Facilities Recapitalization Metric, so we can track and report on our progress toward the goal with confidence.

Improved Facilities Footprint Management

We continue to explore methods for reducing our footprint and better utilizing existing facilities. Demolition is a valuable tool for eliminating excess and obsolete facilities. From fiscal years 1998 through 2002, the Services demolished and disposed of over 75 million square feet of unnecessary, deteriorated facilities, resulting in significant cost avoidance in sustainment and restoration and modernization expenses to the Department. We expect to exceed our goal of demolishing 80.1 million square feet by the end of 2003, and we are requesting about $80 million in fiscal year 2004 to carry on this successful program.

While we use demolition for excess facilities, the enhanced-use leasing program enables us to make better use of underutilized facilities. As we transform the way we do business, the Department remains committed to promoting enhanced-use leasing where viable. This type of lease activity allows us to transform underutilized buildings and facilities, with private sector participation, into productive facilities. Examples of these opportunities include, but are not limited to, the creation of new or joint-use opportunities for office space, warehouses, hotels/temporary quarters, vehicle test tracks, wind tunnels, energy generation plants, recreational playgrounds, and sports venues. Additional benefits can accrue by accepting base operating support or demolition services as in-kind consideration; thereby, reducing the appropriations needed to fund those activities. Finally, enhanced-use leasing provides opportunities to make better use of historic facilities and improve their preservation as both cash and in-kind consideration may be used for those purposes. The Army is a leader in this regard, with pilot projects being discussed at Fort Sam Houston and Walter Reed Army Medical Center.

Improving Energy Management

As we sustain, restore and modernize facilities, part of our focus is to reduce our energy consumption and associated costs. To accomplish this, the Department is developing a comprehensive energy strategy that will continue to optimize utility management by conserving energy and water usage, improve energy flexibility by increasing renewable energy usage and taking advantage of restructured energy commodity markets as opportunities present themselves and modernize our infrastructure by privatizing our deteriorated and outdated utilities infrastructure where economically feasible.

With approximately 2.2 billion square feet of facilities, the Department is the single largest energy user in the Nation. Conserving energy will save the Department funds that can be better invested in readiness, facilities sustainment, and quality of life.

Our efforts to conserve energy are paying off. In fiscal year 2002, military installations reduced consumption by 3.1 percent, resulting in a 6 percent decrease in the cost of energy commodities from the previous year. With a 25.5 percent reduction

in fiscal year 2002 from a 1985 baseline, the Department is on track to achieve the 2010 energy reduction goal for buildings of 35 percent per square foot.

The Department has a balanced program for energy conservation—installing energy savings measures using appropriated funding and private-sector investment—combined with using the principles of sustainable design to reduce the resources used in our new construction. Energy conservation projects make business sense, historically obtaining about four dollars in life-cycle savings for every dollar invested. The fiscal year 2004 budget contains $69.5 million for the Energy Conservation Investment Program (ECIP) to implement energy saving measures at our facilities. This is a 39 percent increase from fiscal year 2003 budget request of $50 million.

The Department will also continue to pursue renewable energy technologies such as fuel cells, geothermal, wind, solar, and purchase electricity from these environmentally-friendly renewable sources when it is life-cycle cost-effective. In fiscal year 2002, military installations used 4.5 trillion British Thermal Units of renewable energy, doubling the amount from the previous year. The pursuit of renewable energy technologies is critical to the Department's and Nation's efforts in achieving energy flexibility.

A key part of our energy program is our utilities management efforts, focused on modernizing systems through utilities privatization. By incorporating lessons learned and industry feedback, the Department has strengthened efforts to take advantage of private sector innovations, efficiencies and financing. We have over 2,600 systems with a plant replacement value of approximately $50 billion. Thirty-eight systems have been privatized using the utilities privatization authority in current law. Another 337 systems were privatized using other authorities, and privatization solicitations are ongoing for over 850 utility systems.

The Services plan to request privatization proposals for the remaining 450 systems over the next 2 years. We are on track to complete privatization decisions on all the available water, sewage, electric and gas utility systems by September 2005. Congressional support for this effort in fiscal year 2004 is essential to maintain the procurement momentum and industry interest, as well as maximize the benefits of modernizing the Department's utility infrastructure.

Improving Environmental Management

The Department continues to be leaders in environmental management. We are proud of our environmental program at our military installations throughout the world, and we are committed to pursuing a comprehensive environmental program.

Environmental Program - Summary of Request

(President's Budget in $ Millions – Budget Authority)

	Fiscal Year 2003 Request	Fiscal Year 2004 Request
Cleanup	1,278	1,273
BRAC Environmental[1]	519	412
Compliance	1,701	1,603
Pollution Prevention	247	173
Conservation	152	153
Technology	205	191
Total	**4,102**	**3,805**

In fiscal year 2004, we are requesting $3.8 billion for environmental programs. This includes $1.3 billion for cleanup, $0.4 billion for BRAC environmental, $1.6 billion for compliance; about $0.2 billion for pollution prevention, and about $0.2 billion for conservation.

By the end of fiscal year 2002, we reduced new environmental violations by 77 percent from the 1992 baseline. The Department continues to reduce the percent of enforcement actions received per inspection, with roughly one enforcement action per 12.5 inspections, down from one for every three inspections in 1994. We have also improved our treatment of wastewater and the provision of drinking water for those systems we control.

We reduced the amount of hazardous waste we generate by over 64 percent since 1992, and we are avoiding disposal costs by diverting non-hazardous solid waste

[1] Funding levels reflect total requirement (TOA).

from landfills by recycling and other approved methods. These pollution prevention techniques continue to save the Department needed funds as well as reduce pollution. As an example, the Department saved about $95 million in disposal costs in 2001. We have increased the number of alternative fueled vehicles that we use in order to reduce the demand for petroleum, and we continue to reduce the number and amount of toxic chemicals we release through our industrial processes and training operations.

The Department's commitment to its restoration program remains strong as we reduce risk and restore property for future generations. We are exploring ways to improve and accelerate cleanup with our regulatory and community partners. Achieving site closure and ensuring long-term remedies are challenges we face. Conducting environmental restoration activities at each site of the installations in the program requires accurate planning, funding, and execution of plan. The Department must plan its activities years in advance to ensure that adequate funding is available and used efficiently.

The Defense Environmental Restoration Program goals assist the Components in planning their programs and achieving funding for activities. We achieved our goal to reduce 50 percent of high risk sites at active installations by the end of fiscal year 2002 and are on track to achieve 100 percent by the end of fiscal year 2007. At BRAC installations, final remedy for 90 percent of the sites was in place by the end of fiscal year 2001, and we anticipate completion by the end of fiscal year 2005.

We also are working to mitigate unexploded ordnance (UXO) on our military ranges. Our operational ranges are designed to train and make combat-ready our Nation's warfighters and prepare them as best as we can for combat. UXO on ranges is a result of our military preparedness training activities. However, we are actively seeking ways to minimize the amount of UXO on our operational test and training ranges. The Department is developing policies on the periodic clearance of UXO for personnel safety and to ensure chemical constituents do not contaminate groundwater.

For the areas other than operational ranges which have a UXO challenge—our Formerly Used Defense Sites, BRAC installations, and closed ranges on active installations—we are currently developing the reports requested by Congress in the National Defense Authorization Act for Fiscal Year 2002. We will have an inventory of our munitions response sites, cost estimates, a comprehensive plan, and will define the current technology baseline with a roadmap for future action.

In addition, we are developing new technologies and procedures through the Environmental Security Technology Certification Program and the Strategic Environmental Research and Development Program. These, along with the Army and Navy's Environmental Quality Technology Program, have enabled us to make tremendous strides for realizing our goals of reducing cost, completing projects sooner and sustaining the safety of our communities.

As you may know, the Defense Science Board (DSB) assessed the UXO issue in 1998. Last year, the Under Secretary of Defense for Acquisition, Technology and Logistics commissioned a new DSB Task Force to look at this entire issue. Their report is due for completion this summer, and we look forward to acting on their recommendations.

Beyond the dollars, we have implemented a new environmental management systems (EMS) policy as a part of the administration's emphasis that enables us to train and operate more effectively and efficiently, while reducing our impact on the environment. Through this "systematic approach," we can continually improve both our mission performance and our environmental management. We are implementing this across all military missions, activities and functions to modernize the way we manage the environment entrusted us by the American people, and we are on-track to achieve the EMS goal established in Executive Order 13148. We hope to reach the level where our mission activities are so well managed from an environmental perspective that our environmental impacts would be virtually eliminated and remove our liabilities from long-term compliance bills. EMS is the systematic approach to achieve this goal and resolve the perceived conflict between mission and environmental stewardship.

We also look to our stakeholders and Government agencies to help us better identify our environmental management issues. On February 5th, we hosted a defense environmental forum at the National Defense University. At the meeting, recognized leaders from Federal, tribal, State and local governments, the private sector, academia, the scientific and research community, and other non-governmental organizations exchanged insights on pressing environmental issues facing the Department. Our objective was to identify and diagnose the major issues associated with the twin imperatives of military readiness and environmental protection. This new

initiative will improve our communication with stakeholders and enable us to more effectively manage our mission and environmental challenges.

Another significant environmental accomplishment is in the area of natural resources. The Department has been managing natural resources for a long time—we currently manage more than 25 million acres. In October of 2002, we issued a new policy for "Integrated Natural Resource Management Plans", or "INRMPs", used by the Department to protect natural resources on our installations. Previous guidance emphasized early coordination with all stakeholders, the U.S. Fish and Wildlife Service and appropriate State agencies to ensure that we meet the conservation requirements of the Sikes Act and focus on the preservation and maintenance of healthy and fully functional ecosystems. The new guidance emphasizes coordination requirements, reporting requirements, implementation requirements, and other miscellaneous requirements. The miscellaneous requirements highlight the need to ensure that we manage our assets in accordance with the INRMPs to ensure that there is no net loss in the capability of military installation lands to support the military mission of the installation, in this case test and training opportunities, as well as preserving the natural resources entrusted to us.

We have completed integrated natural resource management plans at the vast majority of bases. We also are pursuing the completion of integrated cultural resource management plans at our installations to ensure that we identify and preserve historical treasures. This will allow us to test and train to maintain a ready military force without fear of endangering our heritage. We acknowledge there are still some very complex and difficult challenges, but we are making progress.

Preserving Ranges and Training Areas

The Department takes seriously the fact that an important part of our national defense mission is to defend and preserve the natural environment entrusted to us. Our personnel take understandable pride in their environmental record—a record with documented examples of impressive management of critical habitats and endangered species. However, the impacts on readiness must be considered when applying environmental regulations to military-unique training and testing activities. The ever-growing problem of "encroachment" on our military training ranges is an issue for us here at home, as well at our overseas training locations.

We are addressing the effects that encroachment poses to our ability to "train as we fight." This effort, known as the Readiness and Range Preservation Initiative, is the Department's broad-based effort to find solutions to a variety of pressures on our test and training lands.

This past year, Congress enacted two legislative provisions that allow us to cooperate more effectively with local and State governments, as well as private entities, to plan for smart growth surrounding our training ranges. These provisions allow us to work toward preserving habitat for imperiled species and to limit development to land uses that are compatible with our training and testing activities. Congress also provided the Department a temporary exemption from the Migratory Bird Treaty Act for the incidental taking of migratory birds during military readiness activities. These were three of the eight provisions the Department sought approval on as part of our Readiness and Range Preservation Initiative in the National Defense Authorization Act for Fiscal Year 2003.

Today, we are developing a long-term process to address encroachment by creating a multi-year, comprehensive program to sustain training and testing. This program will pursue not only legislative clarification but also regulatory and administrative changes, internal policy and procedure adjustments, and an active stakeholder engagement strategy.

The administration will seek legislative clarification where laws are being applied beyond their original legislative intent. We believe that modest legislative reforms are needed to ensure the preparedness of this Nation's Armed Forces, and we will continue to work with Congress to seek enactment of legislation to address these concerns.

We are in the process of evaluating all of the circumstances that create problems for our test and training ranges. Some of these may be solved with administrative or regulatory changes. We are working with the Military Services, other Federal agencies, tribes, States, and local communities to find ways to better balance military, community and environmental needs.

The Department also is developing a suite of internal policy and procedure adjustments, the capstone of which is a new Department of Defense Directive recently signed by the Deputy Secretary to ensure long-range, sustainable approaches to range management. In addition, we intend to strengthen and empower management structures to deal with range issues. We also have taken a pro-active role to protect

bases from urbanization effects by working with local planning and zoning organizations and other stakeholders.

The actions taken by Congress last year will greatly assist in this process by allowing us to work toward preserving habitat for imperiled species and to limit development to land uses that are compatible with our training and testing activities. The Services will identify opportunities to utilize these new authorities. We plan to convene a workshop early this year with key land conservation organizations and representatives from State and local communities to develop an implementing Memorandum of Understanding and sample cooperative agreements that can be utilized under the new authorities.

The Department also is planning to address the long-term sustainment process by reaching out to and involving other stakeholders. We need to improve the understanding of readiness needs among affected groups such as State and local governments, and non-governmental organizations. We must establish dialogue and form partnerships with these groups to reach our common goals by focusing on areas of common interest. This will enable us to take a proactive stance against encroachment and protect our bases into the future.

IMPROVING BUSINESS PRACTICES

Adopting a Common Approach to Managing Real Property

We are undertaking an aggressive initiative to make management of our real property more efficient and effective. This project is called the Real Property Enterprise Solution (RPES), and is part of the larger Financial Management Modernization Program.

Our vision is to improve the accuracy, reliability, timeliness, and usefulness of real property information necessary by all levels of decision-making to support the Department's overall mission, resources, accounting, accountability and reporting requirements. We will accomplish our vision through development and implementation of a standard, Defense-wide real property enterprise architecture resulting in: standard business practices and processes, standard categorization, definitions and terminology and a standard system (or systems).

We are teaming with the Office of the Under Secretary of Defense (Comptroller) to develop and update our plans. We are 80 percent finished with our enterprise architecture for real property. An enterprise architecture catalogs the current real property activities and leads to identification of the optimal business processes and technical standards, with a transition plan showing how to get from the current to the optimal state, recognizing any business constraints. By the end of this calendar year, we plan to complete the market research and solution assessment and expect to field a pilot system or systems in calendar year 2005 for a significant portion of the real property business area.

As part of the reform of the Department's business practices, we developed the Facilities Sustainment Model (FSM) and the Facilities Recapitalization Metric (FRM). The Facilities Sustainment Model and the Facilities Recapitalization Metric, based on standard commercial processes, improve the way we inventory and account for facilities and more clearly define our facilities sustainment and recapitalization requirements. The Services have used FSM to define their sustainment requirements since fiscal year 2003, and the Defense Agencies were included for fiscal year 2004.

This past summer we thoroughly reviewed and standardized the FRM, so we can track and report on our progress toward our recapitalization goals with confidence. The revised metric is now used throughout the Department to calibrate the rate at which we restore and modernize facilities and to ensure that all elements of the Department are moving forward toward our corporate goals. With these two new tools, we have finally established a common requirements generation process and a sound method for forecasting funding requirements.

In developing these models, we also changed the program element (PE) structure for fiscal year 2002 budget execution, doing away with the real property maintenance PEs, and creating sustainment and restoration/modernization (recapitalization) PEs. These newly defined program elements align our financial management and accounting cost elements with this new, transformed management structure and permit tying dollars and budgets to performance.

Reducing Cycle Time

An imperative within the acquisition community is to reduce cycle time while also reducing total ownership costs. In the Installations and Environment community, we viewed this as a challenge to improve business processes, enabling resources—both money and people—to be better used elsewhere.

We established an integrated product team (IPT), with the Services and Defense Agencies, to identify alternatives to reduce cycle time for military construction. Facility construction typically takes about 5 to 8 years from requirements determination to beneficial occupancy. We researched and adapted private sector practices, where possible, but in some cases we may need legislative change. We will urge your consideration of such proposals should they be necessary.

Focusing on Core Competencies

As we consider approaches to better utilize our personnel, competitive sourcing provides a methodology for focusing on our core capabilities. The Department will obtain needed products or services from the private sector where it makes sense. We support the Competitive Sourcing Initiative in the President's Management Agenda. To meet the target initiated by the Office of Management and Budget, the Department has initiated six pioneer projects as alternatives to A–76. The Army's "Third Wave" is an example of our new aggressive approach to identify the best way to do business. We will also announce an additional 10,000 traditional A–76 initiatives this fiscal year. The Services will submit their plans to meet the President's management initiative objectives through the use of A–76 and alternatives in their fiscal year 2005 Program Objectives Memoranda submissions.

Consistent with our approach of focusing on our core competencies, the Department believes our security guard functions could be better accomplished by contractors, freeing our military and civilians to focus on other tasks that will enable us to fight and win wars. We remain supportive of repealing the restriction in 10 U.S.C. 2465 that prohibits the Department from contracting for security guards. The current provision inhibits the Department's ability to quickly increase or decrease the number of security guards, as threat conditions warrant. This provision would provide increased flexibility as the Department continues to enhance anti-terrorism/force protection measures.

TRANSFORMING BASES AND INFRASTRUCTURE

One of the most effective tools we have to transform the military is through the BRAC process. From 1988 through 1995, approximately 387 closure or realignment actions were approved, and the Department has completed each action within its respective statutory deadline. We have rationalized much of our infrastructure through the previous BRACs—but much more needs to be done. We believe the Department has anywhere from 20 to 25 percent excess capacity in its facilities. By removing that excess capacity we hope to save several billion dollars annually. For instance, prior BRAC actions have resulted in net savings to the Department—to the taxpayer—of approximately $17 billion, with annual recurring savings of approximately $6 billion.

Continuing to operate and maintain facilities we no longer need diverts scarce resources that could be better applied to higher priority programs—like improving readiness, modernization and quality of life for our Service members. We must utilize every efficiency in the application of available resources to ensure we maintain just what we need to accomplish our missions. In the wake of the attacks of September 11, 2001, the imperative to convert excess base capacity into warfighting ability is enhanced, not diminished.

However, achieving savings is not the only reason to realign and close bases. The more important reason is to enable us to attain the right mix of bases and forces within our warfighting strategy as we transform the Department to meet the security challenges of the 21st century. Transformation requires rationalizing our base structure to better match the force structure for the new ways of doing business.

Congress authorized a Base Realignment and Closure in 2005 to accomplish this "base transformation". BRAC 2005 should be the means by which we reconfigure our current infrastructure into one in which operational capacity maximizes both warfighting capability and efficiency. Through BRAC, we will eliminate excess capacity that drains our scarce resources from defense capability.

The process will not be simply a process to reduce capacity in a status-quo configuration, but rather, as the foundation to transformation, it will allow us the opportunity to examine a wide range of options for stationing and supporting forces and functions to make transformation what it truly should be—a "re-tooling" of the base structure to advance our combat effectiveness and make efficient use of our resources. A primary objective of BRAC 2005 process is to examine and implement opportunities for greater joint activity.

Our installations transformation is not limited to the United States. We also are assessing our facilities overseas to determine the proper size and mix. Since 1990, the Department of Defense has returned or reduced operations at about 1,000 overseas sites, resulting in a 60 percent reduction in our overseas infrastructure and a

66 percent reduction in Europe, in particular, and we continue to review overseas basing requirements of the Combatant Commanders and examine opportunities for joint use of facilities and land by the Services, consolidation of infrastructure, and enhanced training.

CONCLUSION

Our facilities continue to recover, and we are seeing the results of investments made over the last several years. The Defense Facilities Strategic Plan and our installations management approach have provided a framework that enables us to focus on our overarching goals: taking care of our people, taking care of our facilities and enhancing our business processes. We have made significant progress toward providing quality housing for our service members, and we are now focused on improving the work environment.

BRAC 05 is our most important initiative to help us accomplish this. By consolidating, realigning and reducing unneeded infrastructure, the Department can focus investments on maintaining and recapitalizing what we actually require, resulting in ready facilities for the warfighters while more prudently using the taxpayer's money.

As we prepare to rationalize our base structure, we also are addressing encroachment issues that impact our ability to effectively utilize our test and training ranges. The Readiness and Range Preservation Initiative is identifying solutions to these challenges. We have developed a plan of action and are proceeding with implementation. A key element of the plan is our proposed legislation that combines military readiness with environmental stewardship.

Our Real Property Enterprise System (RPES) efforts will result in much improved and standardized business practices while enhancing our financial stewardship. Market research and solution assessment should be complete by the end of this fiscal year with pilot fielding of a new system(s) or modification to existing systems to follow.

In closing, Mr. Chairman, I sincerely thank you for this opportunity to outline our successes in military facilities and review our plans for the future. We appreciate your strong support of our military construction program, and I look forward to working with you as we transform our infrastructure.

Senator ENSIGN. Thank you. Secretary Johnson.

STATEMENT OF HON. HANSFORD T. JOHNSON, ACTING SECRETARY OF THE NAVY

Secretary JOHNSON. Thank you, Mr. Chairman, Senator Akaka, distinguished members of the subcommittee. I am proud to appear today as Assistant Secretary of the Navy for Installations and Environment. I would like to highlight a few items that we have in this area.

First of all, we have had a very difficult time, as you are well aware, balancing our need for readiness, our increase in aircraft and ship procurement with our facilities and environment. I think facilities and environment have fared fairly well.

Housing is always a great concern to all members of the military. We find, as I will point out in a minute, we have done pretty good in family housing. This year, if we had to err, we erred in favor of better bachelor quarters. We put $269 million in the bachelor quarters. As we have talked about before, we had some 18,100 sailors that did not have a bed ashore, we call it "homeport ashore," and we are making good progress. In Hawaii we have already done a lot; and in Guam, we have three projects this year that will make a big difference.

When we provide for homeport ashore, we are going to build to the "one-plus-one" DOD, and I think your standards, but to get sailors off of ships earlier, we will put two people to each single room initially. Any room ashore at all is much better than their ac-

commodations on the ship. We will go back to "one-plus-one" when we get there, of course.

We have had great success with the public-private ventures in family housing. We are going to try this year to propose three sites to do bachelor quarter pilots. We will do a pilot at Norfolk, San Diego, and also at Camp Pendleton, where we bring in a private contractor to build dormitories, and we will be their partner, as we are with family housing.

We have a little bigger problem with the bachelor housing than the family housing, because we have to make sure that those rooms will be filled, and we also have to make sure that if, for some reason, everybody goes away, the dormitory is severable, so we will build it on the edge of a base.

Going back to family housing, we have been very successful. We let a contract just last week for Beaufort and Parris Island. That is the second largest one we have done. It is 1,700 units. That is working very well, but we also find with your great support the basic allowance for housing has increased, particularly in the high rent areas, and more and more of our members want to live on the local economy. We think that our sailors and marines are Americans first, and if they can live on the local economy, that is what we would like.

We see a decline in the requirement a little bit. We still are able to fill all of our quarters, but we are very pleased with that result.

The MILCON program is a robust one. It is nearly $1.2 billion. It is near where we proposed last year. It is under the final President's budget. This year, besides the bachelor quarters, we are also placing emphasis on counterterrorism, continuing that effort that we began last year.

We also have several large projects. One of them is in Florida, at Blount Island. Blount Island is where our maritime prepositioned ships operate from, and we are going to buy some land at Blount Island as well as the safety buffer for the ammunition requirements.

We are also planning to build some outlying fields for the new F/A–18E/F that are coming to the east coast, and we are doing test facilities for the next generation launch system, so we are moving forward.

In the sustainment-restoration area, we are doing pretty well in sustainment. The Navy has improved from 84 percent to 93 percent this year. The Marines have held at a very respectful 97 percent, which is probably as high as we need to go. As you mentioned in your statements, we have not done as well on the restoration. We should get down to 67 years.

The Marines have done pretty well. They went down from 156 to 88 years. The Navy did not do as well. They went from 116 to 140 years. In all cases, by the end of the Future Years Defense Plan (FYDP) we will meet the required 67 years. We all have a lot of work to do in the restoration models as well as how we perform to meet those.

We are working very hard to manage risk to limit the degradation of our operational capabilities as well as training, quality of life, and facilities.

We worked very hard on our shore infrastructure, and we have done as the Army had already done and you took note in your opening comments. We are going to one client for all installations. In the past, we passed the money through a couple of levels, and each level sometimes some of it got lost going through that level. We want to make sure that the money that you give us goes directly to the installations, and we are confident that will work well. We are about 6 to 9 months behind the Army and are learning from them, but we are very confident of it.

You talked about the environmental program. It has declined about $200 million, but there are some reasons for that. First of all, we meet all of our requirements, and at the Kaho'olawe, as Senator Akaka will know very well, we do not have that next year, and that was around $75 million there. We will finish Kaho'olawe on November 11 of this year, and we will move forward from that.

Also in the prior Base Realignment and Closure (BRAC) cleanups, our BRAC environmental went down. It went down because we are selling some land, and the revenue from those land sales go into environmental cleanup, so the actual funding in there is increased because of the land sales, but as far as you are concerned it has gone down, but we have taken care of that with the land sales.

We are very pleased with our activities with the prior BRAC land sales. It is working quite well. We have a good partnership with the General Services Administration (GSA), and more and more of the local reuse authorities are realizing that it is better if we sell the property than them trying to develop it. Originally, everybody wanted to give everything to the community, but they find it is much easier now—we have a couple of cases where they are saying, please, take this burden off our back and go sell it and get it back into the economy. It increases the tax base, also.

I recognize the Vice Chiefs are going to talk about the environment, but certainly everybody at the table strongly supports the things that Mr. DuBois talked about, and we are strongly behind the environmental efforts. We are trying to find a balance, not be exempted.

Thank you very much, sir.

[The prepared statement of Secretary Johnson follows:]

PREPARED STATEMENT BY HON. HANSFORD T. JOHNSON

Mr. Chairman and members of the subcommittee, I am H.T. Johnson. While I have recently been designated as the acting Secretary of the Navy, I am also the Assistant Secretary of the Navy (Installations and Environment), and it is in this latter capacity that I appear before you today to provide an overview of the Department of the Navy's shore infrastructure programs and environmental efforts.

FISCAL YEAR 2004 BUDGET OVERVIEW

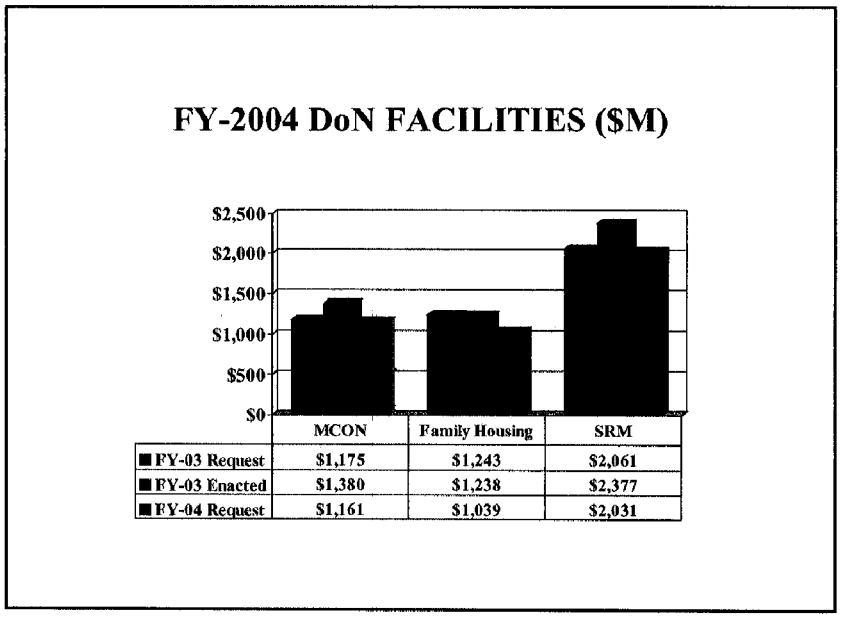
Before his recent departure to the Department of Homeland Security, Secretary of the Navy Gordon England articulated several overarching Department of Navy goals for the fiscal year 2004 budget:

- Successfully prosecuting the global war on terrorism while sustaining our current readiness;
- Recapitalizing and transforming our Navy and Marine Corps to meet the challenges of the future;
- Fully networking our forces at sea and ashore to operate seamlessly in a joint environment;
- Continuing to invest in our sailors and marines; and

- Sustaining the quality of our operational training.

I believe the fiscal year 2004 Department of Navy's budget request meets all of these goals and represents a successful balance between funds needed to operate, recapitalize and transform our fleet assets with funds needed to do the same for our shore installations. Allow me to provide you with an overview of our budget, with further details to follow later in this statement.

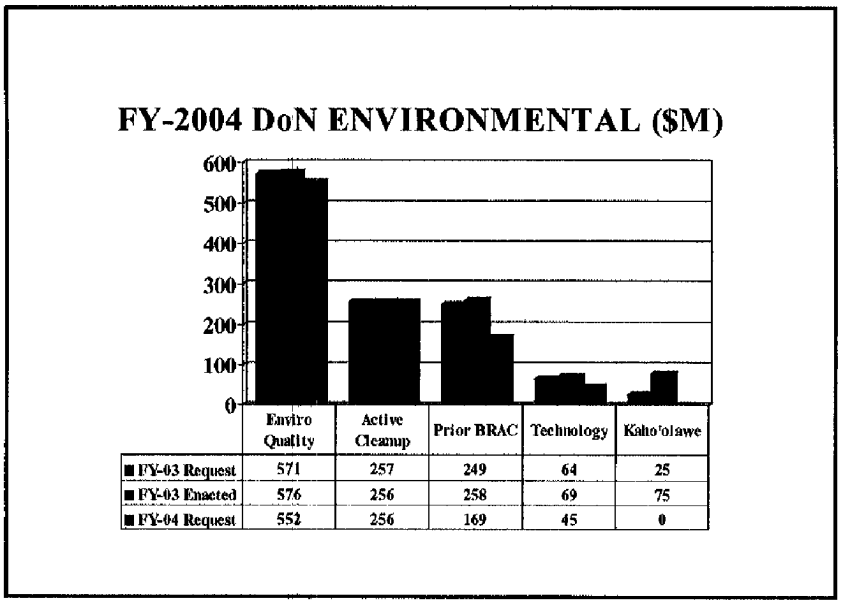
Our Fiscal Year 2004 Military Construction, Family Housing, and Sustainment, Restoration, and Modernization (SRM) request of $4.2 billion is $764 million below the fiscal year 2003 enacted amount, but generally on par with our fiscal year 2003 budget request. Looking at the individual components, the fiscal year 2004 Military Construction, (MILCON) Navy (active + Reserve) request is a very robust $1.16 billion, similar to the fiscal year 2003 request. I note that the fiscal year 2003 enacted amount includes $236 million in one-time combating terrorism projects that were part of the fiscal year 2003 Supplemental request. These projects met the criteria for military construction and were included in the fiscal year 2003 MILCON appropriation.



We have reduced our fiscal year 2004 Family Housing, Navy request by 17 percent compared to the fiscal year 2003 enacted amount or 16 percent compared to our fiscal year 2003 request. However, expanded use of our housing privatization authorities, and increases to the Basic Allowance for Housing (BAH), which makes housing in the community more affordable, allow us to still meet the Department of Defense goal of eliminating inadequate homes by fiscal year 2007. SRM funding[1] is down 15 percent compared to the enacted level, a reflection of overall affordability within the Secretary's priorities. Compared to our fiscal year 2003 request, the fiscal year 2004 request represents a 1.5 percent reduction.

Our fiscal year 2004 request for environmental programs totals $1.0 billion, a reduction of about $200 million from the fiscal year 2003 enacted level and a 12 percent reduction from our fiscal year 2003 request. Much of the reduction is due to the completion of cleanup on the island of Kaho'olawe, a former Naval bombing range in Hawaii. Title X required the Navy to conduct a 10-year cleanup, which will end on 11 November 2003. We are working to transition full control of the island to the State of Hawaii.

[1] Refers only to the Operations and Maintenance portion of SRM.



	Enviro Quality	Active Cleanup	Prior BRAC	Technology	Kaho'olawe
FY-03 Request	571	257	249	64	25
FY-03 Enacted	576	256	258	69	75
FY-04 Request	552	256	169	45	0

The decline in technology investments is due to the completion of environmental research to retrofit non-ozone depleting equipment. This equipment is now being installed on ships. Our must-fund environmental cleanup requirements for bases closed under the Bases Realignment and Closure rounds in 1988, 1991, 1993, 1995, which I will refer to as Prior BRAC[2], are less in fiscal year 2004 than in fiscal year 2003, while cleanup at active bases is unchanged from fiscal year 2003.

Environmental Quality (EQ) includes funds for compliance with existing environmental standards, pollution prevention, and conservation of natural and historic resources on Navy and Marine Corps Bases. Approximately half of these funds are for routine functions such as personnel salaries, environmental permits and fees, environmental sampling and laboratory analyses, and hazardous waste disposal costs, while the rest are for one-time projects. The decline in environmental quality funds is due to the completion of one-time pollution prevention projects and a reduction in equipment purchases.

HOUSING

We have made a special effort in this budget to maintain progress on improving the quality of housing for our sailors and marines.

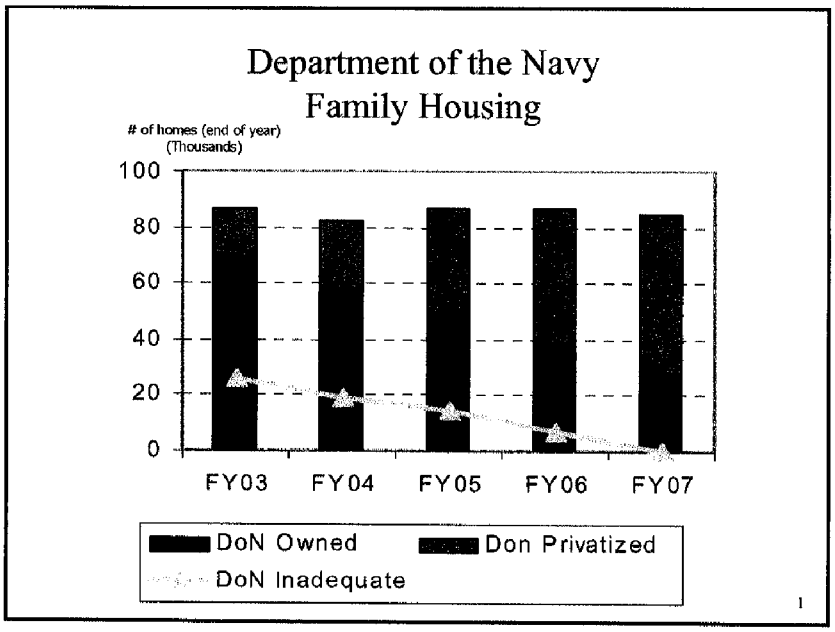
Family Housing

Our family housing strategy consists of a prioritized triad:

- *Reliance on the Private Sector.* In accordance with longstanding Department of Defense and DON policy, we rely first on the local community to provide housing for our sailors, marines, and their families. Approximately three out of four Navy and Marine Corps families receive a Basic Allowance for Housing (BAH) and own or rent homes in the community. Our bases have housing referral offices to help newly arriving families find suitable homes in the community.
- *Public/Private Ventures (PPVs).* With the strong support from this committee and others, we have successfully used statutory PPV authorities enacted in 1996 to partner with the private sector and meet our housing needs, in part, through the use of private sector capital. These authorities,

[2] Prior BRAC amounts shown in the graphic are only for environmental cost, and exclude $12 million in fiscal year 2003, $11 million in fiscal year 2004 for caretaker costs, which are a portion of the Prior BRAC budget request. The fiscal year 2004 budget request includes $68 million in expected land sale revenue to be applied to cleanup Prior-BRAC bases.

which I like to think of in terms of public/private partnerships, allow us to leverage our own resources and provide better housing faster to our families.



• *Military Construction.* Military construction will continue to be used where PPV authorities don't apply (such as overseas), or where a business case analysis shows that a PPV project is not financially sound.

The Department remains on track to eliminate the inadequate family housing units we own by fiscal year 2007, in large measure because we have increased our emphasis on privatization. We will be able to eliminate almost two-thirds of our inadequate inventory through the use of public/private ventures. As of 1 February, we have awarded eight projects totaling almost 6,600 units. During Fiscal Years 2003 and 2004, we plan to award projects totaling over 17,000 homes at ten Navy and Marine Corps locations. This will allow us to improve our housing stock and provide more homes to sailors, marines, and their families much faster than if we relied solely on traditional military construction.

Another important factor is the continuing initiative to improve the basic allowance for housing (BAH). With higher BAH, our members are finding suitable, affordable housing in the private sector. This, in turn, reduces the need for military housing, thus allowing us to divest ourselves of excess, inadequate units in our inventory.

Bachelor Housing

Our budget request of $269 million for Bachelor Quarters construction projects continues the emphasis on improving living conditions for our unaccompanied sailors and marines. There are three challenges:

1. *Provide Homes Ashore for our Shipboard Sailors.* There are approximately 18,100 sailors worldwide who are required to live aboard ship even while in homeport. This requirement is less than reported last year because of a recent change to Navy policy allowing unaccompanied E4s to live off base. This new policy is tied to the National Defense Authorization Act for Fiscal Year 2001 that authorized the payment of BAH to E4s without dependents who are assigned to sea duty. The Navy continues to project that it will be able to achieve its "homeport ashore" initiative by fiscal year 2008 by housing two members per room. Our fiscal year 2004 budget includes two "homeport ashore" projects. One represents the second increment of a

Norfolk, VA project that will provide a total of 500 spaces. The second project would construct 500 spaces for shipboard sailors at San Diego, CA.

2. *Ensure our Barracks Meet Today's Standards for Privacy.* We are continuing our efforts to construct new and modernize existing barracks to provide increased privacy to our single sailors and marines. The Navy applies the "1+1" standard for permanent party barracks. Under this standard, each single junior sailor has his or her own sleeping area and shares a bathroom and common area with another member. To promote unit cohesion and team building, the Marine Corps was granted a waiver to adopt a "2+0" configuration where two junior marines share a room with a bath. The Navy will achieve these barracks construction standards by fiscal year 2013; the Marine Corps by fiscal year 2012.

3. *Eliminate gang heads.* The Navy and Marine Corps remain on track to eliminate inadequate barracks with gang heads[3] for permanent party personnel. The Navy will achieve this goal by fiscal year 2007; the Marines by fiscal year 2005.

We appreciate the support from Congress in our efforts to extend the principles of privatization to our critical bachelor housing needs. We envision that privatization will prove to be as successful in accelerating improvements in living conditions for our single sailors and marines as it has been for family housing. We are developing pilot unaccompanied housing privatization projects for Hampton Roads, Camp Pendleton, and San Diego. We hope to be able to brief you on our concepts for these projects before the end of this fiscal year.

Military Construction Projects

In addition to the $269 million in Bachelor Housing projects, our fiscal year 2004 military construction program includes $361 million in Operational and Training facilities such as waterfront and airfield projects, and $44 million in compliance projects. There is $32 million for counter-terrorism (CT) projects; additional CT costs are included as a portion of the total project where appropriate.

This budget includes $473 million in "new footprint" projects, representing an unusually large 41 percent of the military construction program. While many barracks and CT projects are new-footprint, there are several other important projects that will support the transformation to new weapon systems of the future.

- $116 million to complete the purchase of the Blount Island facility and safety buffer in Jacksonville, Florida. Blount Island is the maintenance site for the Marine Corps' Maritime Pre-positioning Force. The purchase of this site, along with a surrounding safety buffer, will ensure the long-term viability of this strategic national asset.
- $28 million to support the first phase of an outlying field for east-coast basing of the F/A–18E/F Super Hornets. Selection of a specific basing of this aircraft is pending completion of an Environmental Impact Statement (EIS). The EIS is scheduled for completion this summer.
- $24 million to construct a Joint Strike Fighter test facility.
- $21 million to construct a facility to develop the next generation shipboard aircraft launching system to be used on the new aircraft carrier CVN21.

Facilities Sustainment, Restoration, and Modernization (SRM)

The Department of Defense uses models to calculate life cycle facility maintenance and repair costs. These models use industry wide standard costs for various types of buildings. Sustainment funds in the Operations and Maintenance accounts maintain shore facilities and infrastructure in good working order and preclude its premature degradation. Both the Navy and Marine Corps increased sustainment funding in fiscal year 2004, with the Navy improving to 93 percent of the full sustainment requirement, and the Marine Corps staying at or very near the Department of Defense goal of full sustainment.

[3] Gang heads remain acceptable for recruits and trainees.

SRM

Navy

	PB-03	FY-04
Sustainment (%)	84%	93%
Recap Rate (years)	116	140

Marine Corps

	PB-03	FY-04
Sustainment (%)	Full	97%
Recap Rate (years)	156	88

Restoration and Modernization provides for the major recapitalization of our facilities using Military Construction and Operations and Maintenance funds. While both the Navy and Marine Corps achieve the Department of Defense goal of a 67-year recapitalization rate by fiscal year 2008, 1 year later than expressed last year, the fiscal year 2004 recap rate increases to 140 years for Navy while improving to 88 years for the Marine Corps. The Navy will manage the near-term investment in facilities recapitalization to limit degradation of operational and quality-of-life facilities.

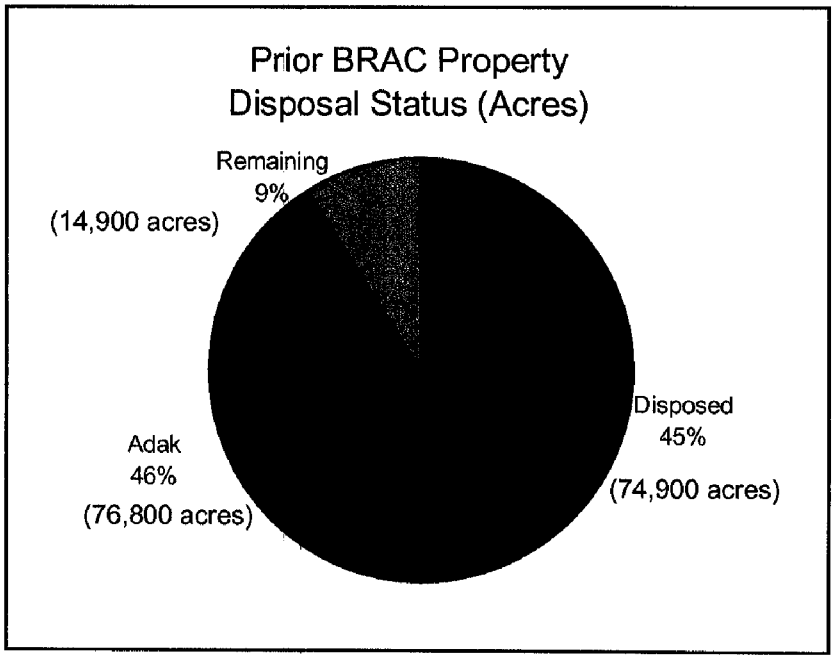
While additional funds would certainly improve the situation, it is unrealistic to believe that we will simply "buy" our way to attain these facility goals. We must seek and implement greater efficiency in our infrastructure

INFRASTRUCTURE EFFICIENCIES

Prior BRAC

The BRAC rounds of 1988, 1991, 1993, and 1995 have been a major tool in reducing our domestic base structure and generating savings. The Department closed and must dispose a total of 90 bases, and has achieved a steady state savings of $2.7 billion per year. All that remains is to complete the environmental cleanup, with an estimated cost of $785 million, and property disposal.

We have completed disposal of 64 bases to date; 8 more bases are planned in fiscal year 2003, 5 in fiscal year 2004. Legislation was enacted last year that will allow the Navy to transfer nearly all of the former Naval Air Station Adak, Alaska to the Department of Interior, who will in turn exchange this property for other wildlife refuge property owned by The Aleut Corporation. The United States will then retain title to wildlife refuge property previously designated for transfer to the Aleuts under the Alaska Native Claims Settlement Act. We are working the final details for the transfer and hope to complete the property exchange later this year. That transfer, along with the planned disposals this fiscal year, should leave us with less than 12,000 acres still to dispose.



I am proud of the hard work and innovation that the Navy and Marine Corps team have displayed in working with environmental regulators to expedite property cleanup and support local redevelopment efforts to speed reuse. Congress provided the necessary legislative authority to allow the Navy to pursue early transfer opportunities. With the concurrence of environmental regulators and the State Governor, we transfer the deed to the property while environmental cleanup continues, or pass mutually agreed cleanup funds to the developer who becomes responsible for doing the cleanup. We have used this authority many times, including the transfer of 1,300 acres at Mare Island Naval Shipyard last year.

The spirit of innovation continues. Taking a cue from the popular commercial uses of the Internet, we worked closely with General Services Administration (GSA) to use its web site to auction 235 acres of highly desirable property at the former Marine Corps Air Station Tustin in California. We have deposited $51 million from this sale, with settlement for the balance this spring. Existing statutes require that all BRAC leasing and land sale revenue be deposited into the Prior BRAC account to meet caretaker and environmental cleanup needs. We will increasingly rely on BRAC land sale revenue to accelerate the remaining BRAC cleanup efforts. I am very pleased with using the GSA web site to auction real estate. It can attract a very wide audience of potential bidders, ensure that the government receives the maximum value for the property, and can help the community quickly resolve reuse needs. We will pursue more BRAC property sales using the GSA web site.

BRAC 2005

The National Defense Authorization Act for Fiscal Year 2002 amended the 1990 Defense Base Closure and Realignment Act to authorize another round of BRAC in 2005. We will apply the BRAC process to examine and implement opportunities for greater joint use of facilities, thus eliminating excess physical capacity, and to integrate DON infrastructure with defense strategy. Continuing to operate and maintain facilities we simply no longer need is unfair to the taxpayer and diverts resources that would be better applied to recapitalize the operating forces (ships, aircraft, and equipment) for the future.

The BRAC statute sets out a very fair process.

- All bases are treated equally;
- All recommendations based on 20-year force structure plan, infrastructure inventory and published selection criteria;

- Statutory selection criteria include:
  - Preserve training areas for maneuver by ground, naval, or air forces;
  - Preserve military installations in the United States as staging areas for the use of the Armed Forces in homeland defense missions;
  - Preserve military installations throughout a diversity of climate and terrain in the United States for training purposes;
  - Consider the impact on joint warfighting, training, readiness, contingency, mobilization, and future total force requirements at both existing and potential receiving locations to support operations and training.
- All data certified as accurate and complete and provided to the Commission and Congress.

We are working closely with the Office of the Secretary of Defense and the other Military Departments to develop opportunities for joint basing that would further eliminate excess infrastructure among the Services.

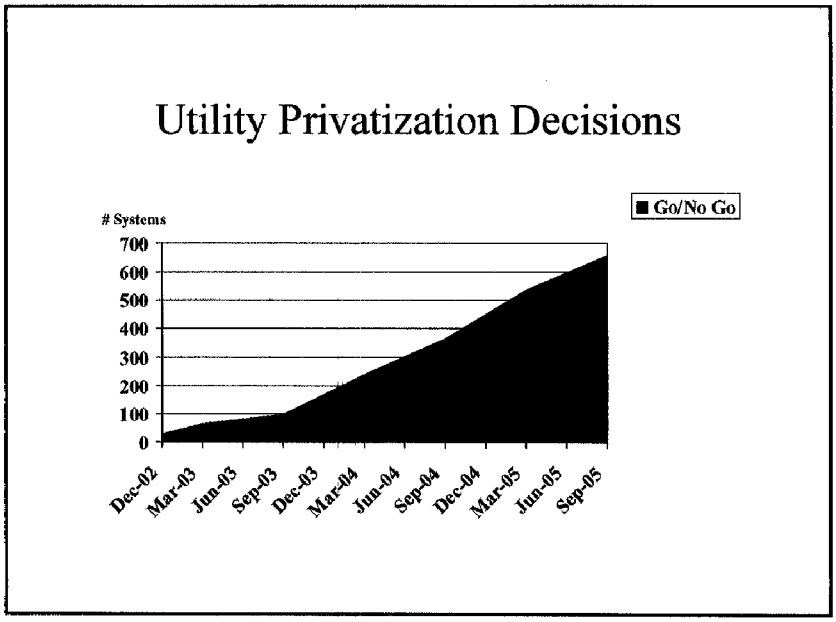
Commander, Navy Installation Command

The Navy will consolidate the management of its shore establishment on 1 October 2003 from 8 installation claimants across 16 regional commanders to a single Navy Installation Command. This consolidation will achieve economies of scale, increase efficiency, and reduce headquarters staffs while also standardizing policies, procedures, and service levels across all Navy installations, much as the Marine Corps now enjoys. We estimate that the benefits of this streamlining will save the Navy $1.6 billion over the FYDP.

There is still much work to be done to implement this change. The Navy must still define the personnel impacts, finalize the reporting relationships, and identify the appropriate funding transfers. I believe this effort will result in a more focused, leaner organization that will improve services to the Fleet.

Utility Privatization

We are proceeding with plans to privatize utility systems (water, wastewater, gas, electric) where it is economically feasible and does not pose a security threat. Utility privatization is an integral part of our efforts to improve our utility infrastructure. The Secretary of Defense issued new utility privatization guidance last fall that requires the Services to complete a source selection decision on each system by September 2005. We are on track to do so for the 662 Navy and Marine Corps systems under consideration for privatization.



Strategic Sourcing

Strategic sourcing uses commercial business practices such as process re-engineering, divestiture of non-core functions, elimination of obsolete services, and public/private competitions under Office of Management and Budget A–76 guidelines to improve efficiency. We expect to achieve $1.6 billion in annual steady state savings in fiscal year 2005 from strategic sourcing initiatives.

Our fiscal year 2004 budget includes A–76 competitions for 2,000 positions. OMB has been trying to bring about much needed process changes for conducting these competitions. We will incorporate these process changes, as well as some of our own initiatives, to speed the process while still ensuring a fair playing field between in-house and private sector interests. We are also supporting the Secretary of Defense's Business Investment Council efforts to identify non-core functions for divestiture. The Navy has identified the manufacturing of eyewear for military personnel as a pioneer project for divestiture.

Naval Safety Program

Although safety is foremost a personnel program to avoid accidental human injury or death, the private sector has also recognized safety programs for their contribution to the bottom line in avoiding damage to expensive equipment or facilities, inadvertent loss of highly skilled personnel, and long-term injury compensation costs. We have established a senior executive in my office, the first in Department of Defense, to help foster a new Naval safety vision for the future. A Safety Task Force has been meeting to consider the relationships between safety staffs and funding mechanisms. We have engaged Navy and Marine Corps installation commanders to recognize and work to reduce the incidence of civilian manhours lost due to injury even as we participate in a Department of Defense-sponsored Employee Work Safety Demonstration project at four bases. We plan to provide basic Operational Risk Management training to all new sailors and marines, with more advanced training to senior personnel.

We are also pursuing safety improvements for the more visible aviation mishaps, for which past experience shows that 85 percent are in part attributable to human errors. We plan to try a new technique that would store critical flight performance data and allow the pilot to later replay a realistic animation of the flight.

ENVIRONMENTAL PROGRAMS

Shipboard Environmental

The U.S. Navy is a recognized world leader in environmental stewardship at sea. In recent years the Navy has completed installation of pulpers, shredders and plastic waste processors on its surface ships. This ensures no plastic discharge to the world's oceans and provides environmentally benign disposal of other solid wastes, such as food, paper, cardboard, metal and glass. The Navy expects to have its submarine fleet fully outfitted with solid waste equipment by the end of 2005, well in advance of the 31 December 2008 Act to Prevent Pollution from Ships deadline. Next year, the Navy will begin to upgrade the solid waste equipment in the surface fleet. These upgrades will mean shipboard personnel will expend less time, energy and resources in processing solid waste.

The Navy continues to convert shipboard air-conditioning and refrigeration plants to ones that use non-ozone depleting, environmentally friendly refrigerants. As of today, over 75 percent of the fleet is CFC-free. Additionally, the Navy continues to upgrade the fleet's ability to safely and effectively handle hazardous materials by installing pollution prevention equipment on all our surface ships. We continue to work with the Environmental Protection Agency to set Uniform National Discharge Standards for all Armed Forces vessels, and in developing best management practices for preparing vessels for use as artificial reefs. These programs, along with others in the shipboard environmental program, reap enormous environmental and public relations benefits while maintaining the primary goal of allowing our ships to operate anywhere in the world in a manner that complies with or exceeds domestic and international environmental laws and agreements.

Cleanup Program at Active Bases

For the second year in a row, the number of cleanups completed at active bases exceeded the planning target. While we still have work to do, almost 70 percent of all sites now have remedies in place or responses complete. At the end of fiscal year 2002, 2,225 of the 3,668 sites at active installations have responses complete. We plan to continue this pace. By the end of fiscal year 2004 we plan to have about 2,500 sites completed at active bases.

Vieques Cleanup

On January 10, 2003, the Secretary of the Navy signed the letter of certification to Congress confirming that the U.S. Navy and Marine Corps will cease military training on the Vieques Inner Range by May 1, 2003. The Department of the Navy has identified training alternatives that will collectively provide equivalent or superior training to the options provided on the island of Vieques. The law requires the Navy to transfer Vieques to the Department of Interior. We have been working with Interior and the Environmental Protection Agency to do so.

We plan to conduct munitions clearance and any necessary cleanup in accordance with applicable laws. The clearance and cleanup will be done in a manner that is consistent with land use designated in the governing statute and where appropriate, minimizes disturbance of the natural environment. The designated land uses, once transferred to the Department of Interior, are wilderness area for the live impact area and a wildlife refuge for the remaining portions. We will be considering the need for land use controls to ensure long-term protectiveness as part of the remedial actions, including consideration of future land use plans. We have identified $2 million in fiscal year 2004 funds from our Munitions Response Program line within the Environmental Restoration, Navy (ER, N) appropriation to begin munitions clearance efforts.

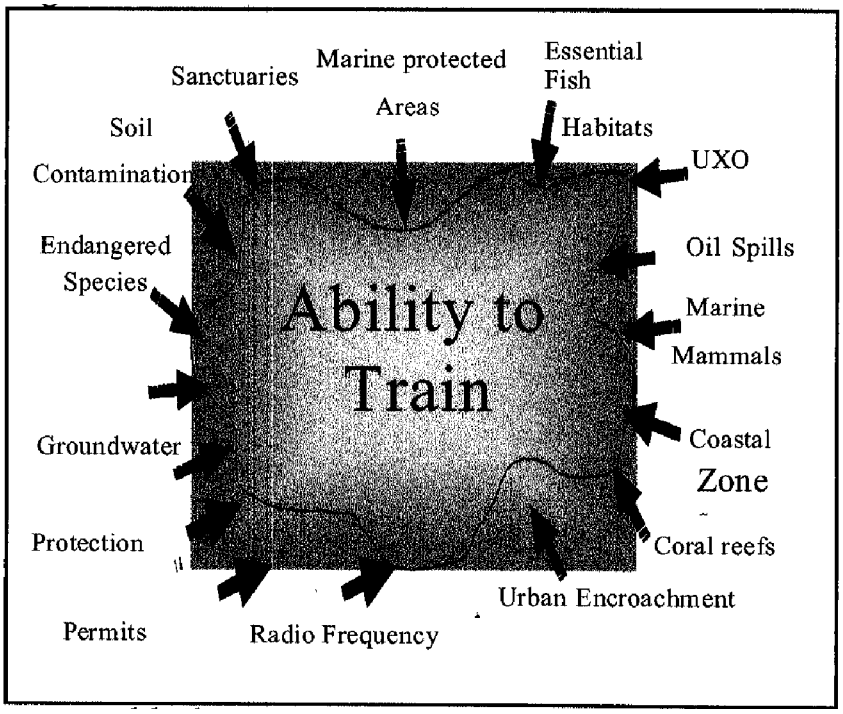
Environmental Range Management

The Navy and Marine Corps have initiated efforts to better understand and manage the environmental concerns on its ranges. The Navy has $15.8 million in fiscal year 2004 to begin this effort at the Southern California, Fallon, Key West, and Gulf of Mexico range complexes. This environmental program addresses three major areas:

- Conduct living marine resource assessments, including ocean surveys of marine mammal population densities;
- Assess groundwater, surface water, soils conditions, natural resources and the environmental compliance status for each of the complex's land-based ranges and associated airspace;
- Integrate this information into complex-wide environmental planning in accordance with the National Environmental Policy Act, which will in turn drive Navy range complex management plans.

Encroachment

The military readiness of our forces is the highest priority of the Department of the Navy. Unfortunately, sustaining military readiness is becoming increasingly difficult because over time a host of factors, including urban sprawl, increasing regulation, litigation, and our own accommodations, although reasonable when viewed in isolation, have cumulatively diminished the Department of the Navy's ability to train and test systems effectively. Military bases and ranges represent some of the few remaining undeveloped large tracts, and are being looked at more and more by Federal and State regulators as a solution for difficult and costly conservation efforts. For example, initial proposals for critical habitat designations would have included about 56 percent of Marine Corps Base, Camp Pendleton, California. The Marine Corps and the U.S. Fish and Wildlife Service worked together in an effort to devise an approach that would satisfy the needs of both agencies. As a result of these efforts, the Secretary of the Interior determined that the speculative benefits of critical habitat designation were outweighed by military training needs at Camp Pendleton. This determination led to the designation of only 5 percent of Camp Pendleton's lands as critical habitat. However, a lawsuit challenging the U.S. Fish and Wildlife Service final rule quickly followed. As a result, U.S. Fish and Wildlife Service withdrew the designation. A new critical habitat designation is still pending.



We—Congress, Federal and State regulators, and the military services—must identify a reasonable balance between the competing national priorities of military readiness and environmental stewardship. The Department of the Navy, in conjunction with the Department of Defense, has begun working with some regulatory agencies to identify changes in regulations and agency policies that can help restore the appropriate balance. However, many environmental laws do not always lend themselves to such changes because when enacted, no one considered their applicability to the military readiness activities of today.

The need for legislative change was demonstrated again recently when the use of a new defensive sensor known as Surveillance Towed Array Sonar System Low Frequency Active (SURTASS LFA), which was developed to deal with the threat of quiet diesel submarines now being deployed by potential adversaries, was recently restricted by a court order. The Navy had undertaken an unprecedented research program to ensure that marine mammals would not be injured, and worked closely with the National Marine Fisheries Service to develop mitigation measures so that marine mammals would not be injured. The Navy concluded that based on tests and analysis conducted by an independent panel of scientists, which was subjected to peer review and approved through a public rule making process by the National Marine Fisheries Service—the Federal regulatory agency tasked with protection and preservation of marine mammals, the system would have little impact upon marine mammals. Yet a Federal judge determined that the Marine Mammal Protection Act (MMPA) would not allow the Navy to deploy the defensive sensor in question in the manner the Navy had determined was needed. In the court's view, there were serious issues raised with regard to whether National Marine Fisheries Service had used a proper mechanism to identify the "specified geographic region" required under the MMPA to issue a "small take" authorization for the Navy's deployment of the sensors. The court ordered the Navy to confer with plaintiffs over possible restrictions on deployment of SURTASS LFA until the final hearing on the merits of the case currently scheduled for June 2003. Following these discussions, the court issued a preliminary injunction restricting the Navy's use to an area in the western Pacific between Japan and Guam.

The military services have been criticized by some for seeking legislative relief without first using national defense exemptions or Presidential waivers built into

environmental laws. Although many of the laws contain some provision for the President to waive compliance with a specific requirement, these waivers are of limited scope and duration. Some laws have no provision for an exemption or require an adverse decision by a court before the exemption can be pursued. For example, the MMPA contains no waiver provision, even for actions that are absolutely necessary for national defense. Many environmental laws, when enacted, did not consider their impact on military readiness activities. The exemptions or waivers that do exist were not intended to serve as routine management tools; they were designed to provide short term fixes for unanticipated or emergency situations.

Last year, the Department of Defense recommended legislative changes to address specific areas of environmental laws that had the greatest adverse impact on sustaining military readiness. Congress provided some relief in one critical area—the applicability of the Migratory Bird Treaty Act (MBTA) to military readiness activities. We are working with the Department of Interior to craft a mutually acceptable proposed rule consistent with report language accompanying the National Defense Authorization Act for Fiscal Year 2003 authorizing take of migratory birds for military readiness activities, and a Memorandum of Understanding to promote migratory bird conservation, as required by Executive Order 13186, for non-readiness related military actions.

The other five involved proposed changes to the MMPA, Endangered Species Act (ESA), Clean Air Act (CAA), Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and the Resource Conservation and Recovery (RCRA) Act were not made. The Department of the Navy is particularly concerned with MMPA and ESA, and the need remains for a legislative solution. For example, the Department of Navy uses special management plans called Integrated Natural Resource Management Plans (INRMPs), pursuant to the Sikes Act, to protect habitat on military installations. A Federal district court in Arizona, however, recently decided the substitution of special management plans for critical habitat designation is impermissible under the ESA. In this case, which involved forest management plans, the court determined that the special management considerations could not substitute for the designation of critical habitat. The Department of Navy is concerned this reasoning could be relied upon by other Federal courts when reviewing INRMPs. The U.S. Fish and Wildlife Service is using other administrative options in an attempt to exclude installations with approved INRMPs from critical habitat designations, but more certainty would be provided by legislative actions.

In addition to the decision concerning restricting deployment of the SURTASS LFA system I mentioned earlier, two other recent decisions by different Federal district courts stopped scientific research after the court determined that the National Marine Fisheries Service had improperly authorized harassment of marine mammals during research by the National Science Foundation off the coast of Mexico and a Navy funded project to study the effects of underwater sound on Grey Whales off the coast of California.

We recognize the importance of resource preservation. We are not looking for wholesale suspension of environmental laws as they apply to military readiness. We are not attempting to avoid the issues that American industries and businesses face regarding environmental compliance. We are not abandoning the outstanding stewardship over the lands entrusted to us or shrinking from environmental protection requirements. We are merely trying to restore balance where environmental requirements adversely affect uniquely military activities—activities that are necessary to prepare sailors and marines to engage in combat and win.

LEGISLATIVE PROPOSALS

I would like to call your attention to several legislative proposals of particular importance to the Department of Navy.

Readiness & Range Preservation Initiative

This legislative proposal is a top Department of Defense priority. It would provide legislative relief for military readiness activities under various environmental statutes. Of particular interest to the Department of the Navy are:

- Modifications to MMPA that would clarify the MMPA's definition of "harassment" as a biologically significant response, and resolve other procedural issues related to the MMPA.
- Modify the ESA to allow use of Integrated Natural Resources Management Plans now required under the Sikes Act to provide the special management considerations in lieu of the need to designate critical habitat on military lands.

Property Conveyance for Housing

We propose to extend to barracks existing authority that allows the transfer of land at locations closed under prior year BRAC actions for family housing. The administration's request also includes a similar proposal that would allow the Services to transfer land at locations not related to BRAC for either housing, land suitable for siting housing, cash, or some combination of these. These proposals would provide additional tools that we could use to obtain housing for our sailors and marines and their families faster.

MILCON Streamlining

We propose several initiatives to streamline the administrative aspects of the military construction process. It typically takes 5 to 8 years from inception to completion for a military construction project. That's too long. Our proposal would increase the minor construction threshold to permit faster execution of smaller projects, and allow the use of the planning and design sub account to initiate early project design on design build projects. Such projects now include most of the design funds as part of the project cost, and thus must await line item authorization and appropriation of the project by Congress to begin design work in earnest.

CONCLUSION

In conclusion, I would ask the members of this subcommittee to not judge the merits of the Department of the Navy's installations and environmental program solely through a single lens comparison of this year's budget request vs. last year's enacted level. We continue progress on most fronts, and the decline in funding is generally due to reduced requirements or less costly alternatives.

We remain steadfast in resolving inadequate housing concerns. Consistent with Department of Defense and our own priorities, we will eliminate inadequate family housing by fiscal year 2007 through increased reliance on our privatization efforts and the help of BAH increases that it more likely for our members to find good, affordable housing in the community. We have maintained momentum to fix housing for our single sailors and marines, particularly with respect to getting our shipboard sailors a place ashore they can call home when their ship is in homeport. We hope to extend the benefits of family housing privatization to barracks with three pilot projects that are being developed. The very robust $1.2 billion military construction request will revitalize existing facilities while acquiring those to support future weapon systems and readiness needs. We will apply the proceeds from selling Prior BRAC property to accelerate cleanup of remaining BRAC property. Facilities sustainment, restoration, and modernization trends are positive, with the exception of the Navy recapitalization rate; regrettably, affordability required that we defer near term progress in using Operations and Maintenance, Navy funds to revitalize facilities.

We have fully funded all environmental commitments. The decline in environmental funds is tied to finishing the cleanup on Kaho'olawe, and the completion of several research and development projects and pollution prevention initiatives. Encroachment remains the primary environmental issue we must deal with. We will work with the Department of Interior to craft mutually acceptable solutions under MBTS. However, other environmental statutes, with ESA and MMPA of particular interest to the Department of Navy, remain to be resolved. We need to craft an appropriate balance between environmental stewardship and military readiness.

That concludes my statement. I appreciate the support of each member of this subcommittee, and will try to respond to any comments or concerns you may have.

Senator ENSIGN. Secretary Fiori.

STATEMENT OF HON. MARIO P. FIORI, ASSISTANT SECRETARY OF THE ARMY (INSTALLATIONS AND ENVIRONMENT)

Secretary FIORI. Mr. Chairman, members of the subcommittee, I am very pleased to appear before you to review the Army Fiscal Year 2004 Military Construction program. The Army's overall budget request for fiscal year 2004 supports the Army vision, transformation, readiness, and people. Our military construction budget request of $3.2 billion will fund our highest priority facilities and family housing requirements.

Transformation is one facet of the Army vision. The Army is fundamentally changing the way we fight and creating a force more

responsive to the strategic requirements of the Nation. Our fiscal 2004 budget includes facilities to support both the active and Reserve components in this transition.

First, I would like to tell you briefly about how we are transforming installation management. Recognizing the requirement to enhance support for the commanders and buttress Army transformation, the Secretary of the Army directed the reorganization of the Army's installation management structure.

On October 1, 2002, the Army placed the management of Army installations under the Installation Management Agency. A top-down regional alignment creates a corporate structure with the sole focus on efficient and effective management of all our installations. It frees up our mission commanders to concentrate on transformation and readiness.

Second, in support of Army transformation, our budget contains $329 million for 17 projects at core active installations and an additional $85 million for 31 Army National Guard projects. Facilities requested cover the spectrum needed for effective operations and training, including ammunition supply point upgrades, mobilization facilities, training land acquisition, maintenance facilities, ranges, information system facilities, barracks, and family housing.

A second facet of the Army vision is readiness. Army installations are our Nation's power projection platforms, and they provide critical support to the Army in joint operations. We have requested funding for key projects that specifically focus on readiness. These include live-fire ranges, maintenance, test, and deployment facilities, Army National Guard readiness, and Army Reserve centers. These critically needed projects constitute about $266 million.

Our third facet of the Army vision is people. The Army continues its major campaign to modernize barracks to provide enlisted permanent party soldiers with quality living environments. The new complexes provide increased personal privacy and larger rooms with new furnishings. With the approval of our budget, 79 percent of our barracks requirement for permanent party soldiers will be funded.

According to our surveys, adequate and affordable housing continues to be a major concern to soldiers and their families. With the approval of the fiscal year 2004 budget, the out-of-pocket expenses for soldiers will be reduced to 3½ percent and, as Mr. DuBois said, by 2005 they will be brought down to zero.

This year's budget expands family housing privatization and increases improvements in existing housing. It supports our goal to have contracts in place by 2007 that will provide adequate housing to all on-base military families. Our privatization effort has been particularly successful. The current program of 28 projects will transition to privatized operations by the end of fiscal year 2006. These projects will include almost 72,000 homes, more than 80 percent of our inventory in the United States.

We have already transitioned four installations to developers. At Fort Carson, for example, we transferred 1,823 existing homes, and the partner-developer will construct 840 more. So far, 618 homes have been constructed and 943 have been renovated. Families have moved into those homes, and the process has been very positive to date.

In closing, Mr. Chairman, I sincerely thank you for the opportunity to outline our program. As I visited many installations, I have witnessed the progress that has already been made, and I attribute much of the success directly to the longstanding support of this committee and your staff.

I look forward to answering any questions of the subcommittee, including those relating to the environment.

[The prepared statement of Secretary Fiori follows:]

PREPARED STATEMENT BY HON. MARIO P. FIORI

Mr. Chairman and members of the subcommittee, it is a pleasure to appear before you to discuss the active Army and Reserve components' military construction budget request for fiscal year 2004. This request includes initiatives of considerable importance to the Army, as well as this subcommittee, and we appreciate the opportunity to report on them to you.

Our budget provides resources in our construction and family housing programs essential to support the Army's role in our National Military Strategy and our role in the global war on terrorism. The budget supports the Army's vision and our transformation strategy.

The program presented herein requests fiscal year 2004 authorization of appropriations and appropriations of $1,536,010,000 for Military Construction, Army (MCA); $1,399,917,000 for Army Family Housing (AFH); $168,298,000 for Military Construction, Army National Guard (MCNG); and $68,478,000 for Military Construction, Army Reserve (MCAR).

The Army has begun one of the most profound periods of transformation in its 227-year history. In 1999, we published the Army vision—people, readiness, and transformation—that defined how we meet the Nation's military requirements today and into the future. After 3 years, we are on the road to implement the self-transformation that will allow us to continue to dominate conventional battlefields, but also provide the ability to deter and defeat adversaries who rely on surprise, deception and asymmetric warfare to achieve their objectives.

The attacks against our Nation and the ongoing global war on terrorism validated the Army's vision and our transformation. To meet the challenges of Army transformation and to carry out today's missions at home and abroad, the Army must sustain a force of high quality, well-trained people; acquire and maintain the right mix of weapons and equipment; and maintain effective infrastructure and power projection platforms to generate the capabilities necessary to meet our missions. Taking care of soldiers and families is a readiness issue and will ensure that a trained and qualified soldier and civilian force will be in place to support the Objective Force and the transformed Army.

Installations are a key component in all three tenets of the Army vision. They are the operational and service support centers where our soldiers and civilians work, live, and train; and from which we deploy, launch, and accomplish our missions. Our worldwide installations structure is inextricably linked to the Transformation of the Army and the successful fielding of the Objective Force.

Army installations, both active and Reserve component, must fully support our warfighting needs, while at the same time provide soldiers and their families with a quality of life that equals that of their peers in civilian communities. The Army vision begins and ends talking about the well-being of people. Our installations are the hometowns to many of our people. To improve our installations, we realized we had to transform installation management to improve the way we operate and manage this important resource.

In support of the Transformation of Army installations, on October 1, 2002, the Army activated the Installation Management Agency (IMA). This activation symbolized a radical transformation in how the Army manages installations. Through the IMA, the Army has created a corporate structure for managing its installations. By shifting that responsibility from the 14 formerly land-holding major commands, the IMA seeks to enhance effectiveness in installation management, achieve regional efficiencies, eliminate the migration of installation support dollars, and provide consistent and equitable services and support.

Major Commanders can now focus solely on their primary missions. Though the major commands no longer have a primary responsibility for installation management, the support they receive from installations is a paramount mission of the IMA. The IMA exists to support and enable mission commanders. The senior mission commander on each installation is part of the rating chain for the garrison com-

mander of that installation. The most senior commanders of the major commands, as well as the Director of the Army National Guard and the Chief of the Army Reserve, also sit on an Installation Management Board of Directors, providing oversight and guidance to the operations of the IMA.

The Army's transformation of installation management represents a significant paradigm shift in the way the Army manages installations. It represents a new commitment to installation management as a key component of Army Transformation. Mission readiness no longer competes with installation management tasks; and the soldier's well-being and quality of life on the installations does not compete with the mission. It will allow us to provide for our soldiers and their families and to permit us to implement our facilities strategy.

FACILITIES STRATEGY

The Army's Facilities Strategy (AFS) is the centerpiece of our efforts to fix the current state of Army facilities over 20 years. It addresses our long-term need to sustain and modernize Army-funded facilities in both active and Reserve components by framing our requirements for sustainment, restoration, and modernization (SRM) using operations and maintenance (O&M) and military construction (MILCON) funding. The AFS addresses sustainment, recapitalization, quality, and quantity improvements so that the Army will have adequate facilities to support Transformation and our 21st century missions.

The first objective of the strategy requires us to halt further deterioration of our facilities. Our sustainment funding, which comes from the O&M SRM accounts, has improved. Our budget request funds 93 percent of our requirements in fiscal year 2004. This level of funding may be sufficient to slow further deterioration of Army facilities. We use the Installation Status Report (ISR) to rate the condition of our facilities. A C–1 quality rating indicates facilities support mission accomplishment; a C–2 quality rating indicates facilities support the majority of assigned missions; a C–3 quality rating indicates facilities impair mission performance; and a C–4 rating indicates facilities that significantly impair mission performance. Currently, the Army's overall quality rating is C–3 (impairs mission performance). We must have sufficient O&M SRM resources to sustain our facilities and prevent facilities from deteriorating further, or we put our MILCON investments at risk.

The second objective of our strategy addresses improving recapitalization of our facilities to a 67-year cycle. This will ensure we have adequate facilities to keep pace with future force structure changes and weapons modernization programs. The focus is on the Army's most obsolete infrastructure, such as vehicle maintenance facilities, Army National Guard Readiness Centers, and Army Reserve Centers. Unfortunately, our budget resources limit our recapitalization rate to 144 years for fiscal year 2004.

The third objective is to raise the Army facilities from the current C–3 quality rating (impairs mission performance) to an overall C–2 quality rating (supports majority of assigned missions) by the end of 2010. This will be accomplished by bringing a focused set of facilities to C–1 (supports mission performance) during that timeframe. Since we cannot afford a quick fix to buy down the SRM backlog, we will centrally manage resources towards focused investments. This capital investment requirement will primarily require MILCON funding, supplemented by O&M SRM project funding.

The fourth objective is to reduce facility shortfalls where they exist over the entire 20-year strategy. These shortfalls are a result of facilities modernization not keeping pace with our weapons modernization and supporting force structure. Ranges and training facilities are an example.

Modest MILCON investment will be made in fiscal year 2004 for these objectives. These four objectives will enable us to improve the health of Army real property and the ability to successfully support our worldwide missions and our soldiers. This year, our highest priority went to sustainment to achieve a 93 percent funding level.

In addition to implementing our facilities strategy, we continue our policy of eliminating excess facilities throughout the entire Army to allow us to use our limited resources where they have the most impact. During fiscal years 1988–2003, our footprint reduction program, along with the base realignment and closure process (including overseas reductions), resulted in the disposal of over 400 million square feet worldwide from our fiscal year 1990 peak of 1,157,700,000 square feet. In fiscal year 2004, we plan to reduce an additional 2.7 million square feet. We continue our policy of demolishing at least one square foot for every square foot constructed.

MILITARY CONSTRUCTION, ARMY (MCA)

This year's MCA program focuses on the Army's vision and four major categories of projects: people, readiness, transformation, and other worldwide support. I will explain each category in turn.

People

Fifty percent of our MCA budget is dedicated to providing for the well-being of our soldiers, their families, and civilians. We are requesting 23 barracks (plus an additional 1 for transformation), a dining facility and 2 physical fitness centers. These projects will improve not only the well-being of our soldiers and families, but also the readiness of the Army. We are requesting $776.2 million for these projects.

Whole Barracks Renewal Program

The Army continues its major campaign to modernize barracks to provide enlisted permanent party soldiers with quality living environments. The new complexes provide increased personal privacy, larger rooms, closets, new furnishings, adequate parking, and landscaping. In addition, administrative offices are separated from the barracks. With the approval of our budget, $737.9 million, as requested, 79 percent of our barracks requirement (including the transformation barracks), will be funded at the new standard for our permanent party soldiers. Between fiscal years 2005 and 2009, we plan to invest an additional $3.5 billion in MCA and host nation funds. While we are making considerable progress at installations in the United States, we will request increased funding for Germany and Korea in future budgets to compensate for the fact that these areas have been historically funded at lower levels than installations in the United States. A large portion of the remaining modernization effort—37 percent—is in overseas areas.

In fiscal year 2004, we are planning 23 barracks projects as part of our barracks modernization program, including 7 projects in Europe (one of which supports our Efficient Basing East initiative) and 3 projects in Korea. This will provide new or improved housing for at least 5,500 soldiers. The installations with the largest investment are Fort Bragg, North Carolina, with $102 million (3 projects), and Schofield Barracks, Hawaii, with $98 million (2 projects). At these installations, large soldier populations and inadequate barracks require sustained high investment to provide quality housing. Barracks projects are also requested for Fort Hood, Texas; Fort Riley, Kansas; Fort Campbell, Kentucky; Fort Lewis, Washington; Fort Richardson, Alaska; Fort Drum, New York; and Fort Stewart, Georgia. A barracks project supporting Transformation is also requested at Fort Wainwright, Alaska. Although we are requesting authorization for all phases of a multi-phase barracks complex at Fort Drum and Fort Bragg, we are only requesting the appropriation needed for the fiscal year 2004 phase. Our plan is to award each complex, subject to subsequent appropriations, as a single contract to gain cost efficiencies, expedite construction, and provide uniformity in building systems.

Community Facilities

Our budget request includes a dining facility at Fort Meade, Maryland, for $9.6 million. Also included are two physical fitness centers at Hohenfels, Germany ($13.2 million) and Fort Stewart, Georgia ($15.5 million) to improve soldier fitness and community wellness. The physical fitness center at Fort Stewart has been selected as a pilot project for the demonstration program for the reduction of long-term facility maintenance costs. We believe this demonstration program will decrease our maintenance expenses and increase the quality of our facilities. This project is one of three included in fiscal year 2004. An Army Reserve and a National Guard demonstration project are also included in the budget.

Readiness

In fiscal year 2004, there are 11 projects, $153 million, to ensure the Army is deployable, trained, and ready to respond to meet its national security mission. The projects provide enhanced training and readiness via live-fire ranges and simulators, maintenance and test facilities, and a deployment facility.

To improve soldier training, we are requesting $45.8 million to construct five training and readiness projects. Our request includes Modified Record Fire Ranges at Schweinfurt, Germany; Fort Knox, Kentucky; and Fort Sill, Oklahoma; an instrumented Multipurpose Training Range Complex at Fort Benning, Georgia; and a live-fire urban operations Shoot House at Fort Lewis, Washington. All five ranges will provide our soldiers with realistic, state-of-the-art live-fire training.

A project to construct troop support facilities, including a physical fitness center and dining facility, and to renovate a headquarters facility and a postal facility at

a cost of $46 million will support the Efficient Basing, East, initiative at Grafenwoehr, Germany.

We are requesting three maintenance facilities for $41 million to support Army missions.

Our request also includes $5.5 million for a Vibration Dynamic Test facility at Redstone Arsenal, Alabama. This facility will enable the Army to test small rocket systems and components for reliability to ensure that equipment can withstand the rigors of military operations.

To support deployment of an airborne battalion ready task force, our request includes $15.5 million for a Joint Deployment Facility in Aviano, Italy. This facility will be constructed on an Air Force Base and will provide support for deployments of the 173rd Airborne Brigade stationed in Vicenza, Italy. In addition, the facility will support other U.S. and NATO forces deploying through Aviano Air Base.

Transformation

Our budget contains $285.3 million for 16 projects at 4 installations that will support the deployment, training, unit operations, and equipment maintenance for Army Transformation. The projects include one barracks, one multi-purpose training range complex, one live-fire urban operations Shoot House, upgrades to an existing Military Operations in Urban Terrain (MOUT) facility, two Mission Support Training Facilities (and the acquisition of additional lands in Hawaii to ensure our forces are properly trained), two Alert Holding Areas, expansion of a Deployment Staging Facility, an upgrade to an existing Ammunition Supply Point, a Pallet Processing Facility, an Information Systems Facility, Arms Storage, and an Aircraft Maintenance Hangar. The proposed projects in Hawaii will support the legacy force requirements that are currently not being met and future combat systems.

Following the Persian Gulf War, Congress charged the Department of Defense to determine strategic mobility requirements to support the revised national strategy of greater reliance on CONUS-based contingency forces and power projection capabilities. The Army established the Army Strategic Mobility Program (ASMP) in fiscal year 1994 that centered on the capability to deploy a five division contingency force with its associated support structure anywhere in the world within 75 days. We will successfully complete funding the program in fiscal year 2003. Over the 10-year period we funded approximately $800 million in projects to support our strategic mobility.

The Army has reviewed the lessons learned from the successful ASMP and has analyzed current and future strategic environment; multiple, astute, and dynamic adversaries; and identified the need to deploy a brigade combat team anywhere in the world in 96 hours after liftoff, a division on the ground in 120 hours, and five divisions in theater in 30 days. To meet these goals, the Army has developed the Army Power Projection Program (AP^3) beginning in fiscal year 2004. Five of the Transformation projects listed above support our new deployment requirements for a transformed Army and initiate the start of the AP^3 program.

Other Worldwide Support Programs

The fiscal year 2004 MCA budget includes $100.7 million for planning and design (P&D). The fiscal year 2004 P&D request is a function of the construction programs for 2 fiscal years: 2005 and 2006. The requested amount will be used to complete design of fiscal year 2005 projects and initiate design of fiscal year 2006 projects. Without this level of funding, our ability to design future year projects will be impaired and this will ultimately impact delivery of critically needed facilities to our soldiers.

Host Nation Support (HNS) P&D

The Army, an executive agent, provides HNS P&D for oversight of host nation funded design and construction projects. The U.S. Army Corps of Engineers oversees design and construction to ensure facilities meet the Army's requirements and standards. Lack of oversight may result in an increase in design errors and construction deficiencies that might require United States dollars to rectify. Maintaining the funding level for this mission results in a payback where $1 of United States funding gains $44 worth of host nation construction. The fiscal year 2004 budget request for $22 million will provide oversight for over $950 million of construction in Japan, Korea, and Europe.

The fiscal year 2004 budget also contains $20 million for unspecified minor construction. This funding level will allow us to address unforeseen, critical needs that cannot wait for the normal programming cycle.

ARMY FAMILY HOUSING

According to the Military Family Housing Standards Study done in April 2001, adequate and affordable housing continues to be a major concern to soldiers and their families. We have waiting lists at all of our major posts. Out-of-pocket expenses for soldiers living off post, though less than in prior years due to increases in Basic Allowance for Housing, will be reduced to 3.5 percent of the total cost of their housing with the approval of the Army fiscal year 2004 budget. By fiscal year 2005, we will meet our OSD goal to reduce our out-of-pocket expenses to zero. Maintaining and sustaining safe, attractive, and convenient housing for our soldiers and families is one of our continuing challenges. This year's budget expands privatization and increases improvements to existing housing. It supports the Secretary of Defense's goal to provide adequate housing to all military families by 2007.

Our fiscal year 2004 request for Army Family Housing is $1,399,917,000. Table 1 summarizes each of the categories of the Army Family Housing program.

TABLE 1—ARMY FAMILY HOUSING

Fiscal Year 2004

Facility Category	($000)	Percent
New Construction	126,600	9
Post Acquisition Construction	197,803	14
Planning and Design	32,488	2
Operations	179,031	13
Utilities	167,332	12
Maintenance	432,605	31
Leasing	234,471	17
Privatization	29,587	2
Total	1,399,917	100

Family Housing Privatization

The Army continues to implement the Residential Communities Initiative (RCI) to create modern residential communities in the United States, using the military housing privatization authorities granted by Congress. We are leveraging appropriated funds and government assets by entering into long-term partnerships with private sector real estate development and management firms to obtain financing and management expertise to construct, repair, maintain, and operate family housing communities.

The current program of 28 projects will transition to privatized operations by the end of fiscal year 2006. These projects include over 71,000 homes, more than 80 percent of our family housing inventory in the United States. We already have transitioned four installations to privatized operations: Forts Carson, Hood, Lewis, and Meade. These projects include over 15,700 housing units. Families have moved into new and renovated housing at those locations and our experience to date has been very positive.

We have selected development partners and are currently negotiating Community Development and Management Plans (50-year construction, operations, and financing plan) at 8 additional locations with over 23,000 units. Five of these projects (Fort Bragg, Fort Campbell, Presidio of Monterey, Fort Irwin/Moffett Army Airfield/Camp Parks, and Fort Hamilton) will transition to privatized operations in fiscal year 2003 and the remaining three (Fort Belvoir, Forts Eustis/Story/Monroe and Fort Stewart) will transition in fiscal year 2004. In addition to these projects, four other projects are in various stages of the procurement process (Walter Reed Army Medical Center, Fort Shafter/Schofield Barracks, Fort Polk, and Fort Detrick). Twelve more projects are scheduled for the future (Fort Leonard Wood, Fort Sam Houston, Fort Bliss, Fort Drum, Fort Benning, Fort Rucker, Fort Gordon, Fort Knox, Fort Leonard Wood, Picatinny Arsenal, Carlisle Barracks, and Redstone Arsenal).

Our development partners expertise, experience, and resources are resulting in significant improvements in our family housing communities. The fiscal year 2004 budget request is necessary to support continued implementation of this quality-of-life program.

Family Housing Construction

The total fiscal year 2004 request for construction is $356.9 million. It continues the Whole Neighborhood Revitalization initiative approved by Congress in fiscal

year 1992, and supported consistently since that time, and our Residential Communities Initiative program. These projects are based on life-cycle economic analyses and support the Department of Defense's goal funding the elimination of inadequate housing by 2007.

New Construction

The fiscal year 2004 new construction program provides Whole Neighborhood Revitalization projects at 4 locations, 496 units for $126.6 million. Replacement construction provides adequate facilities, built to local standards, where there is a continuing requirement for the housing and it is not economical to renovate the current housing. New (deficit elimination) construction provides additional housing to meet requirements. All of these projects are supported by housing surveys, which show that adequate and affordable units are not available in the local community.

Construction Improvements

The Construction Improvements Program is an integral part of our housing revitalization program. In fiscal year 2004, we are requesting $197.8 million for improvements to 6,883 existing units at 6 locations in the United States and 5 locations in Europe. Included within the scope of these projects are efforts to improve supporting infrastructure and energy conservation.

Family Housing Operations and Maintenance

The operations, utilities, maintenance, and leasing programs comprise the majority of the fiscal year 2004 request. The requested amount of $1.043 billion for fiscal year 2004 is approximately 74 percent of the total family housing budget. This budget provides for annual operations, municipal-type services, furnishings, maintenance and repair, utilities, leased family housing, demolition of surplus/uneconomical housing and funds supporting management of the Military Housing Privatization Initiative.

Family Housing Leasing

The leasing program provides another way of adequately housing our military families. We are requesting $234.5 million in fiscal year 2004 to fund over 14,300 housing units including existing Section 2835 (formerly known as 801 leases) project requirements, temporary domestic leases in the United States, and approximately 7,800 units overseas.

MILITARY CONSTRUCTION, ARMY NATIONAL GUARD (MCNG)

Focused on the Army's vision, the Army National Guard's military construction program for fiscal year 2004 is giving special attention to people, readiness, and transformation. The fiscal year 2004 Army National Guard program supports these elements.

Transformation

This year we have concentrated on Army Division Redesign Study (ADRS) projects. ADRS addresses a long-standing Army problem of lack of Combat Support and Combat Service Support Force. The Army National Guard, in support of the National Military Strategy and wartime requirement shortfalls, is reorganizing selected units toward this end, i.e., Chemical, Medical, and Military Police units.

We are requesting $84.9 million for 31 ADRS projects. These funds will support the construction of Readiness Centers, Organizational Maintenance Shops, Training Fire Stations, an Armed Forces Reserve Center, and a Working Animal Building.

The ADRS transformation, which began in fiscal year 2001, is scheduled to be completed by fiscal year 2009.

Readiness Centers/Armed Forces Reserve Center

To accommodate the force structure change, the Army National Guard will make additions or alterations to 14 readiness centers in Alabama, Indiana, Kansas, Kentucky, Nebraska, New Mexico, New York and North Dakota. Six new readiness centers are planned for California, Kentucky, Michigan, Missouri, Nebraska and North Carolina.

We will also construct an Armed Forces Reserve Center in Mobile, Alabama. This facility will house all elements of a Support Group, Chemical Company, Medical Battalion, and Special Forces Detachment, as well as the Marine Reserves Reconnaissance Company, Intelligence Company, and the Marine Corps Inspector and Instructor staff.

Training Fire Stations

Six training fire stations are scheduled for Alabama, Connecticut, Kentucky, North Carolina (2), and Nebraska. These training fire stations will provide the necessary administrative, training, maintenance and storage areas required for the units to achieve proficiency in their required training tasks.

Organizational Maintenance Shops

The Army National Guard has three Organizational Maintenance Shops requested in fiscal year 2004. These facilities require additional space and upgrades to support the ADRS initiative. They are located in Montana (two) and New York.

Working Animal Building

As a result of ADRS, there will be two Military Police Working Dog Teams assigned to the Connecticut Army Nation Guard. These facilities will provide for all phases of dog training for patrol and protection.

Mission

In fiscal year 2004, the Army National Guard has requested $55.3 million for the revitalization of four mission projects. They include a readiness center, a Consolidated Maintenance Facility (Phase I), an Army Aviation Support Facility and a Military Education Facility (Phase III).

Readiness

A new readiness center at Lenoir, North Carolina, will replace the current 48-year-old facility that was built in a flood plain. The State will provide 41 acres of State land to relocate the new readiness center. This project has been selected as the Army National Guard fiscal year 2004 candidate for the demonstration program for the reduction of long-term facility maintenance cost.

Maintenance

The Consolidated Maintenance Facility at Pineville, Louisiana, will consist of a Combined Support Maintenance Facility, a Maneuver and Training Equipment Site, and two Organizational Maintenance Shops. These facilities will provide direct support, general support, and limited depot maintenance for all vehicles and equipment in Louisiana and full-time organizational maintenance support to selected units. This facility will permit Army National Guard personnel to work in a safe and efficient environment.

An Army Aviation Support Facility in South Burlington, Vermont, will replace the current facility that was built in 1954. The new facility will provide the additional 80,650 square feet required to support 3 aviation units with 18 aircraft.

Training

The Military Education Facility (Phase III) at Camp Shelby, Mississippi, is the last and final phase of this regional school project. This regional training center, a Category A training site, supports units from Mississippi, Alabama, Arkansas, Kentucky, Louisiana, Oklahoma, Tennessee, and Texas. The school conducts leadership training, maintenance training, and armor crewman training.

Worldwide Unspecified Funding

The Army National Guard's fiscal year 2004 budget request contains $26.6 million for planning and design of future projects and $1.5 million in unspecified minor construction to address unplanned health or safety issues that may arise during fiscal year 2004.

MILITARY CONSTRUCTION, ARMY RESERVE (MCAR)

This year's MCAR program focuses on the Army Reserve's highest priority—readiness. Army Reserve centers are the key component to the readiness of units and provide support to soldiers and their families. In fiscal year 2004, the Army Reserve has requested $57.9 million to construct three Army Reserve centers and a maintenance and storage facility.

Mission Facilities

Army Reserve Centers

Three Army Reserve centers will be built in Fort Meade, Maryland; Cleveland, Ohio; and Nashville, Tennessee. The Fort Meade Army Reserve center will replace 50 World War II wood buildings, which will be returned to the installation for demolition. This project has been selected as the Army Reserve fiscal year 2004 candidate for the demonstration program for the reduction of long-term facility maintenance cost. The Cleveland Army Reserve Center will replace two 1950s era facilities and

three leased facilities. The Nashville Army Reserve Center will replace a high-cost leased facility.

Maintenance

An Organizational Maintenance Shop/Direct Support Maintenance Shop and Storage facility will be built on Fort Gillem, Georgia.

Planning and Design/Unspecified Minor Construction

The fiscal year 2004 MCAR budget includes $7.712 million for planning and design (P&D), which provides essential planning and design capability in order to properly execute the MCAR program. The fiscal year 2004 budget also contains $2.886 million for unspecified minor construction to satisfy critical and emergent mission requirements.

Sustainment, Restoration, and Modernization

In addition to MCA and AFH, the third area in the facilities arena is the O&M portion of the SRM program. Sustainment is the primary account in installation base support funding responsible to maintain the infrastructure to achieve a successful readiness posture for the Army's fighting force. Installation facilities are the power projection platforms of America's Army and must be properly maintained to be ready to support current Army missions and any future deployments.

O&M SRM consists of two major functional areas: (1) facilities sustainment of real property, and (2) restoration and modernization. Facilities sustainment provides resources for maintenance costs and contracts necessary to keep an inventory of facilities in good working order. It also includes major repairs or replacement of facility components, usually accomplished by contract, that are expected to occur periodically throughout the life cycle of facilities. Restoration includes repair and restoration of facilities damaged by inadequate sustainment, excessive age, natural disaster, fire, accident or other causes. Modernization includes alteration or modernization of facilities solely to implement new or higher standards, including regulatory changes, to accommodate new functions, or to replace building components that typically last more than 50 years, such as foundations and structural members. The active Army's OMA sustainment funding request in fiscal year 2004 is $1.8 billion. The Army National Guard is requesting $380 million and the Army Reserve is requesting $182 million.

In fiscal year 2004, the Army 's top O&M priority in SRM is to sustain its facilities. This prevents further deterioration of the facilities we own and allows the facilities to support the Army's mission. The basic maintenance and repair of all Army facilities is funded at 93 percent of the O&M requirement. At the current funding levels, facilities will be properly maintained and deterioration will be minimal. Restoration and modernization initiatives supplement MILCON funding and meet recapitalization requirements. The Army has used the O&M R&M for barracks, strategic mobility, and other needs. The Army's demolition program will eliminate unneeded facilities. In fiscal year 2004, we plan to eliminate approximately 2.7 million square feet of facilities worldwide.

The Army's privatization or outsourcing of utilities is the first part of our Long Range Utilities Strategy within the SRM program to provide reliable and efficient utility services at our installations. All Army-owned electrical, natural gas, water, and waste water systems are being evaluated to determine the feasibility of privatization. When privatization appears economical, we use competitive contracting procedures as much as possible. The Army is on track and continues to seek ways to privatize as many systems as possible by September 30, 2003. OMA restoration and modernization resources will be programmed for systems we are not able to privatize so that all systems are brought to a C2 (quality) status by 2010. To date, 18 percent (64 of 351 systems) of all CONUS systems and 23 percent (250 of 1,068) of systems worldwide have been privatized. During fiscal year 2003, the negotiation and evaluation process for an additional 103 CONUS systems will be completed. Recent successes include privatization of the natural gas system at Fort Campbell, Presidio of Monterey and Fort Benning; electrical systems at Fort AP Hill, Picatinny Arsenal, Presidio of Monterey, Red River Army Depot, and Fort Bliss; and water and waste water systems at Red River Army Depot and Presidio of Monterey.

Base Realignment and Closure (BRAC)

Our facilities strategy strives to meet the needs of today's soldiers while also focusing on the changes required to support the Army of the 21st century. Our budget includes the Army's requirement to continue unexploded ordnance (UXO) removal, environmental restoration, and property management of those facilities not yet disposed from the first four rounds of BRAC. In fiscal year 2001, the Army began saving $924 million annually upon completion of the first four rounds of BRAC. Al-

though these savings are substantial, we need to achieve even more, and bring our infrastructure assets in line with projected needs. The Army supports the need to close and realign additional facilities and we appreciate Congress' authority to have an additional round in fiscal year 2005.

The Army is now in the second year of exclusively caretaking and completing the remaining environmental restoration activities at BRAC installations. This budget will continue this important work. These funds allow us to properly caretake these properties and to continue environmental and ordnance removal efforts that will facilitate economic revitalization and will render these properties safe. This budget includes the resources required to support projected reuse in the near term and to continue with current projects to protect human health and the environment. The Army implemented innovative approaches to environmental restoration at BRAC sites in fiscal year 2002, which supported the early transfer of several properties. The Army will continue to support early property transfers in fiscal year 2003 and beyond.

Although the extensive overseas closures do not receive the same level of public attention as those in the United States, they represent the fundamental shift from a forward-deployed force to one relying upon overseas presence and power projection. Without the need for a Commission, we are continuing to reduce the number of installations overseas. The total number of Army overseas sites announced for closure or partial closure since January 1990 is 685. Additional announcements and efficient basing initiatives will occur until the base structure matches the force identified to meet U.S. commitments.

The significant challenges posed by the removal of unexploded ordnance, the remediation of groundwater, and the interface of a variety of regulatory authorities continue to hinder the disposal of property. A number of innovative approaches for environmental restoration were recently developed in an effort by the Army to expedite the transfer of property, while ensuring the protection of human health and the environment. Two innovative mechanisms are being utilized to complete environmental restoration efforts: Guaranteed/Fixed Price Remediation (G/FPR) Contracts and Environmental Services Cooperative Agreements (ESCA). A G/FPR Contract obligates BRAC funds necessary for regulatory closure of specified restoration activities. The Army retains responsibility for completion of the environmental restoration, overseeing the contractor and ensuring that regulatory closure of the property is obtained. An ESCA is a different mechanism, authorized under the environmental restoration program that obligates Army BRAC funds and apportions some amount of liability to a governmental entity representing the reuse interests of the particular BRAC installation, in exchange for specific environmental restoration services outlined in the ESCA.

The Army used a G/FPR to accelerate regulatory closure from 2003 to 2002 at Fort Pickett, Virginia, at a cost that will not escalate over the course of the work. We estimate that this $2.9 million contract saved us $0.8 million based on our initial estimates. An ESCA allows the Army to transfer property and associated cleanup responsibilities to a local reuse authority or developer. This allows the developer to integrate cleanup with their redevelopment plans. An ESCA completed in 2001 was used in conjunction with early transfer authority at Military Ocean Terminal, Bayonne, New Jersey, saving the Army an estimated $5 million. An ESCA will facilitate the early transfer in fiscal year 2003 of property at Oakland Army Base, California. The benefits of the G/FPR and ESCA initiatives are that they limit Army environmental remediation cost growth liability and facilitate property disposal.

We remain committed to promoting economic redevelopment at our BRAC installations. We are supporting early reuse of properties through economic development conveyances, as well as the early transfer of properties along with cooperative agreements to accelerate the completion of remaining environmental remediation. The Army is also making use of leasing options approved by Congress and awarding guaranteed fixed price remediation contracts to complete environmental cleanup and make properties available earlier. Real property assets are being conveyed to local communities, permitting them to quickly enter into business arrangements with the private sector. Local communities, with the Army's support and encouragement, are working to develop business opportunities that result in jobs and tax revenues. The successful conversion of former Army installations to productive use in the private sector benefits the Army and ultimately the local community.

SUMMARY

Mr. Chairman, our fiscal year 2004 budget is a balanced program that permits us to execute our essential construction programs; provides for the military construction required to improve our readiness posture; provides for family housing

leasing, operations and maintenance of the non-privatized inventory; and initiates privatization at four additional installations. This request is part of the total Army budget request that is strategically balanced to support the current war effort, the readiness of the force and the well-being of our personnel.

Over the past few years with your support, we have successfully improved our infrastructure posture and postured ourselves for further improvements as the Army moves to the Objective Force and the Army of the future. We implemented a revolutionary management system with the establishment of the Installation Management Agency. We have reduced our infrastructure by a third. In addition, we have initiated efforts to privatize family housing and utilities systems where it makes economic sense and supports our military mission. We have the resources to improve the living conditions of 106,000 single soldiers and will be 79 percent complete with approval of this budget. We have expedited the process to turn over closed facilities and save the taxpayers money.

Our long-term strategy can only be accomplished through sustained, balanced funding, divestiture of excess capacity, and improvements in management and technology. With your support, we will continue to streamline, consolidate, and establish community partnerships that generate effective relationships and resources for infrastructure improvement, continuance of services, and improved quality of life for soldiers, their families, and the local communities of which we are a part.

The fiscal year 2004 request for the active Army is for authorization of appropriations and appropriations of $2,935,927,000 for Military Construction, Army, and Army Family Housing.

The request for authorization of appropriations and appropriations is $168,298,000 for Military Construction, Army National Guard, and $68,478,000 for the Military Construction, Army Reserve.

Mr. Chairman, this concludes my statement. Thank you.

Senator ENSIGN. Secretary Gibbs.

STATEMENT OF HON. NELSON F. GIBBS, ASSISTANT SECRETARY OF THE AIR FORCE, (INSTALLATIONS, ENVIRONMENT, AND LOGISTICS)

Secretary GIBBS. Mr. Chairman, Mr. Akaka, other distinguished members of the panel, I have submitted a written statement. In the interests of time, I will try to be very brief.

I am here today to discuss with you the Air Force portion of the President's budget request as it relates to military construction, military family housing, dormitories, and sustainment, restoration, and modernization of those facilities. That request is approximately 5 percent higher in 2004 than it was in 2003, an increase of approximately $200 million.

In the area of the environment, the budget request this year is down approximately 2 to 2½ percent, and I will be happy to discuss with you during the question and answer period the specific reasons why that occurs.

I thank you for the opportunity to be here, and I look forward to the questions that you may have of me. Thank you very much.

[The prepared statement of Secretary Gibbs follows:]

PREPARED STATEMENT BY HON. NELSON F. GIBBS

INTRODUCTION

Mr. Chairman and members of the subcommittee, good morning. I appreciate the opportunity to appear before you and present the Department of the Air Force fiscal year 2004 military construction program. Today, I will present to the subcommittee the Air Force investment strategies for facilities, housing, and environmental programs.

OVERVIEW

Our Total Force military construction and military family housing programs (MFH) play vital roles supporting Air Force operational needs, work place productiv-

ity, and quality of life. Today, when our Nation needs its Air Force more than ever before, our installations are the platforms from which we project the global air and space power so important to combat operations overseas. During Operation Enduring Freedom, we flew the longest bomber combat mission in history . . . 44 hours traveling more than 16,000 miles . . . from Whiteman Air Force Base, Missouri, against targets in Afghanistan. Our military construction program is a direct enabler of this kind of dominant combat capability. In that same vein, as we send tens of thousands of airmen overseas to prepare for possible conflict with Iraq, the peace-of-mind they enjoy, knowing their families are safe and secure, living in adequate housing with state-of-the-art quality-of-life facilities, has direct impact on their ability to focus on the task at hand.

While the Air Force has always acknowledged the importance of robust funding for facility sustainment and recapitalization, in the past we have found that higher competing priorities have not permitted us to address all the problems we face with our aging infrastructure. We turned a corner with our fiscal year 2002 and 2003 military construction and family housing budget requests, both well in excess of $2 billion. You supported those requests and increased them to nearly $3 billion, making the last 2 years' infrastructure investment programs the two largest in more than a decade. We sincerely appreciate your support.

We're continuing this positive trend in fiscal year 2004 . . . we are requesting more than $2.4 billion for Total Force military construction and Military Family Housing, a $160 million increase over last year's request. The request includes more than $770 million for active military construction, $60 million for Air National Guard military construction, more than $40 million for Air Force Reserve military construction, and more than $1.5 billion for Military Family Housing. In addition, we have maintained our focus on Operations and Maintenance (O&M) sustainment, restoration, and modernization (SRM) funding. Last year's O&M SRM request was nearly $400 million more than in fiscal year 2002. This year, we protected and actually increased that program growth. With the fiscal year 2004 budget request, we will invest more than $2 billion in critical infrastructure maintenance and repair through our O&M program.

When one considers our level of effort across the entire infrastructure spectrum (military construction, MFH, and O&M SRM), we plan to invest more than $4.4 billion in fiscal year 2004.

These Air Force programs were developed using a facility investment strategy with the following objectives:

- Accommodate new missions,
- Invest in quality-of-life improvements,
- Continue environmental leadership,
- Sustain, restore, and modernize our infrastructure,
- Optimize use of public and private resources,
- Continue demolition of excess, uneconomical-to-maintain facilities, and
- Base realignment and closure.

Mr. Chairman, Air Force missions and people around the world clearly depend upon this subcommittee's understanding of and support for our infrastructure programs. That support has never wavered, and for that we are most grateful.

With this background, I will discuss in more detail our military construction budget request for fiscal year 2004.

ACCOMMODATE NEW MISSIONS

New weapon systems will provide the rapid, precise, global capability that enables our combat commanders to respond quickly to conflicts in support of national security objectives. Our fiscal year 2004 Total Force new mission military construction program consists of 43 projects, totaling more than $273 million. These projects support a number of weapons system beddowns; two of special significance are the F/A–22 Raptor and the C–17 Globemaster III.

The F/A–22 Raptor is the Air Force's next generation air superiority fighter. Tyndall Air Force Base, Florida, will house the F/A–22 flying training program. Nellis Air Force Base, Nevada, will be the location for F/A–22 Follow-on Operational Test and Evaluation. Langley Air Force Base, Virginia, will be home for the first operational squadrons. The fiscal year 2004 military construction request includes one F/A–22 project at Tyndall for $6 million, and three F/A–22 projects at Langley totaling $25 million.

The C–17 Globemaster III aircraft is replacing our fleet of C–141 Starlifters. The C–17 provides rapid global mobility by combining the C–141 speed and long-range transport capabilities; the C–5 capability to carry outsized cargo; and the C–130 capability to land on short, forward-located airstrips. We are planning to bed down

C–17s at Elmendorf Air Force Base, Alaska; Travis Air Force Base and March Air Reserve Base in California; Dover Air Force Base, Delaware; Hickam Air Force Base, Hawaii; Jackson Air National Guard Base, Mississippi; McGuire Air Force Base, New Jersey; Altus Air Force Base, Oklahoma; Charleston Air Force Base, South Carolina; and McChord Air Force Base, Washington. Thanks to your support, construction requirements for Charleston and McChord were all funded in prior-year military construction programs. Our request for fiscal year 2004 includes a $1 million facility project at Altus, a $8 million assault runway at Camp Shelby (near Jackson, Mississippi), two facility projects for $12 million at McGuire, and six facility projects for $63 million at Hickam.

Other new mission requirements in fiscal year 2004 include the Global Hawk beddown at Beale Air Force Base, California; Combat Search and Rescue aircraft beddown at Davis-Monthan Air Force Base, Arizona; C–130J beddown at Pope Air Force Base, North Carolina, and Little Rock Air Force Base, Arkansas; and Joint Strike Fighter facilities at Edwards Air Force Base, California.

INVEST IN QUALITY-OF-LIFE IMPROVEMENTS

The Air Force is committed to taking care of our people and their families. Quality-of-life initiatives acknowledge the increasing sacrifices our airmen make in support of the Nation and are pivotal to recruiting and retaining our best. When our members deploy, they want to know that their families are stable, safe, and secure. Their welfare is a critical factor to our overall combat readiness. Our family housing and dormitory programs, and other quality-of-life initiatives reflect our commitment to provide facilities they deserve.

Family Housing

Our Air Force Family Housing Master Plan provides the road map for our Housing military construction, O&M, and privatization efforts, to meet the goal of providing safe, affordable, and adequate housing for our members. Our fiscal year 2003 budget request reflected an increase of more than $140 million over the prior year—we have built on that increase with our fiscal year 2004 request and in the programmed budgets for the next 3 years. With the exception of four northern-tier locations, we will eliminate our inadequate housing units in the United States by 2007. The inadequate units at those four northern-tier locations will be eliminated by 2008, and the inadequate units at our overseas installations will be eliminated by 2009.

For fiscal year 2004, the $700 million we have requested for housing investment constructs nearly 2,100 units at 18 bases, improves more than 1,500 units at 8 bases, and supports privatization of nearly 7,000 units at 7 bases. I'll discuss our housing privatization program in more detail later. Our fiscal year 2004 housing operations and maintenance program totals nearly $835 million.

Dormitories

Just as we are committed to provide adequate housing for families, we have an ambitious program to house our unaccompanied junior enlisted personnel. The Air Force Dormitory Master Plan is a comprehensive, requirements-based plan, which identifies and prioritizes our dormitory military construction requirements. The plan includes a three-phased dormitory investment strategy. The three phases are: (1) fund the replacement or conversion of all permanent party central latrine dormitories; (2) construct new facilities to eliminate the deficit of dormitory rooms; and (3) convert or replace existing dormitories at the end of their useful life using a new, Air Force-designed private room standard to improve airman quality of life. Phase 1 is complete, and we are now concentrating on the final two phases of the investment strategy.

Our total requirement is 79,400 Air Force dormitory rooms. We currently have a deficit of 11,400 rooms, and the existing inventory includes 3,700 inadequate rooms. It will cost approximately $1 billion to execute the Air Force Dormitory Master Plan and achieve Office of the Secretary of Defense's (OSD) fiscal year 2007 goal to replace all of our inadequate dormitory rooms. This fiscal year 2004 budget request moves us closer to that goal.

The fiscal year 2004 dormitory program consists of 12 dormitory projects at 9 U.S. bases and 3 overseas bases, for a total of $203 million. On behalf of all the airmen affected by this important quality-of-life initiative, I want to thank the subcommittee. We could never have made it this far without your tremendous support.

Fitness Centers

Other traditional quality-of-life investments include community facilities, such as fitness centers, vital in our efforts to attract and retain high-quality people and

their families. A strong sense of community is an important element of the Air Force way of life, and these facilities are important to that sense of community as well as to the physical and psychological well-being of our airmen. The fiscal year 2004 military construction program includes fitness centers at Lajes Air Base, Azores; Mountain Home Air Force Base, Idaho; Spangdahlem and Ramstein Air Bases, Germany; and Royal Air Force Bases Lakenheath and Mildendall in the United Kingdom.

CONTINUE ENVIRONMENTAL LEADERSHIP

The Air Force continues to ensure operational readiness and sustain the public trust through prudent environmental stewardship. We are meeting our environmental cleanup commitments and Department of Defense goals through effective outreach and partnering with Federal and State regulators and team-building with stakeholders and communities. Meeting our legal obligations remains a primary objective of the Air Force environmental quality program. Our record of environmental stewardship illustrates our environmental ethic, both here in the United States and overseas.

In addition to ensuring our operations comply with all environmental regulations and laws, we are dedicated to enhancing our already open relationships with both the regulatory community and the neighborhoods around our installations. We continue to seek partnerships with local regulatory and commercial sector counterparts to share ideas and create an atmosphere of better understanding and trust. By focusing on our principles of ensuring operational readiness, partnering with stakeholders, and protecting human health and the environment, we remain leaders in environmental compliance, cleanup, conservation, and pollution prevention. We have reduced our open enforcement actions from 263 in 1992 to just 22 at the end of 2002.

We have one project ($7 million) in our fiscal year 2004 environmental compliance military construction program. With it, we will install arsenic treatment systems on water wells at Kirtland Air Force Base, New Mexico, to ensure the base is in full compliance with the U.S. Environmental Protection Agency's (EPA) new standard for maximum arsenic levels allowed in drinking water. Failure to install these treatment systems could result in fines from the EPA, shutdown of water wells at Kirtland, and the increased cost of purchasing and distributing potable water on the base.

SUSTAIN, RESTORE, AND MODERNIZE OUR INFRASTRUCTURE

Overseas Military Construction

The quality of our installations overseas continues to be a priority to us. Even though the majority of our Air Force personnel are assigned in the United States, 16 percent of our forces are permanently assigned overseas, including 29,000 Air Force families. The Air Force overseas base structure has stabilized after years of closures and force structure realignments. At this level, our overseas infrastructure still represents 11 percent of our Air Force physical plant. Now, old and progressively deteriorating infrastructure at these bases requires increased investment. Our fiscal year 2004 military construction request for European and Pacific installations is $171 million totaling 22 projects. The program consists of infrastructure and quality-of-life projects in the United Kingdom, Germany, the Azores, Italy, Turkey, and Korea, as well as critical facilities on Wake Island. We ask for your support of these operational and quality-of-life projects.

Planning and Design/Unspecified Minor Construction

We are also requesting planning and design and unspecified minor construction funding. Our request for fiscal year 2004 planning and design is $102 million. These funds are required to complete design of the fiscal year 2005 construction program, and to start design of our fiscal year 2006 projects. We have requested $23 million in fiscal year 2004 for our total force unspecified minor construction program, which is our primary means of funding small, unforeseen projects that cannot wait for the normal military construction process.

Operations and Maintenance Investment

To sustain, restore, and modernize what we own, we must achieve a balance between our military construction and O&M programs. Military construction allows us to restore and recapitalize our facilities. O&M funding allows us to perform facility sustainment activities necessary to prevent facilities from failing prematurely. Without proper sustainment, facilities and infrastructure wear out sooner. We also rely on O&M funding to directly address many of our critical restoration and less-expen-

sive recapitalization needs. These funds enable commanders in the field to address the facility requirements that impact their near-term readiness.

Since the early 1990s, constrained defense budgets resulted in reduced military construction funding. For a few years, adequate O&M funding partially offset this military construction decline. However, between fiscal year 1997 and fiscal year 2001, competing priorities forced the Air Force to cut sharply into both military construction and O&M funding. Our effort to sustain and operate what we own was strained by minimally funded O&M, which forced us to defer much-needed sustainment and restoration requirements. Thankfully, along with the robust military construction programs provided in the last two years, we have been able to restore our O&M balance for the second year in a row. In fiscal year 2004, our sustainment, restoration, and modernization share of the Air Force O&M funding is more than $2 billion—allowing us to properly invest in facility sustainment (to keep our good facilities good) and invest some O&M funding in restoration and modernization work compared to fiscal year 2003. Our known restoration and modernization O&M backlog has grown to nearly $8 billion, so it will be important for us to continue this precedent of higher O&M facility investment in the future.

OPTIMIZE USE OF PUBLIC AND PRIVATE RESOURCES

In order for the Air Force to accelerate the rate at which we revitalize our inadequate housing inventory, we have taken a measured approach to housing privatization. We started with a few select projects, looking for some successes and "lessons learned" to guide our follow-on initiatives. We awarded our first housing privatization project at Lackland Air Force Base, Texas, in August of 1998, and all 420 of those housing units were constructed and are occupied by military families. Since then, we have completed two more projects (at Robins Air Force Base, Georgia, and Dyess Air Force Base, Texas) and have two more under construction (at Elmendorf Air Force Base, Alaska, and Wright-Patterson Air Force Base, Ohio). Once these two projects are complete, our privatized unit total will exceed 3,800. We are on-track to award another eight projects in the next 12 months. Looking at 2005 and beyond, we are targeting an end-state of privatizing 60 percent of the U.S.-based housing inventory. Our fiscal year 2004 budget request includes $44 million to support the privatization of nearly 7,000 units at seven bases: Luke Air Force Base, Arizona; Altus and Tinker Air Force Bases in Oklahoma; Shaw Air Force Base, South Carolina; Sheppard Air Force Base, Texas; McChord Air Force Base, Washington; and F.E. Warren Air Force Base, Wyoming.

We continue to pursue privatization of utility systems at Air Force installations. Our goal is to privatize utility systems where it makes economic sense and does not negatively impact national security. The Air Force has identified 420 of our 650 systems as potential privatization candidates. We expect to release approximately 190 requests for proposal over the next 24 months.

CONTINUE DEMOLITION OF EXCESS, UNECONOMICAL-TO-MAINTAIN FACILITIES

For the past 7 years, we have pursued an aggressive effort to demolish or dispose of facilities that are not economical to sustain or restore. From fiscal year 1998 through fiscal year 2002, we demolished more than 12 million square feet of non-housing building space. We expect to demolish an additional 2 million square feet in fiscal year 2003, for a total reduction of 14 million square feet. This is equivalent to demolishing six Air Force bases equal to the combined square footage of Whiteman, Goodfellow, Moody, Brooks, Vance, and Pope Air Force Bases. Looking at fiscal year 2004 and beyond, we will continue to identify opportunities for Air Force demolition through facility consolidation. In general, we consider our facility demolition program a success story enabling us to reduce the strain on our infrastructure funding by getting rid of facilities we don't need and can't afford to maintain.

BASE REALIGNMENT AND CLOSURE

The Air Force views the fiscal year 2005 Base Realignment and Closure (BRAC) process as a unique opportunity to reshape our infrastructure to optimize military readiness and to ensure we are most efficiently postured to meet new security challenges. In January of this year, we created a Basing and Infrastructure Analysis group within Headquarters Air Force. This office will serve as the Air Force focal point for the fiscal year 2005 BRAC process. Our major commands are following suit with creating their own analysis structures to support the BRAC process. As in previous rounds of base closures, we are establishing a Base Closure Executive Group (BCEG) composed of general officers and senior civilians representing a variety of functional areas, including those with range and airspace operational expertise. We continue to participate in joint BRAC forums with our sister services and the Office

of the Secretary of Defense to meet the Secretary of Defense guidance and develop the required processes and procedures.

The Air Force leadership is committed to meeting the BRAC fiscal year 2005 statutory deadlines and ensuring our analytical processes are unbiased and defensible.

The Air Force continues to work with the local reuse authority at each base closed under previous rounds of BRAC to minimize the impact on the local community from the closure. This effort has led to the creation of over 48,000 jobs with 86 percent of the property transitioned for reuse.

While these facilities are being returned to their respective communities, the Air Force has a continuing responsibility for environmental cleanup from past industrial activities. The Air Force approaches this responsibility at our BRAC bases with the same prudent environmental stewardship as at our active bases. We have spent $2.2 billion since fiscal year 1991 in environmental cleanup at closing bases, and for fiscal year 2004, the Air Force is requesting $176 million to continue the cleanup.

CONCLUSION

In conclusion, Mr. Chairman, I thank the subcommittee for its strong support of Air Force military construction and family housing. With your help, we will ensure we meet the most urgent needs of commanders in the field while providing quality facilities for the men and women who serve in and are the backbone of the most respected aerospace force in the world. I will be happy to address any questions.

Senator ENSIGN. Thank you, Secretary Gibbs. We appreciate your brevity.

Let me start with a question on the recapitalization rates. In discussions with the Secretary of Defense on this next round of BRAC, and I have a question about the overseas stuff in a second, but let us just assume what is going to happen in the United States.

If we were successful reducing our bases by about 20, 21 percent in the United States, what would be the effect then on the recapitalization rate?

Mr. DUBOIS. Mr. Chairman, I think it is important to note that the Secretary, when he used that 20 to 25 percent figure, was referring to a 1998 study based on excess capacity. There is no question in my mind that we are not going to reduce our installations by 20 to 25 percent. Remember that BRAC is a realignment exercise first and foremost. It is not a closing exercise.

Senator ENSIGN. Let us just say that, whatever the projection out there that you all think now, in 2003 numbers, what is the effect going to be on recapitalization?

Mr. DUBOIS. I think it potentially has two positive effects. Number 1, if one closes certain bases and moves those missions to other bases, you will have new construction done under the BRAC MILCON account. You are thereby entering into the inventory brand new buildings which automatically reduces in the calculation your recap rate.

Number 2, we would hope that a rationalization would, in point of fact, reduce the numbers of facilities. We have a replacement value of $600 billion worth. By reducing the numbers of facilities, especially the older ones——

Senator ENSIGN. Do you have any idea of a number?

Mr. DUBOIS. No, sir. That is sheerly hypothetical at this point.

Senator ENSIGN. I guess it is something that should be looked at, if you have an idea of approximately what the goal of DOD has for closing bases. They have a target list, I am sure, in mind. I know it is not a public target list, that would certainly seem to be able to be factored in a range from this level to this level on how it is going to affect some of these numbers.

Mr. DUBOIS. I will only say, sir, there is no target list. We are beginning this process. In fact, we are having our second, only our second infrastructure steering group meeting tomorrow afternoon with the Vice Chiefs and these three gentlemen.

Senator ENSIGN. I will just say it for the future, then. As you are studying this, there would be a number that I think would be very helpful to have for this subcommittee.

Mr. DUBOIS. To both us and you.

Secretary GIBBS. Senator Ensign, if I may.

Senator ENSIGN. Yes.

Secretary GIBBS. The Air Force intends, given the current stock of facilities that it has, to meet the Department of Defense goal for recapitalization in 67 years in 2006 and 2007. To the extent there is a reduction in the overall stock requirement due to the BRAC initiative, we would be in the enviable position of either beating that particular statistic very handsomely, or reallocating funds, if we choose to maintain it at that level, reallocating funds for other activities. So either way it should be a winning combination.

Senator ENSIGN. I would like to turn very briefly to some environmental questions, especially addressing the perchlorate problem. In January 2002, the Environmental Protection Agency published its second draft risk assessment document for perchlorate, which contained a proposed standard of one part per billion. Any of the four of you feel free to answer this question: Do you believe that this proposed standard is supported by sound science; if not, what efforts have been made to address this concern on behalf of the DOD, and assuming a standard of one part per billion, what are the estimated costs for site characterization and cleanup?

Mr. DUBOIS. Mr. Chairman, the Department of Defense, and I will be quite blunt about this as I believe that NASA and the Department of Energy share our concerns, has serious science policy concerns over the EPA's draft report.

Now, we have been in negotiations, as I indicated, with the EPA, and at the behest and under the tutelage, if you will, of the Office of Management and Budget, with the CEQ there, the Department of Energy, and NASA to address our concerns.

Now, to resolve our concerns, I believe I can say that the interested parties have agreed to refer this issue, this perchlorate toxicity issue, to the National Academy of Sciences for further review. It is not necessarily a de novo review, as they say, but it is going to be a thorough review of both the evidence, the data collected, and how it was collected, how it was analyzed by EPA in order to have as objective an assessment as possible.

Now, unfortunately the news stories and some of the State regulatory authorities have misinterpreted, and I underline that word, misinterpreted, EPA's draft reference dose as the safe limit for perchlorate consumption. In reality, a reference dose is defined by EPA as, "an estimate, with uncertainty spanning, perhaps, several orders of magnitude," and this is something that gets lost in the articles in the press.

Therefore, designing this ballpark estimate is merely the starting point for EPA's process of setting safe drinking water standards, and this is especially true, I think, Mr. Chairman, of the per-

chlorate reference dose, which is a draft, which is being referred, as I indicated, for further review to the National Academy.

Now, unfortunately, and I want to emphasize this, because I think it is important for the American public to understand, regulatory action based on misinterpretation of this draft reference dose is incorrect and, in my view, bad public policy.

Senator ENSIGN. Do any of the rest of you want to comment on that, just very briefly?

Secretary JOHNSON. Certainly Mr. DuBois knows more than I do, but we have excited the American people with little science to back it up. We recognize there are some challenges here, but there has been no proof at all, from the scientific standpoint, on the proper levels.

Secretary GIBBS. Sir, members of my staff participate with Mr. DuBois' staff in some of the discussions we have been having with the council and with EPA. Being a resident of Los Angeles and drinking Colorado River water, it is of particular concern to me as an individual. In reading the local newspapers I was interested in a quote from one of the water managers out in the desert area east of Los Angeles about this particular issue. Basically what he said was that we need to get on with something, and we should not spend a great deal of time arguing about whether it is one, two, or three. I think having a more reasonable level to begin the process, rather than wasting a lot of time, would certainly move the ball forward.

Senator ENSIGN. Senator Akaka.

Senator AKAKA. Thank you very much, Mr. Chairman.

Mr. DuBois, with the 2005 BRAC round still ahead, and it is ahead of us and drawing closer, I will ask for the record again, as I did last year—all I need is a simple yes or no answer, and this is the question: Did the administration use future BRAC rounds as a consideration in the preparation of fiscal year 2004 budget requests?

Mr. DUBOIS. The answer, in short, is that we did not. Now, Senator, the building of our budget request this year for military construction and all the ancillary and associated accounts and references that I made during my opening statement was done in concert with our colleagues in the acquisition area, the research and development area, the personnel area, the O&M area, and procurement.

As Secretary Johnson said, the procurement issues are very important, as are these, but I can say categorically we did not build the MILCON account for fiscal year 2004 with any future number, installation, facility, or potential goal in mind. We did it on the basis of mission-critical requirements both here and abroad. Now, I can address those in more detail later, and we believe it to be the right amount.

I defer to my three colleagues if they want to add to that.

Secretary JOHNSON. We certainly did not intentionally or, to my knowledge, unintentionally consider BRAC in any way in developing our recap rate or MILCON program.

Secretary FIORI. The answer is no, sir.

Secretary GIBBS. No, sir.

Senator AKAKA. Secretary Fiori, could you please outline the current plans for the fifth and sixth Stryker Brigade Combat Teams? What are the military construction requirements, including land acquisition, needed to support the expected fiscal year 2005 implementation of the fifth Stryker Brigade, and how many of these requirements are actually funded?

Secretary FIORI. Yes, sir. We are still studying and have to report back to the Secretary of Defense, and the Secretary of Defense has to make a decision on whether to proceed on the fifth and sixth Stryker Brigades. The money requested in the military construction budget, particularly for the fifth Stryker Brigade that may get to Hawaii, is for items of acquisition for training needs. They are for facilities that we will need if it is a Stryker Brigade, or whatever the future brigade is.

We are moving to a lighter, faster force, and the facilities that we are requesting in the 2004 budget request would support that. There is no difference of my requirements for 2004, even if we do not go after a "Stryker Brigade." The things that we requested we would need to support our forces in Hawaii.

The sixth Stryker Brigade in Pennsylvania, the National Guard is not requesting much money this year. It is more for planning, and it is in my budget request, the exact things that we are looking to spend for Pennsylvania.

Senator AKAKA. Secretary Fiori, 4 years ago the Air Force came to us with a budget that underfunded its environmental compliance accounts. This committee stated the following in its report, and I quote:

"Insufficient funding to meet Air Force compliance requirements suggests a distinct lack of support for installation commanders. These commanders could be subject to criminal sanctions for such deficiencies. The Air Force has suggested that installation commanders will likely avoid fines and penalties by using funding for readiness priorities to pay unfunded compliance requirements. The committee views this as an unacceptable result."

This year, the Army has done the same thing, proposing a budget that would reduce compliance spending by $89 million from last year's level, and funding over 79 percent of the expenditures needed to comply with requirements of law and regulation. My questions are, why has the Army decided to put its installation commanders at risk by requiring them to risk fines and even criminal penalties for noncompliance, and which readiness accounts does the Army expect its installation commanders to raid to pay for unfunded compliance requirements to avoid such sanctions?

Secretary FIORI. Sir, we are funding in the 2004 budget $552 million for compliance. We believe that is sufficient for our compliance requirements. We do not use readiness accounts. Particularly this year, where the Installation Management Agency (IMA) controls the money, our readiness accounts, in general, are not in the domain of the garrison commander. So should he have additional fines, which we are reducing dramatically over the years, by the way, the IMA will be required to find the money to help pay for those things.

Right now, we do not have a serious problem whatsoever in the compliance area, nor do I anticipate one. My request was about $71

million less than last year. It is a risk we are willing to take, but we are not putting the garrison commanders at risk at all. The risk is more an Army risk, should we have some significant fines, or some serious noncompliance problems, which we do not anticipate having.

Senator AKAKA. Thank you. I appreciate your responses.

Mr. Chairman, my time has expired.

Senator ENSIGN. Senator Allard. We are going by the early bird rule.

Senator ALLARD. Thank you, Mr. Chairman. Mr. DuBois or Secretary Fiori, whichever one of you feels most qualified to take this, a group of programs, what we call the formerly used defense sites (FUDS) programs, those requirements have been increased dramatically, I understand, from the original estimates. Are the budget requests continued in a way that we can meet those increased program requirements?

Secretary FIORI. We have submitted a budget of $213 million for FUDS this year, and we feel this will carry us along. Quite honestly, it is maintaining a balance between a lot of different issues, FUDS plus unexploded ordnance and also our long-range cleanup issues. We are picking those cleanup issues and characterizing them as we speak throughout the country. It is a large mortgage. It could overwhelm my budget if I try to fix it in 5 years. I have heard various estimates of how many years it will take to fix, but none of them are particularly satisfying right now.

This is where we are. We are not endangering anyone. We are not breaking any laws, and they are in protected areas where we know they are.

Senator ALLARD. So the answer is that no, you are not keeping up with the increased requirements. Are the new program requirements going to be readjusted to the real amount of dollars needed to finish the program successfully?

Secretary FIORI. We are going to do our best to try to balance the requirements we have with the money we have and go after the ones that are most critical to clean up first.

Mr. DUBOIS. Senator Allard——

Secretary FIORI. Maybe I could get some more help from OSD on this one. [Laughter.]

Mr. DUBOIS. It is a question of who is most qualified and who is most comfortable in answering the question.

Let us be perfectly clear, Tier 1 FUDS, those that are determined to have a potential for an immediate health or safety impact are going to be addressed, and we adjust every year to the recharacterization, if you will, of some of these FUDS.

Now, in a little place not far from where we are sitting, where I did some of my growing up as a child, we found things that we did not know that were there. They were undocumented, and in Spring Valley (Washington, DC) came as a shock to everyone, including myself, who had lived there. The fact is that we had to adjust, in that year's accounts, fiscal year 2002, upwards of $60 plus million to immediately address that issue.

Now, where did that $60 million come from? The FUDS account was not plussed up during the middle of the fiscal year. It came from Tier 2 and Tier 3 FUDS that have been postponed in terms

of being addressed, but I think it is important to know that the Secretary will make the adjustments as necessary in Tier 1.

[The information referred to follows:]

CURRENT FUNDING AND FORMERLY USED DEFENSE SITES CLEANUPS

In March 2000, the Department researched five management options aimed at enhancing formerly used defense sites (FUDS) overall program management and execution. Each option featured varying levels of contract management and private industry involvement: (1) U.S. Army Corps of Engineers (Corps) and contractor managed cleanups; (2) Corps and industry competed contracts; (3) total program management by contract; and (4) industry proposals. The Department decided to retain Corps management of the program, based on the Corps' demonstrated expertise, experience, and geographic capability, but would continue to pursue innovative contracting methods in an effort to further increase overall efficiency and effectiveness of FUDS cleanups.

The Corps currently uses a variety of contracting approaches, including fixed-price, cost-reimbursement, incentive, indefinite-delivery, and contractor managed cleanups for FUDS. At Rocky Mountain Arsenal, the Army implemented a Program Management contract to manage the cleanup, which has resulted in both accelerated cleanup and significant cost savings. Other innovative contracts under consideration by the Corps include the Guaranteed Fixed Price Remediation (GFPR) contracts and State and local government entity cleanups.

The GFPR contracting approach, currently used by the Army at BRAC installations, emphasizes performance to achieve defined cleanup objectives, helping to limit risks from uncertainties normally encountered in traditional fixed-price contracting.

The Environmental Services Cooperative Agreement (ESCA) is an agreement authorized under the Defense Environmental Restoration Program (DERP) statute (10 USC 2701(d)) between the Army and a State or local governmental entity for environmental restoration services. Used in Army BRAC transfers, the Army retains lead agent oversight, while the State or local public entities (Local Reuse Authorities) or qualified conservation entities receiving property for conservation conduct the cleanup. Applicability of ESCAs has been interpreted as limited only to a State or local public entity or a non-governmental organization receiving a conservation transfer. Army is evaluating the need for additional authority for application of ESCA to the privately held properties in the FUDS program.

Senator ALLARD. In order to meet some of those program demands, does it make sense to do some privatization efforts on some of those programs?

Mr. DUBOIS. Privatization of cleanup of the FUDS?

Senator ALLARD. Privatization of cleanup.

Secretary FIORI. Most of our cleanup, per se, is being done under contract. The Corps of Engineers is in charge, and they get contractors to come in. So I guess that would be privatization. There are potential ways to clean up BRAC sites that we could work out for contractors. It would be trading land for cleanup. We have done that type of thing.

Senator ALLARD. In Colorado we have some cleanup sites going, Rocky Flats, for example, where the contractor is cleaning that up, basically.

Mr. DUBOIS. The DOE is paying for it.

Senator ALLARD. They are paying for it, but the contractor has put out the plan and organized it and gone ahead and done it, and they are ahead of schedule. We put some incentives in there. They are ahead of schedule, and things are moving along very well. We are under budget, actually, and so I wondered if the same philosophy cannot be applied to the cleanup of some of these FUDS.

Mr. DUBOIS. The FUDS program is an OSD or Department-level program, and the Army's executive agent and Secretary Fiori and I will look into this and report back to you.

Senator ALLARD. That is all I ask. Thank you.

There is a requirement in an international treaty that the United States destroy our chemical munitions stockpiles by 2007. How well are we progressing towards that goal, and does this year's budget request continue sufficient funding for the United States to meet the 2007 deadline, as required by that international treaty on destroying our chemical munitions stockpile by 2007?

Mr. DUBOIS. The oversight for that chemical demilitarization program is with Secretary Aldridge, the Under Secretary of Defense for Acquisition Technology.

Again in this case, as it was in the FUDS case, the Army is the executive agent for that program. The management responsibility within the Department of the Army is with the Assistant Secretary of the Army for Acquisition, Logistics, and Technology (AL&T). It is no longer in the portfolio of Secretary Fiori. I would be glad to address the specifics of your issue, or send up here Dale Klein, who is the Assistant Secretary of Defense for Chemical and Biological Issues, who has the, if you will, oversight day to day, or Secretary Claude Bolton of the Army, Assistant Secretary for AL&T, who can give you more detail on that particular program.

It is a program, no doubt, no question, of high political visibility, and one that takes a considerable amount of time of Mr. Aldridge, and he will be responsive to your questions.

Senator ALLARD. Very good. Lance Landry or Jayson Roehl in my office, I would like to have them come and sit down and talk about the program.

Mr. DUBOIS. I know the Pueblo issue is well-known to those of us who have touched upon this issue.

Senator ALLARD. Thank you, Mr. Chairman.

Senator ENSIGN. Prior to your arriving, Senator Inhofe, both myself as the new chairman and our past chairman sang your praises. You were not here to hear them.

Senator INHOFE. You can do them again if you would like. [Laughter.]

Senator ENSIGN. You were the next person to arrive, so we will turn the questioning over to you.

Senator INHOFE. Do not count this against my time. Let me just say how much I appreciate your comments. [Laughter.]

For about 6 years with Danny Akaka I was either ranking minority or chairman, and I have been very distressed over our readiness situation, so I will be very active on your subcommittee here, since under Republican rules you cannot chair a whole committee and also a subcommittee, so I will be looking forward to working with you on this.

Secretary Gibbs, were you there this morning when we had Secretary Roche and the rest of the Secretaries?

Secretary GIBBS. No, sir, I was not.

Senator INHOFE. During that time I spent some time giving a lot of credit and expressing my appreciation to Secretary Roche in that he made one of his first trips—I think he said it was his first trip after confirmation with me to go and really spend some time on ALCs. We went to Tinker, we looked at the history behind it, the national security ramifications of the potential of being dependent upon a sole source, and just talking about what core work really

is, and no serious investment has been made in it, and yet we are supposed to have this capability.

Now, your workforce shaping initiatives, they have worked out real well. I know that in the case of Tinker we are now cranking those KC–135s through in 200 days instead of 400 days, and so I was very complimentary of him, but I am also aware that you are the guy that did the work, so let me thank you very much for that.

I understand the $150 million that is going to be going to the ALCs, do you have any indication, or can you share with me how that will be divided up, what priority is going to be used?

Secretary GIBBS. The $150 million that the Senator is referring to, for those of you who may not be that familiar with the program the Air Force is running, is a special set-aside program to reinvest in its three organic depot activities to try to make up for substandard amount of investment over the decade of the 1990s.

Specifically in the 2004 budget we started out with $150 million, and we had it until the last moment of the budget process, but there is something I learned this time. There is a thing called negative inflation that flows through the process at the last moment, and that cost us $5 million, so I have to report to you we only have $145 million in, not the $150 million we requested.

From a budgetary perspective, it effectively is included in three different places. There is a piece of it that is in the military construction budget. There is a piece of it that really is buried in O&M, and there is a third piece that is really in the sustainment type accounts.

The amounts are spread across the three different depots based upon a competition that is held. The depots, up through their Major Command, Air Force Materiel Command (AFMC), suggest particular projects to the AFMC ranking authority, and based upon, to a certain extent objective, but somewhat subjective judgment of the command, the projects either win and are funded or do not win.

Senator INHOFE. Okay. I do not want to run out of time too quickly here. Is it safe to say, though, that this money is not going to replace the existing MILCON or anticipated MILCON?

Secretary GIBBS. No, it did not.

Senator INHOFE. All right, that is fine. Thank you very much for all your work in that.

Mr. Chairman, this morning I was reading some of the things that General Jones was talking about, and I was really interested, as—when I was chairing this subcommittee we took the time to go all around the world, as well as here in the United States, and look at some of the installations, the conditions of the buildings, and I particularly was concerned about Germany. Some of the work we are doing there now, particularly on family housing, is doing real well.

As I understand, General Jones is talking about, and I just read this, primarily two things. One is, we might be giving serious consideration to moving from Western Europe to Eastern Europe, and to me this is a very attractive notion because of the environmental encroachments that we are having in Germany and other places. I think he mentioned Poland, Bulgaria, and Romania.

I have been spending some time talking to some of the people from these countries, and specifically the other day, Valentyn Zaichuk, who is the Chief of the Verkhovna Rada Administration Staff (Urkainian legislature) in the Ukraine. They would love to have the opportunity to extend to us an invitation to use their facilities to build ranges, and I think we would have a lot fewer problems.

The other idea that he mentioned was that we might change this, instead of moving families over for an extended period of time, to have a rotation, where they would leave families home and maybe go over for 2, 3, or 4 months, as we have done in some other places. Now, if that is true, that would certainly affect any future BRAC round that would come up. So I guess what I would like to ask anyone who would like to respond to this, what these two prospects look like to you, whether you think they are a good idea and, if so, how that might affect BRAC rounds.

Mr. DUBOIS. Senator Inhofe, in the Quadrennial Defense Review (QDR) published in September 2001, the Secretary of Defense made it very clear that his charge from the President to reform and reshape the global footprint was a necessary ingredient to transforming the military.

In that light, and since his memorandum to the combatant commanders of that summer 2001 to ask them to look at their overseas basing strategy, he, the Secretary of Defense, has concluded that the global presence, our global presence and our global infrastructure, is in point of fact an inherited global presence and global infrastructure, as it is a legacy of the Cold War. It is a legacy of the Cold War, it is a legacy of the Warsaw Pact, facing NATO troops in the inter-German border and the North German plains.

The world is different today, significantly, and we have an obligation, in the Secretary's view, to ask the combatant commanders, especially the new combatant commander in Europe, Jim Jones, to assess the military construction currently in the pipeline, as well as projected, to determine whether or not those decisions, which arguably were made 2, 2½, 3 years ago, are still directly supporting the military requirements that we have today.

How this unfolds, how the Secretary and the Joint Chiefs and the combatant commanders, with General Myers and General Pace, integrate the future global presence with the future global infrastructure, is going to be a process that is going to take probably another 4 to 5 months, but I will say this, and you are quite right in connecting the two, Congress authorized the BRAC in 2005, a domestic BRAC. The Secretary of Defense, of course, does not need the authority to look at how we reorganize or reconfigure outside the United States and its territories. He, however, is very cognizant of the fact that one cannot do an effective domestic BRAC, prior to an effective international or overseas BRAC, if you will.

He had a meeting, actually, now I guess it is 3 weeks ago, with all combatant commanders and the Joint Chiefs and discussed this very issue, and they are all seized with it.

Senator INHOFE. That is good. Mr. Chairman—if the rest of you for the record could just submit something in writing—I am very much interested in this—if you have any thoughts on it, I would appreciate it.

[The information referred to follows:]

Secretary JOHNSON. The Department of the Navy will work with the combatant commanders, the major claimants, and the Office of the Secretary of Defense on facilities issues arising from any proposals to relocate overseas naval forces.

Secretary FIORI. In August 2001 the Secretary of Defense directed all combatant commanders to review overseas basing requirements and examine opportunities for joint use of facilities and land by the Services, consolidation of infrastructure, and enhanced training. While that particular task is completed, the Department of Defense is continuing to examine our overseas basing and presence within the context of a global strategy. Specifically, combatant commanders have been asked to provide priorities regarding their fiscal year 2003 and fiscal year 2004 military construction programs by April 20. To complement that effort, the Department of Defense is developing a comprehensive and integrated presence and basing strategy looking out 10 years. We anticipate that effort to be completed by July 1, 2003.

Secretary GIBBS. BRAC law has in fact incorporated overseas basing factors into the BRAC 2005 round. Section 2912 of the BRAC law requires that DOD's infrastructure inventory be conducted "world-wide" and specially consider "[t]he anticipated continuing need for and availability of military installations outside the United States, taking into account current restrictions on the use of military installations outside the United States and the potential for future prohibitions or restrictions on the use of such military installations." Accordingly, DOD's analysis and determination of excess infrastructure inside the United States must and will consider overseas installations. The Secretary of Defense on March 20, 2003, directed combatant commanders to make recommendations for appropriate locations for the global positioning of our forces and supporting infrastructure outside the United States so we are able to determine future infrastructure needs now and in the future.

Senator INHOFE. I know my time is up. I have two committee hearings taking place right now, and I am chairing the other one and I have to leave. Could I have one more minute? Would that be all right, Senator Pryor?

Senator PRYOR. That is fine.

Senator INHOFE. Thank you very much. There is an outrageous article this morning that I saw that someone who is supposed to know what he is talking about, but obviously he does not, made the statement. It says that there has been no degradation in training as a result of environmental encroachment. I would just like to ask if any one of the four of you agrees with that statement.

Secretary JOHNSON. No, sir.

Secretary GIBBS. No, sir.

Secretary FIORI. No, sir.

Mr. DUBOIS. No, sir.

Senator INHOFE. Thank you. Finally, this would be to you, Mr. DuBois, on the matter of perchlorates. I have to pronounce it before I can address this in my hearing of the Committee on Environment and Public Works.

But as far as that is concerned, I would suggest to the Ranking Member we are going to be taking this up in my committee, too, and we are interested, and all I am asking for is sound science, and I know that is outrageous to some people, but I am going to be doing it anyway.

Mr. Chairman, thank you for your indulgence.

Senator ENSIGN. Thank you, and I would like to welcome one of the new members of the subcommittee, Senator Pryor.

Senator PRYOR. Thank you. I look forward to working with you, Mr. Chairman. It is great to be here.

I did not have questions as much as a couple of observations, and that is, having been around some of our military facilities in Arkansas, mainly Little Rock Air Force Base and the Pine Bluffs Ar-

senal, I have witnessed first hand the conditions of some of those facilities.

For example, at Little Rock Air Force Base, I think they have done a good job in trying to modernize their housing, but there is still quite a bit of housing at the air base that is very antiquated. I can see how it would be very unattractive for the people stationed there to live there, and certainly raise families there. It is something I really do want to work with you all on, to try and make sure we have the right kind of housing and solutions that make sense, both fiscally, and also for morale purposes and security purposes and everything else.

In addition to that, the Pine Bluff Arsenal, which has the only white phosphorous manufacturing facility, I think, in the Western Hemisphere and the only one in the DOD, of course, but that is a facility that, if my history was correct, was built in World War II. Even though the arsenal's mission has been greatly expanded and changed over time since its original construction, they still are using some of those World War II era buildings, and even though they have some state-of-the-art things like the nerve gas disposal facility they have been building and working on and testing, where they will destroy tons of lethal gas agents there. I just want to work with you all to upgrade our military facilities again in ways that make sense.

I look forward to not just having some oversight, but having some input, and to help you all accomplish your mission as best you can, and I know you have a very full plate, and I just look forward to working with all of you on these matters. Thanks for being here today.

Mr. DUBOIS. Senator Pryor, Secretary Gibbs may want to address the Little Rock Air Force Base issue, but I note in my briefing materials here that the Air Force does have it scheduled for a housing privatization program for award in this fiscal year to address 1,535 military family housing units.

Senator PRYOR. Great.

Mr. DUBOIS. So it is in the queue, as it were.

Senator PRYOR. That is great news, and I know that when I was there a few weeks ago we looked at various options, and they were very hopeful that would happen and be a reality, so I do appreciate you all being mindful of that. Thank you.

Senator ENSIGN. We will go with a second round of questions. I have some questions.

Mr. DuBois, you were asked in last year's hearing by Senator Inhofe what support is the United States getting to maintain or build new facilities from various countries in Europe, the Pacific, or Southwest Asia. You responded that, "burden-sharing reports will be published soon, and we are exploring additional opportunities to increase burden-sharing by our allies."

I want to ask the same question. What support is the United States getting to maintain or build facilities from various countries in Europe, Korea, or Southwest Asia, and what progress has been made on exploration of additional opportunities to increase burden-sharing?

Mr. DUBOIS. Mr. Chairman, I will refer to Korea first. Secretary Dov Zakheim, the Under Secretary of Defense (Comptroller), nego-

tiated on behalf of the United States Department of Defense, or renegotiated, if you will, a special measures agreement with the Republic of Korea, which is basically your host nation funding mechanism. As a result, the Republic of Korea funding construction for the United States forces in Korea increased by over 35 percent.

With respect to the Government of Japan, as you may know, that government provides us with about $680 million per year in construction under the Japanese Facility Improvement Program (JFIP). Those two programs alone are very impressive in terms of their contributions to our presence.

Senator ENSIGN. What was the total dollar number in Korea?

Mr. DUBOIS. The total dollar number in Korea in calendar 2003—Korea is $156 million, projected in calendar 2004, $170 million. I might add there are two pieces to the Korean host nation funded construction program. The program that funds and supports quality of life and other nonreadiness type construction, and then the combined defense improvement program, that constructs combat readiness facilities, so I gave you the first number for calendar 2003 of $156 million. That is the first category, called life, nonreadiness. The second category is $60 million, which is combat readiness facilities, so that in calendar 2003 the programs will be funded to the level of $215.9 million by the Government of Korea.

Now, you asked also about Europe. We do not have any burden-sharing programs per se, or burden-sharing agreements in Europe. Does that mean that there ought to be? I would obviously defer to this subcommittee, as well as the full committee to deliberate on that issue. It is true, however, that when we do close bases in Europe, we do have an agreement that we negotiate what is called a residual value.

Some Members of Congress have asked when we close a base, are we not taking on a liability to environmentally clean it up in Western Europe, for instance. What we try to do is to calculate a residual value. That is to say, the improvements that we have made, the U.S. taxpayer has made to the facilities on that particular foreign installation has a value. We net out the estimated remediation costs that would be required, and a check is then cut to the United States Government. It is a negotiation that is difficult, but it is essentially the model that we try to follow, but more particularly to your question about burden-sharing, we do not have any burden-sharing agreements in Europe.

Senator ENSIGN. Just one comment from the chair, and that is, from this Senator's point of view I think it is outrageous we do not have burden-sharing in Europe. Not just considering what is going on at this point, but I think it should have been going on all along.

I think that the Europeans have developed this false sense of security in thinking that negotiations can solve all the problems in the world because of the United States military and the protection we are giving them, and for them not to be sharing significantly in that cost I think is something that this subcommittee and the full committee should take a serious look at and work with the Department of Defense and the State Department to try to address that problem.

Secretary Johnson, do you want to comment?

Secretary JOHNSON. Our only overseas Marine Corps facilities are in Japan, and the JFIP that Ray talked about contributed $310 million in 2003. We had $140 million of that for the Marine Corps. Not to disagree with my partner here, in Italy, our European Center for the Navy, Italy did provide the land for us to build houses on. They also provide, through leases, support and housing facilities. They do not give money, as Mr. DuBois said, but we do have good relationships with them, and we have done some magnificent things. I think you have visited there and have seen the housing and facilities that we have built in Italy, with their full cooperation, but not the revenue-sharing that Japan has done.

Secretary GIBBS. In the case of the Air Force, we receive funding either for our individual-use facilities or joint-use facilities in excess of $500 million a year from the three countries you mentioned, the largest piece being in Japan, where we have three major Air Force bases.

In the case of Europe, although we do not have country-to-country arrangements, particularly on the two Air Force bases in Germany, in excess of $100 million is being used for NATO joint use type facilities on those two bases, and we also have an agreement with various levels of the German Government, from the federal down through states and local communities, to bear a substantial portion of the move costs and rebuilding as we are vacating the main transshipment terminal at Rhein-Main Airport and consolidating it in Ramstein Air Base. They have committed in excess of $350 million to that series of projects both at Ramstein Air Base and also for runway additions and repairs over at Spangdahlem Air Base.

Senator ENSIGN. Thank you. Just very briefly—my time has expired—I will let Secretary Fiori answer in just a second, but Secretary Johnson, I would like to submit a question for the record on Fallon Naval Air Station. It is an environmental question dealing with the water treatment plant, with the cancer cluster that was up there and the recent reports about tungsten and about the Navy's contribution.

Secretary JOHNSON. We would be very pleased to answer that, and we have not had any more cases recently.

Senator ENSIGN. You have seen the reports in the papers lately about tungsten. I guess that is maybe possibly going to be difficult.

Secretary JOHNSON. We certainly will talk about that, but we had nothing to do with tungsten, and we are working with the State, of course.

Senator ENSIGN. Secretary Fiori.

Secretary FIORI. I would just add to what Mr. DuBois said. As far as Korea, I am a beneficiary of most of the $215 million. In calendar year 2004, we will be getting about $236 million in Korea, and $680 million in Japan. We are the executive agent, and so we distribute that and control it in Japan. But turning back facilities and payment in kind, our records show that we have received $182 million in cash, and $853 million in payment in kind for services in Germany over the years.

Senator ENSIGN. Senator Akaka.

Senator AKAKA. Thank you, Mr. Chairman. DOD Instruction (DODI) 4715.6, which establishes budgeting requirements for envi-

ronmental compliance, states that DOD components shall fund "all projects and activities that are currently out of compliance, or will be out of compliance if funding is not made available."

Secretary Fiori, is the Department of the Army in compliance with this DOD instruction?

Secretary FIORI. Sir, I have not read the detailed requirements of DODI 4715.6. I do know that we are meeting all the compliance requirements for our facilities today and in the budget year.

Senator AKAKA. Thank you.

Secretary Johnson, the Navy will be transferring access to Kaho'olawe to the State of Hawaii on November 11, 2003. Title IX of the Fiscal Year 1994 Defense Appropriations Act envisioned at that time clearance of 100 percent of the island. Ten years later, we are aware of the challenges and limitations that have prevented such results, and these are my questions.

What actions have been taken by the Navy to maximize clearance efforts in fiscal year 2003? How much of the island will be cleared by November 11, 2003, and given the fact that unexploded ordnance will remain on Kaho'olawe after access is transferred to the State, what are the Navy's plans with respect to the discovery of undetected ordnance after November?

Secretary JOHNSON. Yes, sir. As you well know, better than I, it has been a very difficult task, and I think we collectively have come up with the best solution we can. We have tried to maximize the cleanup within the budget. Also, we said last year that the budget was as much as we could spend, so the maximum effort by November 11, and we worked with the local Kaho'olawe Island Reserve Commission (KIRC) organization to prioritize the areas that we will clear. I will get back for the record the actual numbers.

[The information referred to follows:]

The Navy expects to be able to clear ordnance on the island of Kaho'olawe on a total of 19,500 net acres to the Tier 1 (surface) standard, of which 2,500 net acres are further cleared to the Tier 2 (subsurface from 1 to 4 feet) standard by November 11, 2003.

Secretary JOHNSON. Certainly there will always be the potential for new finds of UXOs. The agreement that we are working with the State of Hawaii and the KIRC is to agree on the circumstances to go back—remember, there are two tiers. Tier 1 is no access, but we do ground clearance. Tier 2 would go down to 4 feet, I believe.

We propose that anything that is in Tier 2, we will clean it to the depth cleared whenever we find it, and at Tier 1, anything that would affect Tier 2 we certainly will clear that, and anything outside those two tiers that will affect the access in Tier 2, we will do that.

The law says any time anything is found, we hope to transfer this to the Army under FUDS. We recognize the ongoing—and the best intentions, you can clear all the UXOs, and the ground process, they come up out of the ground on occasions, as they did in Spring Valley, so to say we ever clean it perfectly is an overstatement in anybody's words.

Senator AKAKA. Secretary Gibbs, could you please discuss the Air Force plans for the C–17 bed-down? What are the military construction requirements of the C–17 bed-down, and which of these requirements are funded, and the final question, is the C–17 bed-

down plan fully updated to reflect the air mobility force structure plan, and if that is not so, then what needs to be adjusted?

Secretary GIBBS. Sir, all of the known requirements for the C–17 bed-down within the FYDP, the 5-year planning cycle, are fully funded. There may be additional requirements as the last units come on for that particular weapons system, but everything that is required within the FYDP is fully funded.

Senator AKAKA. Secretary Fiori, the Army Corps of Engineers determined more than a year ago that a FUDS at Waikaloa and Waimea, Hawaii, has a medium to high potential for human health and safety risk from unexploded ordnance.

Last spring, our committee report directed the Army to develop a comprehensive plan for addressing risks to human health and safety at Waikaloa and Waimea FUDS. A report on this plan was due to the congressional defense committees on February 2. You have notified us that it will not be available until July 31, and my question is, what is the current state of the Army's effort to assess risks to human health and safety at Waikaloa and Waimea?

Secretary FIORI. Sir, I am afraid I am going to have to take that for the record. I have a perfect opportunity when I go visit the U.S. Army Corps of Engineers tomorrow to get a good answer from them.

Sir, I would like to address your previous question. I am not familiar with the DOD instruction, but I will review it to make sure that I understand the nuances of what the instruction says, just to confirm the fact that we are, in fact, meeting those requirements, and I will put that on the record also.

[The information referred to follows:]

WAIKOLOA AND WAIMEA FORMERLY USED DEFENSE SITE

The Army has conducted an investigation of the 123,000-acre site and has identified 11 areas, comprising 48,000 acres, which could pose a medium to high explosives safety risk. In December 2002, the Army awarded a contract to begin munitions removal on three of the areas determined to pose the highest explosives safety risk. The environmental cleanup planned for the Waikoloa and Waimea formerly used defense site will be one of the largest, most complex, and most expensive undertaken. At current funding levels, the entire cleanup cannot be fully resourced in the near term. The number and diversity of munitions that have been identified and are suspected to be present at the site and the proximity of these munitions to residential areas complicate response actions. The Army has also initiated an outreach program to ensure all residents and property owners are informed of the possible risks and reporting procedures should munitions be encountered.

DOD INSTRUCTION 4715.6

Yes, the Army is in compliance with the DOD instruction on funding environmental compliance requirements. The Army environmental quality must fund policy requires that commands and activities must fund their environmental requirements at a level to ensure compliance with legally mandated standards.

Senator AKAKA. Thank you very much for that response to my previous question.

My time has expired, Mr. Chairman.

Senator ENSIGN. Senator Nelson.

Senator BILL NELSON. First of all, Secretary Johnson, why don't you put on the record what you and I talked about yesterday with regards to the Marine Corps on Blount Island.

Secretary JOHNSON. Yes, sir. Blount Island is the home station, if you will, for all the Marine preposition ships. This year, we have

money in to buy the Blount Island real property that we are occupying, but we also have funded activities that will allow us to enforce the explosive safety arc around Blount Island. Two weekends a month we handle ammunition, and we have to have a rather large safety arc of activity and control the activity within the arc when we are offloading the ammunition.

That seems to be in good shape. There are three tenants, if you will, three partners there. We have agreements with one. The second one seems straightforward. The third one, Jacksonville Port Authority, we think we are close with them also, sir.

Senator BILL NELSON. Thank you. I suppose I might address this to Mr. DuBois. Over a year ago—as a matter of fact, it was about a year and a quarter ago, I had asked DOD for an explanation, classified if necessary, about the former activities at the old Boca Raton Airfield in Florida, because this has been shrouded in secrecy. This is testing that was done back in the 1950s, apparently when we were trying to figure out how we were going to kill the Soviet wheat crop, and so they were testing a spore to kill wheat.

They were testing it in Florida because we do not grow wheat in Florida, and that was tested at several different places, but specifically at Boca Raton, and I was first told to buzz off, and I do not do that very well. So, I persisted, and that briefing is going to come in another week or two, about a year and a quarter after I first asked for it. I do not want you to have to get involved in that, because it looks like it is finally going to come to fruition, but from the standpoint of the public concern about public safety, I clearly do have a role and a responsibility.

Now, over the years, the Armed Forces have used various military installations for the storage and the testing of chemical and biological weapons. Understandably, there is some perception out there in the community that this might have some problem with regard to community health. At the same time, clearly we have a need, for the protection of the United States, to go about testing, anticipating, understanding, and mitigating the vulnerability of our forces to chemical or biological attack.

So the question is, how do you do this in concert with the needs of the community, particularly something that testing was done half a century ago? When you look at just the question of use of property, long since, this is not a military facility. It is now Florida Atlantic University and the Boca Raton General Aviation Airport, but there is a portion of this airport that is not developed, which is thought to be the area of the old testing.

It is about 60 acres, and so the concerns, in the midst of high density urbanization, is this property contaminated in some way? Is its value less than what otherwise its fair market value would seem to be?

So I want you to contemplate what can be done to protect both military secrets and restore public confidence in the safety of former military property that has been in the past involved in chemical and biological testing activities. Would you contemplate that, please?

Mr. DUBOIS. Senator, with respect to a situation such as you are addressing, I am glad that the Department has finally responded

to your request for a briefing. I will be as interested in its brief as you are.

I think that it is important to note that we have situations such as Boca Raton, and I have been to Florida Atlantic University. As I mentioned before you came in today, when it comes to places like Spring Valley here in the Nation's capital, we are unfortunately presented with prior issues, undocumented, but when we find out, as the Army has done, I think, fairly well, the Army Corps of Engineers with respect to Spring Valley, it is acted upon. Moneys are moved to address these so-called Tier 1 situations.

On the other side of that coin, if you will, I think you have raised a very interesting and very important question, and that is, how do we go about the testing, research, and development on weapons of mass destruction, specifically chemical and biological ones, which, as we all know, there is a fellow in Baghdad who has no compunction about using them. If our troops go into battle, it is of grave concern to the President and the Secretary what they may face in that regard.

We maintain testing, we maintain research and development on detection, defenses in that regard, as well we should. The extent to which we keep them classified so that potential enemies do not know our ability to detect and defend is an important one. There will no doubt be—if you so desire, if the chairman so desires, we can go into closed hearing and discuss some of those issues, but I appreciate your bringing them up. Your concern is shared.

Senator BILL NELSON. Thank you, Mr. Chairman, and after I get my briefing and find out what happened 50 years go, let us have a conversation.

Mr. DUBOIS. Yes, sir.

Senator ENSIGN. Senator Pryor.

Senator PRYOR. I have a quick follow-up, if I may, on Senator Inhofe's points a few moments ago about the environmental considerations with facilities and locations. All four of you said that you do not agree with the statement made in the paper that, I have forgotten exactly the phrase he used, but basically the environmental concerns have not encroached on your ability to do what you need to do, and I would like to hear from all four of you specifically why you disagree with that, and I do not need a lengthy answer, but just a couple of minutes from each, if possible.

Mr. DUBOIS. Senator, that article was, needless to say, very troubling to me, and I am being charitable. Insofar as all four of us at this table have repeatedly gone on the record publicly before the press, before Congress, and in meetings with nongovernment organizations, conservation organizations, environmental organizations, to try to express and articulate as best we can the narrowness of the provisions which we have suggested, to have a newspaper article which in this particular case misrepresents a GAO report—and I made sure that I was correct in this regard. I mean, the article says, the GAO report says that encroachment is not a problem, that DOD can and should do a better job of quantifying the impacts of encroachment.

The second clause is correct, and I testified to that effect last year, but the report, and I quote page 9 of that very report from June 2002, and it says, "over time, the impact of encroachment on

training ranges has gradually increased. While the effect varies by Service and individual installation, in general, encroachment has limited the extent to which training ranges are available, or the types of training that can be conducted." So when I read things like this in the newspaper, it is disturbing.

The quote that was referred to by the Administrator of EPA, Governor Whitman, while I have not seen the transcript from her testimony in front of the Environment and Public Works Committee of the Senate, I will say this. Last year, over a period of approximately 100 days, as a number of the staffers in this room appreciate and understand, I was in high level negotiations with EPA, with the Department of Commerce, the National Oceanic and Atmospheric Administration (NOAA), with the Council on Environmental Quality, and OMB, so that when the administration put forth its proposals last year, as is the case this year, it is the administration's proposal fully supported by the EPA Administrator, Secretary of Commerce, the head of NOAA, the head of the Fish and Wildlife Service, et cetera.

The other issue, and I just think it is worth the time spent this afternoon, the term exemption, the Department asking for blanket exemptions, this is a myth that keeps getting repeated and repeated and repeated in the media. We are not asking for blanket exemptions.

We have been as clear as we possibly can be that the clarifications we are asking Congress to address have to do with only military training readiness activities on operational ranges. It does not apply to any of those activities that this Department every day undergoes. Paint shops and wastewater water plants, construction, everything the rest of the society has applied to them in terms of environmental statute continues to apply to the Department of Defense.

I think Secretary Johnson made an interesting comment to me this morning, and I think it bears repeating.

Secretary JOHNSON. I cannot remember the comment, but when you go out to Camp Pendleton, we have 17 miles of beach, and we can use under certain conditions 200 yards for amphibious assaults, and we have examples like that. We are not asking for, certainly, to change all the laws. We are asking for balance, and we are getting good support within the administration.

Mr. DUBOIS. I apologize, it was Nelson's well-articulated words to me before the hearing started.

Secretary GIBBS. I will speak to it generally. There is degradation in training, but the military that I work with in the Air Force works very hard to ensure that training is obtained in other manners.

To give you one example, down on the Barry Goldwater Range, relative to the Pronghorn Saw Net, we have a requirement that before we use the range we employ five biologists whose full-time activity is to watch over the antelope, and before we use the range, they have to find all the antelope and make sure they are not any place in the range that we are going to use on that particular day. If they are, on a number of occasions we have had to cancel training, because the antelope were moving across a section of the range we wanted to use.

Does that mean that our pilots do not get trained? No. The pilots are going to get trained. We are going to find a way to do it, but it has impinged upon it.

The comment that Mr. DuBois and I were talking about earlier, and it was brought on by this article, in the comment about exemptions—we are not asking for exemptions. Let me pick two particular pieces in the legislation relative to CERCLA and RCRA. We are talking there about ordnance on active ranges, and what we are asking really for is for Congress to declare their intent, and was it Congress' intent to include the discharge of live munitions on an active military range as a discharge, as it is defined in those two pieces of legislation.

In a way, we are just trying to anticipate a problem. If we do not get a definition now, there is every likelihood we are going to end up in litigation by someone coming to us saying that is a discharge, we will spend 5 to 10 years in litigation, it will significantly impact training, we will spend a lot of money in terms of defending a net, and eventually we will come back to Congress and say, please, now, after the fact, define it for us, after the courts finish going through the issue.

We are just trying to get ahead of the problem in those two particular cases. A similar kind of concept in the legislation we are asking for is the discussion of using the planning mechanisms that we have now in force, and we use with DOD in a number of cases, to look after endangered species without having to go through the full ramification of having the critical habitat designation, which makes it a very bureaucratic process.

In all I have found since I have been here in the last month, and working with the people on my environmental staff and with the active offices out on the program, the military services really do try very hard and actually do a very good job in these particular areas. So, what we are saying is, please define them for us so that we can make sure we can get on and we are doing it in the way you had intended it to be done.

Secretary JOHNSON. We have become the best stewards, because all the endangered species migrate to our ranges, and our young men and women take good care of them, but we have to find the right balance to do what the ranges are there for.

Secretary FIORI. Sir, each of us was frustrated by this article today. We are good stewards of the environment. We can prove that, and in quantitative matters. The number of species we have that we take care of does affect our training.

The red-cockaded woodpecker at Fort Bragg, we have learned how to live with the bird. We are looking at mechanisms to move it out of our training areas so we can do training without putting ropes or white lines around a tree. You cannot get but so close to keep disturbing them. We even have time frame issues on training for certain species that are in certain areas of our many ranges.

So it does affect our training, and our people work very hard to get their training anyway. Ultimately, as we go to a faster, lighter force, we are going to need more area. We have to figure out how to do it smartly, and the blanket exemption idea is just not true.

Senator PRYOR. Thank you, Mr. Chairman.

Senator ENSIGN. Thank you, and I want to thank the entire panel. I think it has been a very productive first hearing of this subcommittee in the 108th Congress. I look forward to working with each and every one of you. You have some huge challenges ahead of you, especially in the world that we are facing today, so thank you all for being here, and this hearing is adjourned.

[Questions for the record with answers supplied follow:]

QUESTIONS SUBMITTED BY SENATOR JAMES ENSIGN

FACILITY RECAPITALIZATION RATES

1. Senator ENSIGN. Secretary Gibbs, the 2004 budget request for military construction and restoration accounts is described in Department of Defense (DOD) press releases as "supporting the reduction of the current recapitalization rate of its facilities to 67 years by 2008." This represents a 1-year slip compared to last year's goal of 2007 for the same level and assumes unprecedented amounts of investment over the Future Years Defense Program. In addition, the overall recapitalization rate across the Services remains around 140 years, 50 years more than fiscal year 2002 rates. I am concerned about the continued unrealistic level of recapitalization rates for the Services. Unfortunately, the 2004 budget request for Air Force construction continues a disconcerting trend with a proposed investment level equal to 180 years in comparison to last year's rate of 165 years.

What funding levels for both military construction and restoration funds are required to achieve the 67-year cycle and when does the Air Force intend to provide the funds to support this goal?

Secretary GIBBS. The Air Force requires approximately $2 billion per year in the military construction and O&M restoration and modernization accounts to recapitalize existing facilities and infrastructure at a 67-year rate. That $2 billion should be comprised of approximately $1.3 billion in military construction and approximately $700 million in O&M restoration and modernization funding.

The facility funding in the fiscal year 2004 budget request supports a 180-year recapitalization rate. This is an improvement over the fiscal year 2003 rate, which was 284 years based on the fiscal year 2003 budget request and 195 years based on the enacted fiscal year 2003 budget.

The Air Force future years defense plan allows us to meet Office of the Secretary of Defense's (OSD) 67-year recapitalization rate goal by fiscal year 2008.

2. Senator ENSIGN. Secretary Gibbs, do you believe that competing Air Force priorities in readiness, acquisition, and modernization will allow you to meet OSD goals to achieve a 67-year facility recapitalization rate by 2008?

Secretary GIBBS. We continue to build our future years defense plan based on our most urgent and compelling requirements. In doing so, our current plan meets OSD's 67-year recapitalization rate goal by fiscal year 2008.

3. Senator ENSIGN. Secretary Johnson, Secretary Fiori, and Secretary Gibbs, assuming the current balance between operations and maintenance accounts versus military construction, what overall amount of military construction funding for your Service per year is required to meet the OSD goal?

Secretary JOHNSON. Investment resources utilized to reduce the recapitalization rate are a combination of military construction and operations and maintenance funding. Total investment resources needed to meet the DOD goal of a 67-year recapitalization rate within each year of the FYDP are as follows:

[In millions of dollars]

Fiscal Year	Navy	Marine Corps
2004	1,567	285
2005	1,600	290
2006	1,604	294
2007	1,665	301
2008	1,700	307
2009	1,735	315
Average	1,645	298

Secretary FIORI. The Army is currently investing $1.1 billion against the OSD recapitalization goal, with approximately $35 million from operation and maintenance funds. The cost to the Army to meet a 67-year recapitalization rate would be $2.5 billion annually.

Secretary GIBBS. In order to recapitalize our facilities at a 67-year rate, we estimate that approximately $1.3 billion of our annual military construction request would need to be dedicated to facility restoration and modernization.

MIGRATION OF OPERATIONS AND MAINTENANCE FUNDS

4. Senator ENSIGN. Secretary Johnson, the General Accounting Office released a report last month that suggested changes in funding priorities and strategic planning were needed to improve the conditions of military facilities. There is a lack of consistency in the Services' information on facility conditions, making it difficult for Congress, DOD, and the Services to direct funds to facilities where they are most needed. In addition, facility sustainment funds are routinely held back at various headquarters levels to fund other priorities. As a result, while the Services intended to fund sustainment across the board at 78 to 98 percent, a survey of bases across the country revealed sustainment funding ranging from 35 to 77 percent of installation requirement. What is happening at the installation level to the funding you ask for and we provide for sustainment?

Secretary JOHNSON. The Navy is presently in the first year of the transformation to sustainment, restoration, and modernization (SRM) execution. Three impacts on the delivery of sustainment funds to installations have been identified.

The first is the migration of funds to other operation and maintenance (O&M) accounts. The Navy is consolidating installation management from eight commands to a single Commander Navy Installations who will receive and allocate O&M funds to the installations.

The second is resource flow patterns. The GAO surveys were conducted in mid fiscal year 2002 when resources had been withheld in a typical pattern to ensure availability for priority O&M accounts. The Navy has recognized that resources are flowing in a "bathtub profile" with a large percentage of resources arriving late in the fourth quarter causing inefficiencies. Commander Navy Installations will be charged with the responsibility to level resource flow across the fiscal year to ensure the best sustainment program efficiencies.

The third is "SRM awareness." With the advent of the new SRM program, installation leadership is not yet fully aware of the scope of sustainment. Sustainment includes recurring and preventative maintenance as well as replacement of the components. Many Installation level managers have not yet realized that final piece—replacement is part of the Sustainment function. Additionally, higher dollar value projects and other requirements that are resourced at higher management levels can include Sustainment functions and should be included in the Sustainment rate calculation. Navy installations are typically not including these resources provided outside of installation funding in their anecdotal statements on the level of sustainment funding. The Navy is transforming its Facility Management policies to align them with the new SRM facility investment structure.

Sustainment funding migration is a recognized issue. It will take time to fully resolve. The first steps have been taken with the creation of a Commander Navy Installations to lead the effort.

The GAO report indicated that the Marine Corps did not have the problem with its installations receiving a small percentage of the sustainment funding. The one Marine Corps base visited by GAO, Marine Corps Combat Development Command (MCCDC) Quantico, VA, was funded at 97 percent of sustainment. This was expressly noted as an exception to the low funding levels found at other Services' bases. The report went on to explain the procedures the Marine Corps uses to control funding: "According to Marine Corps officials, their Service does not permit sustainment funds to be taken away from installations by intermediate commands without the explicit permission of Headquarters' facilities staff."

5. Senator ENSIGN. Secretary Fiori, the Army recently established an Installation Management Agency (and the Navy is working in the same direction) to centralize control prioritization of facility requirements. Will this new agency ensure a greater percentage of sustainment funds are invested at the installation level?

Secretary FIORI. Yes. Garrisons will receive almost all of the base support funds that are allocated to the Installation Management Agency (IMA). Effective fiscal year 2003, concurrent with the activation of the Army IMA, the Army implemented a policy that any request to migrate base support funds to mission programs must

be approved by Army leadership. This policy should ensure a greater percentage of facilities sustainment funds are distributed to the installations.

6. Senator ENSIGN. Secretary Johnson, Secretary Fiori, and Secretary Gibbs, please provide by installation what percentage of the sustainment requirement was executed in fiscal year 2002?

Secretary JOHNSON. The Department of the Navy cannot readily provide what percentage of the sustainment requirement for each installation was executed in fiscal year 2002 because the data is not available. Fiscal Year 2002 Facility programs were executed in the previous "Real Property Maintenance (RPM)" mode. The execution reports were structured for the RPM metrics that did not separate the sustainment function from the recapitalization function. The Department of the Navy Facility Cost Accounting Code (CAC) structure has been converted to the SRM metrics beginning with fiscal year 2003. The Department will be able to report sustainment execution at all organizational levels with the modernized CAC structure beginning with fiscal year 2003.

Secretary FIORI. The fiscal year 2002 Army-wide average for sustainment was 71 percent. Unfortunately, we cannot provide comparisons of funding versus requirement at the installation level. The reason is that the Department of Defense generates requirements using the Facilities Sustainment Model, which is a macro level tool that is useful on an Army-wide basis.

Secretary GIBBS. The Facilities Sustainment Model (FSM) is a macro-level tool, designed to address sustainment requirements in aggregate. Due to the cyclical nature of many sustainment requirements (upon which the model is based), FSM may not be pinpoint accurate for a specific 12-month period at installation level. This is because, at the installation level, certain specific sustainment actions may not be required every year. The model does take this reality into consideration however, and averages the cyclical requirements across years. Therefore, accuracy improves over longer time periods.

Accuracy also improves as installations are aggregated into Major Command (MAJCOM) total costs. This is because while some installations within a MAJCOM may not require a specific sustainment action during a given year, others within the MAJCOM will.

As we reported in our fiscal year 2002 financial statements, we executed 68 percent of the Facilities Sustainment Model requirement Air Force wide in fiscal year 2002. Over a 12-month period, individual installations would vary significantly from the overall Air Force average—even if the overall Air Force average were 100 percent. We have addressed this issue in our response to a recent recommendation from the General Accounting Office. We are improving from the fiscal year 2002 level in fiscal year 2003 and have budgeted 95 percent of required sustainment in fiscal year 2004.

7. Senator ENSIGN. Mr. DuBois, what is the Department doing to get their hands around the problem of inconsistent information, varying methods for data collection, and different assessments of facility conditions?

Mr. DUBOIS. We are working to implement a new quality status indicator (or "Q" rating) that will be reported within the Department's standard real property inventories. These ratings—which we plan to collect from the military departments and Defense agencies beginning in October 2004 will avoid subjective judgments of condition and instead rely on a quantitative assessment of the investment needed to achieve a "Q–1" status. This is the third leg of our evolving sustainment, restoration, and modernization paradigm. When fully operational, it will allow us to more accurately quantify and report those restoration requirements that go beyond normal rates for sustainment and recapitalization of facilities.

USE OF MILITARY PAY FOR RECAPITALIZATION

8. Senator ENSIGN. Mr. DuBois, the Department published a Facilities Recapitalization Front-End Assessment in August 2002 that identifies and adds new funding programs to determine the final rate for facility recapitalization. One fund source identified is "military pay appropriations that support recapitalization." Can you elaborate on what facility programs military pay will support?

Mr. DUBOIS. To be precisely clear about our requirements, our models and metrics identify all potential sources of funding—even those that are relatively small. Military pay provides a modest contribution to facilities sustainment and a very small contribution to facilities restoration and modernization. Our requirements models count this funding as a contribution that would otherwise be paid for from oper-

ations and maintenance appropriations. Military members perform some facilities sustainment work in each of the four military Services, although practices vary by military department and the largest contribution is in the Air Force and Marine Corps. Only the Navy uses military members for certain recapitalization (restoration and modernization) tasks.

9. Senator ENSIGN. Mr. DuBois, can you give a general estimate of the amount of military pay appropriations that is proposed to be spent on facility recapitalization in the 2004 budget?

Mr. DUBOIS. $5 million in the Navy.

UTILITIES PRIVATIZATION

10. Senator ENSIGN. Mr. DuBois, Congress granted the Department the authority to take advantage of private sector financing and efficiencies by entering into privatization agreements for deteriorated utility systems (electrical distribution, water, waste/sewer, and natural gas—2,600 systems total, valued at $50 billion). Utility systems had suffered from years of under-funding and low priority. DOD has made slow progress citing industry complexity and inconsistent initial results. A new privatization goal has been established to complete evaluations of all systems by September 2005 to determine candidates for privatization. In your written statement you say, "Congressional support for this effort in fiscal year 2004 is essential to maintain the procurement momentum and industry interest." What do you perceive to be the level of industry interest in taking over deteriorated utility systems and what can Congress do to maintain the level of interest?

Mr. DUBOIS. The level of interest has varied. In general, utility providers have expressed interest and provided proposals on systems. The components have found adequate competition for DOD utilities privatization on larger installations near metropolitan areas, especially where the systems are currently operated and maintained near industry standards. There has been less interest in systems in poor condition or located on small installations in rural areas. In particular, many utility privatization solicitations for Air National Guard installations did not receive an industry response. In areas where utility systems did not receive interest, the components are collecting information from potential utility providers. This information should assist efforts to obtain adequate interest in the future.

Most importantly, Congress can help maintain the level of industry interest by supporting the level of funding requested by the components in the President's fiscal year 2004 budget request. These requests are based on the current schedules developed by each Service to complete utility privatization decisions by September 2005. Additionally, Congress could help simplify the utilities privatization effort by deleting the requirement to provide a 21-day notification prior to proceeding with a utility conveyance. With over 1,300 evaluations scheduled for completion during the next 30 months, this notification requirement will continue to cause unnecessary delays in completing the actions. The Services have taken a number of steps to improve the process used to evaluate systems for privatization and obtain proposals from the industry.

11. Senator ENSIGN. Secretary Johnson, Secretary Fiori, and Secretary Gibbs, recognizing the slow pace, what problems are you experiencing in your privatization initiatives and what lessons have you learned?

Secretary JOHNSON. The Department of the Navy has not experienced any major problems with the Utilities Privatization program, and is on schedule to meet the Department of Defense goal of completing a source selection decision on each system by September 2005. The Department has established a thorough and methodical approach to utilities privatization. This approach includes an open-ended performance based request for procurement that allows industry sufficient time to assemble a team and prepare an offer.

Secretary FIORI. Utilities Privatization contracts are non-traditional 50-year contracts that require significant capital investment. The procurement process is complex and is successful when the Government partners with the utility provider. We have made significant progress in developing a standard procurement process. With the assistance of industry, we have developed a standardized utilities privatization Request for Proposal format that promotes competition among the broadest selection of providers, including municipal, private, regional, district or cooperative utility companies, and other interested parties. In addition, we maintain two Centers of Expertise for utilities privatization acquisition. One is located at the Defense Energy Support Center, Fort Belvoir, Virginia, and the other at the Huntsville Engineering

and Support Center, U.S. Army Corps of Engineers, Huntsville, Alabama. The contracting specialists at both centers are well trained in the procurement process.

Secretary GIBBS. The Air Force has developed a pace for the utilities privatization program that is measured, balanced, and accountable. We are overcoming several issues perceived by industry as barriers to privatization, including the lengthy solicitation process timeline, our caution in granting access to Air Force installations, and the complicated Federal source selection process.

The most significant lesson we have learned is how important it is for us to educate potential offerors on how to deal with the Federal acquisition process and prepare responses to Requests for Proposals. Most prospective offerors are long-established utility companies with little or no experience with Federal acquisition requirements. For the uneducated or inexperienced, the process can be overwhelming. Additionally, most offerors have little understanding of Air Force installation access requirements and our determination to keep bases physically secure. There are also some inherent differences between various types of offerors, e.g., regulated vs. nonregulated and publicly owned vs. for profit, which cannot be overcome by the Air Force. In some cases these differences further impede or slow-down the competitive process, or otherwise make it more costly to privatize systems. In nearly every case, we have found the best solution has been to interact often and candidly with industry offerors to reach a mutual understanding.

MILITARY CONSTRUCTION RECOUPMENT THROUGH THE NATO SECURITY INVESTMENT PROGRAM

12. Senator ENSIGN. Mr. DuBois, many of the military construction projects in the 2004 program have been certified as not eligible for funding through the North Atlantic Treaty Organization (NATO) Security Investment Program, yet these same projects are required to support NATO missions. An example would be the Consolidated Combat Communication facility at Ramstein Air Force Base for over $19 million. What is the Department doing to rigorously vet these projects through the host nation and following up on requests for reimbursement and can you assure that full reimbursement has been received for qualified projects?

Mr. DUBOIS. The NATO Security Investment Program provides the minimum fixed and mobile infrastructure necessary for NATO wartime, crisis, peace support, and deterrence operations and NATO-unique training requirements—as determined by and prioritized by NATO Strategic Commanders. Minimum refers to Minimum Military Requirement or MMR, which means providing the least possible to satisfy the requirement. This is accomplished by strict eligibility criteria, austere construction standards and by NATO control of the detailed scope of a project. When U.S. facility requirements exceed NATO's MMR, the U.S. must nationally fund this.

Each DOD Service component in Europe is responsible for reviewing future projects and, where eligible, seeking NATO funding. They ensure maximum use is made of the NATO Security Investment Program.

Eligibility is based upon a number of key concepts in addition to the MMR, such as whether the project supports a NATO requirement rather than a national requirement. If a particular project is deemed eligible, then it is included in a capability package and NSIP funding is sought. If the project is not eligible, then the component may prefinance the project using U.S. funds.

Prefinancing does not end the components efforts to seek NATO funding. Each prefinanced project is tracked by the components and continuing efforts are made to seek NATO funding.

The Combat Communication Facility at Ramstein is being tracked by U.S. Air Force Europe (USAFE). The project has been pre-financed, and USAFE is working with NATO in an attempt to get some portion of it accepted as a NATO requirement. Since the scope of the project greatly exceeds the NATO MMR, only a minimal amount of NSIP funding can be expected.

FALLON, NEVADA WATER SUPPLY

13. Senator ENSIGN. Secretary Johnson, a leukemia cluster was identified in Fallon, Nevada, with 16 cases diagnosed in children from 1997 to 2002. The expected rate for leukemia in a town the size of Fallon is one case every 5 years. The final report from the Centers for Disease Control and the Agency for Toxic Substances and Disease Registry indicated there was no link between environmental causes and the leukemia. Nevada State health officials have initiated studies of similar northern Nevada communities. Though Fallon's last case of leukemia count-

ed in Nevada health statistics occurred over 15 months ago in December 2001, health officials will not declare the cluster over for another 3 to 4 years.

Extensive Federal and State studies of Fallon drinking water resulted in finding arsenic, tungsten, and six other metals (antimony, barium, cesium, cobalt, molybdenum, and uranium) at elevated levels. Though the Navy has contributed some $6 million to the construction of Fallon's new water treatment plant, there are doubts as to whether or not the new water treatment plant will resolve issues regarding the metal substances other than arsenic. Furthermore, I am aware that the Navy currently provides filtered and bottled water to all Navy homes and facilities.

Please provide the Navy's position with regard to the Fallon water supply in general and, in particular, are you investigating the Navy's possible contribution to the elevated metal content of the water?

Secretary JOHNSON. No scientific or medical data exist linking acute lymphocytic leukemia, in general, or the Fallon childhood leukemia cluster, in specific, to environmental causes or metals in drinking water. However, the Navy and the City of Fallon are cooperating in the development of a water treatment facility in response to Environmental Protection Agency notices of violation for their common water source exceeding the maximum contaminant level of arsenic in drinking water. Arsenic is the only substance in the City/Naval Base water supply that does not currently meet State and Federal safe drinking water standards. Though there are no historic or current data which indicate that the health of Navy personnel (or the civilian residents of Fallon) has been adversely affected by local drinking water, the Navy elected to make filtered and bottled water available to Naval personnel and dependents ordered to Fallon until the local water supply meets Federal standards. According to all existing studies, including recent studies conducted by the Centers for Disease Control and the Agency for Toxic Substances and Disease Registry, the water supply for the City of Fallon, Naval Air Station Fallon and local wells have not been impacted by site-related contaminants from the Naval Air-Station (this includes metals and volatile organic chemicals/fuels). The studies state that elevated metals in the local water supply are a result of local geology and natural erosion processes.

14. Senator ENSIGN. Secretary Johnson, what actions have you implemented to ensure the Navy is not contributing to a water problem yet to be discovered?

Secretary JOHNSON. Naval Air Station (NAS) Fallon maintains extensive environmental monitoring and compliance programs and is regulated by State and Federal laws and inspections. Additionally, NAS Fallon maintains an Arsenic and Total Dissolved Solids Plan to ensure minimization of such products discharge to surface waters from the station's wastewater treatment plant. Reducing the release of these contaminants to local surface waters will help minimize infiltration into the ground and potential contamination of groundwater. NAS Fallon is upgrading a number of sewer systems to provide for such minimization. NAS Fallon also operates a "Hazardous Material Pharmacy" (HazMart) for the authorization, purchase, storage, and issuance of hazardous materials utilized by the installation. Mandatory training of hazardous material handlers is also conducted to ensure proper management of such products. Through training and the HazMart process, NAS Fallon reduces the storage and use of hazardous products. This translates to less generated waste, and a lower potential for releases that may otherwise impact local waterways and groundwater. Finally, the Navy environmental team at NAS Fallon has developed partnerships with local, State, and Federal agencies, as well as a number of environmental, conservation and Native American organizations to work on regional issues, share information and develop a common vision for environmental restoration, land use, resource conservation, community health and development.

QUESTIONS SUBMITTED BY SENATOR JOHN CORNYN

DORMITORY FACILITIES AT SHEPPARD AFB

15. Senator CORNYN. Mr. DuBois, I commend you for the work that you are doing to ensure that the men and women who serve in our Armed Forces have top-notch housing facilities. It is essential that we continue to invest in quality-of-life improvements, such as improved housing, especially right now when we are asking for such a tremendous sacrifice from not only the Service members, but their families as well. I am particularly interested in what the Air Force is doing to improve dormitory facilities. I recently visited with some representatives from Sheppard Air Force Base, and they expressed the urgent need to renovate some of the dormitories at that installation.

I understand that the Air Force has a Dormitory Master Plan which prioritizes dormitory military construction projects. Could you provide me a better understanding how the Air Force goes about prioritizing which dormitories get renovated? Please elaborate where the dormitories at Sheppard Air Force Base are on any such priority list.

Mr. DUBOIS. The Air Force Dormitory Master Plan is a comprehensive, requirements-based plan, which identifies and prioritizes their dormitory military construction requirements. The plan includes a three-phased dormitory investment strategy. The three phases are: (1) fund the replacement or conversion of all permanent party central latrine dormitories; (2) construct new facilities to eliminate the deficit of dormitory rooms; and (3) convert or replace existing dormitories at the end of their useful life using a new, Air Force-designed private room standard to improve airman quality of life. Phase 1 is complete, and the Air Force is now concentrating on the final two phases of the investment strategy.

The Air Force currently has a deficit of 11,400 rooms, and their existing inventory includes 3,700 inadequate rooms. Their program to eliminate the remaining dormitory room deficit is prioritized based on the size of deficit at each installation. Those installations with the largest dormitory room deficits are highest on the priority list. Once the Air Force eliminates its deficit they will focus on its inadequate rooms. Dorm "adequacy" is based on the condition of its building systems, i.e., heating, ventilation, and air conditioning; electrical; roof; doors; windows; plumbing. Those dorms with the worst building system condition receive the highest priority for renovation or replacement.

Sheppard AFB has two types of dormitories, both are included in the Dormitory Master Plan. The first type of dormitory is permanent party. These dormitories house unaccompanied E1–E4 airmen assigned to the installation in a permanent duty status. These dormitories are built to the Air Force standard where each airman gets a private room and private bath; every four airmen share a common kitchen and living area. The second type of dormitory is a student pipeline dormitory. Pipeline dormitories are used to house airmen who have completed their Basic Military Training and are now receiving additional career-field specific training. While living in pipeline dormitories, they are still under control of training instructors. Two airmen share one room and one bathroom. Based on the current dormitory room deficit and condition, the Air Force is making, and has programmed, significant dormitory investment for Sheppard AFB. They are constructing one 144-room permanent party dormitory at Sheppard AFB in their fiscal year 2003 program and have included a 300-room student dorm in their fiscal year 2004 budget request. Additionally, they have programmed four additional dormitory projects for Sheppard AFB in their future years defense plan.

BRAC 2005

16. Senator CORNYN. Mr. DuBois, there has been much talk recently about how this round of BRAC will not be entirely Service specific, but also have as a primary objective how the DOD can "implement opportunities for greater joint activity." I understand that the Infrastructure Executive Council will recommend to Secretary Rumsfeld in April what facility categories or functions should be considered for joint-Service consolidation and which should remain Service-centric. Could you give me a better understanding on the process of how you are determining which functions will be viewed as joint rather than Service specific for the purposes of BRAC?

Mr. DUBOIS. The Infrastructure Steering Group (ISG), a senior BRAC oversight group chaired by the Under Secretary of Defense (Acquisition, Technology, and Logistics), is responsible for recommending to the Infrastructure Executive Council for the Secretary's approval those functions that may receive joint cross-Service analysis. These recommendations will be based on the guidance contained in the Secretary's November 15, 2003 memorandum, Transformation Through Base Realignment and Closure. If a function is either common (conducted in more than one Service or Agency) or business-oriented (not exclusively conducted by the military), then that function is eligible for joint cross-Service analysis. The ISG is currently deliberating on what specific functions will receive joint cross-Service analysis.

QUESTIONS SUBMITTED BY SENATOR DANIEL K. AKAKA

ANTI-TERRORIST/FORCE PROTECTION FUNDING

17. Senator AKAKA. Mr. DuBois, according to the administration, homeland defense funding drops in the fiscal year 2004 budget request due to one-time force pro-

tection investments in 2003. Out of the approximate $2 billion decrease across DOD, homeland defense funding for MILCON, which represents much of DOD's Anti-Terrorist/Force Protection (AT/FP) funding, drops from $733 million to $82 million. Is this attributable to the one-time investment last year?

Mr. DUBOIS. The Department's AT/FP program has been evolving since September 11. The fiscal year 2003 MILCON appropriation included the one-time investment of $733 million funding which paid for numerous anti-terrorism projects required as a result of current threat assessments. This $733 million was requested as part of the Defense Emergency Response Fund for fiscal year 2003. The Department, however, began integrating AT/FP investments into individual MILCON projects beginning with the fiscal year 2002 program.

In addition to the $82 million investment level identified by Congress for AT/FP projects, the fiscal year 2004 MILCON budget request also includes an additional $49 million for AT/FP requirements as a result of the new AT/FP standards incorporated into the design and cost of all other MILCON projects across the Department.

18. Senator AKAKA. Mr. DuBois, what progress have we made in the buy-out of AT/FP requirements for our installations?

Mr. DUBOIS. The fiscal year 2003 Defense Emergency Response Fund addressed the most urgent and immediate anti-terrorism requirements. The Department has just begun addressing AT/FP requirements for all of its buildings and will continue as buildings are restored and modernized over time.

19. Senator AKAKA. Mr. DuBois, are we almost finished, or should we expect additional requirements in fiscal years 2005, 2006, 2007, and the future?

Mr. DUBOIS. We currently invest in AT/FP requirements, and we anticipate that these requirements will continue into the out-years. As threats change, and as criteria and technology evolve, the level of investment will also fluctuate.

QUALITY OF LIFE

20. Senator AKAKA. Mr. DuBois, funding for a number of budget areas that directly affect quality of life for our servicemen and women and their families has decreased in this year's budget request. Some examples include a $1.5 billion drop in overall MILCON, a $200 million cut to family housing, and a reduction that brings Army restoration and modernization (R&M) down to 10 percent of the fiscal year 2002 level. What impact will cuts such as these have on the quality of life and work of our servicemen and women and their families?

Mr. DUBOIS. The fiscal year 2004 President's budget request for military construction is roughly equivalent to the 2003 request.

We do not anticipate any negative impacts on the quality of life and work life resulting from our budget request. We continue to improve the quality of life and work for our Service members. The 2004 request reflects our highest priorities for improving quality of life and resolving critical readiness shortfalls. For quality of life, the military construction request sustains funding for family and bachelor housing and increases the number of housing units privatized. We increased funding for facilities sustainment, raising the corporate sustainment rate from 93 to 94 percent, which will improve the work environment by preserving our facilities and reducing the need for future, more costly revitalizations. We also preserved funding for recapitalization, another component of our plan to improve the work environment.

DEMOLITION

21. Senator AKAKA. Mr. DuBois, what is the Department's current guidance to the Services on demolition of excess infrastructure?

Mr. DUBOIS. The current guidance—which expires at the end of this fiscal year 2003—is the same guidance that has been in place since fiscal year 1998. That is the guidance that directed the disposal of 80 million square feet of identified excess facilities over 6 years. We are on track to finish that effort this year. For the future, we have funded a continuing demolition program for each military Service through fiscal year 2009.

22. Senator AKAKA. Mr. DuBois, are the Services' funds for demolition adequate?

Mr. DUBOIS. Yes.

23. Senator AKAKA. Mr. DuBois, are we continuing to support facilities that we do not need?

Mr. DUBOIS. Yes. The April 1998 Report of the Department of Defense on Base Realignment and Closure estimated approximately 23 percent of DOD's base capacity is excess to support forces projected for 2003. In its review of that report, the GAO stated: ". . . our prior work supports the report's general conclusion that DOD continues to retain excess capacity." However, any estimate of excess capacity is just an estimate—only a thorough BRAC analysis can indicate where unnecessary infrastructure can precisely and prudently be eliminated.

24. Senator AKAKA. Secretary Johnson, Secretary Fiori, and Secretary Gibbs, could each of the Services please discuss their demolition programs?

Secretary JOHNSON. Demolishing excess facilities which have outlived their life cycle usefulness is a key component in properly managing our ashore infrastructure since it eliminates associated maintenance and repair requirements for these obsolete buildings. Where applicable, the Department of the Navy complies with the National Historic Preservation Act before undertaking demolition. The Department of the Navy utilizes military construction funds, operations, and maintenance funds, and Navy Working Capital funds to demolish old, excess facilities in compliance with State Historic Preservation Act standards.

Secretary FIORI. In fiscal year 2004, the annual target of 2.7 million square feet is funded at $36 million. The Army is on track to meet the Defense goal to eliminate 53.2 million square feet of excess capacity by the end of fiscal year 2003. The Army will fund at a minimum of $30 million each year between fiscal years 2005 and 2009 to demolish excess capacity.

Secretary GIBBS. We have pursued an aggressive effort to demolish or dispose of facilities that are not economical to sustain or restore. From fiscal years 1998 through 2002, we demolished more than 12 million square feet of non-housing building space in support of Defense Reform Initiative Directive #36. We expect to demolish an additional 2 million square feet in fiscal year 2003, for a total reduction of 14 million square feet and thereby meet the Defense Reform Initiative Directive goal. This is equivalent to demolishing six Air Force bases, equal to the combined square footage of Whiteman, Goodfellow, Moody, Brooks, Vance, and Pope Air Force Bases. In general, we consider our facility demolition program a success story, enabling us to reduce the strain on our infrastructure funding by getting rid of facilities we do not need and cannot afford to maintain.

25. Senator AKAKA. Secretary Johnson, Secretary Fiori, and Secretary Gibbs, what are each of you doing to eliminate excess facilities?

Secretary JOHNSON. The Department of the Navy is relying heavily on its demolition programs to eliminate old, excess facilities. Where applicable, the Department of the Navy complies with the National Historic Preservation Act before undertaking demolition.

Secretary FIORI. The Army has a Facility Reduction Program with a plan to demolish 53.2 million square feet (MSF) of unneeded facilities between fiscal years 1998 and 2003. To date, we have demolished 47.5 MSF. We expect to meet our goal by the end of fiscal year 2003. In fiscal year 2004 we plan to demolish an additional 2.7 MSF.

Secretary GIBBS. The Air Force continues to eliminate excess infrastructure through our operation and maintenance-funded demolition program. Beyond Defense Reform Initiative Directive #36 (fiscal year 2004 and beyond), we plan to continue to reduce footprint through facility consolidation, which will enable demolition/disposal of excess facilities (subject to funds availability). This approach considers consolidating several compatible functions into one facility, then demolishing/disposing of resultant excess buildings.

BRAC LAND SALES

26. Senator AKAKA. Secretary Johnson, could you please describe the Navy's practices to date for clean-up and disposal of bases closed in the BRAC rounds of 1988, 1991, 1993, and 1995?

Secretary JOHNSON. The Department of the Navy seeks to transfer surplus property as quickly as possible to local communities. While we often use leases as an interim step to facilitate reuse, our focus has been on moving to final transfer of the property. This helps the community with reuse and job generation and saves the Navy from extended carrying costs. The Department of the Navy uses all available tools to accomplish this goal. Some highlights of the Department's efforts are:

- Use of the standard Federal conveyance mechanisms as well as the BRAC-unique method of Economic Development Conveyance;
- Close coordination with environmental regulators to expedite the characterization and clean-up remedy selection;
- Clean-up actions focused on those parcels where early reuse is most promising;
- Offering the community the use of early transfer authority to convey property before remediation is in place;
- Use of Environmental Services Cooperative Agreement to provide funding to support clean-up or caretaker efforts after conveyance;
- Integration of the environmental clean-up into the redevelopment construction effort to save time and money for both the developer and the Department of the Navy;
- Immediate conveyance of the cleaned portions of parcels, while other areas undergoing remediation are conveyed later; and
- Use of land sale revenue provides additional funds that are used to accelerate clean-up.

To date we have fully transferred 64 installations. Of the remaining 26 installations, over half of the land has already been conveyed. By the end of this year, we expect to have 18 installations containing 12,000 acres still to be disposed.

MANAGEMENT OF INSTALLATION PROGRAMS

27. Senator AKAKA. Mr. DuBois, in 1999 DOD developed a standard rating scale known as "C-Ratings" in order to assess the condition of military facilities in each Service. Even though this standard was established, a recent GAO report published just last month states that there still exists a lack of consistency in how the Services define each C-Rating, as well as how often they conduct their assessments, and how broad a range of facilities are included in their studies. These inconsistencies pose a challenge to the ability to direct funds to the facilities that are in the most need of funding, and they also remove the ability to accurately track progress made in addressing the Office of the Secretary of Defense's goals to reach a 67-year recap rate and to eliminate inadequate facilities. Has there been any consideration by DOD to create more of a consistent rating scale by modifying how these ratings are defined and determined by the Services and if not, why not?

Mr. DUBOIS. The Department is continuing to consider how to manage and report on military installations and facilities. The guidance and definitions for facility C-Ratings were established for the Installations' Readiness Report, which the Department submits to Congress in accordance with public law. The foundation for this report lies with facility condition assessments conducted at military bases. DOD is moving now to require common condition reporting. This will help overcome some of the inconsistencies GAO found in the Services' assessments and in the Installations' Readiness Report C-Ratings as well as improve each Service's ability to prioritize work and direct funding. The Installations' Readiness Report is the Department's initial attempt to establish a correlation between facilities and readiness. As that report matures, the Department meets with Service representatives to refine its application and enhance its validity with the purpose of creating more consistent ratings.

INSTALLATIONS MANAGEMENT AGENCY

28. Senator AKAKA. Secretary Fiori, the Army established the IMA in October of last year to handle the management of its installations programs. How is the Agency structured?

Secretary FIORI. The IMA is a field operating agency for the Assistant Chief of Staff for Installation Management. IMA consists of a headquarters element and seven regions worldwide. IMA headquarters, located in Crystal City, VA, provides installation management planning, programming and budgeting guidance to the regions. The region offices manage execution functions for all Army installations and garrisons within a geographical area. Three of the regions are outside the continental United States in Europe, Korea and the Pacific. The four regions in the continental United States align with other Federal regions (Federal Emergency Management Agency and Environmental Protection Agency). In addition, the Installation Management Board of Directors (IMBOD) advises IMA leadership on compelling installation issues. The IMBOD consists of 11 senior Army executives (to include General Officers, Assistant Secretaries, other Senior Executive Service members and the Sergeant Major of the Army) who meet quarterly to recommend strategic goals and

objectives; recommend program, resource and finance strategies; and monitor performance measures and standards.

29. Senator AKAKA. Secretary Fiori, could you please discuss the specific problems you hope to address?

Secretary FIORI. The transformation of installation management, represented by the IMA, is a supporting initiative to the overall Army transformation. Through the IMA, the Army has created a corporate structure for managing all of its installations. IMA uses the corporate management structure to streamline procedures for managing installations. IMA will conduct business process re-design to develop more efficient and effective region and installation management business practices. In addition, by shifting the installation management responsibility from 14 land-holding major commands (MACOMs), the IMA seeks to enhance effectiveness in installation management, achieve regional efficiencies, eliminate the migration of installation support dollars, and provide consistent and equitable services and support. MACOMs can now focus solely on their primary missions. Though the major commands no longer have a primary responsibility for installation management, the support they receive from installations is a paramount mission of the IMA. The IMA exists to support and enable mission commanders.

IMA enhances the Army's ability to provide consistent and standardized services from installation to installation. Soldiers and their families can better predict the level and quality of housing, child development, safety, recreational programs, educational opportunities and overall well-being support services as they move from one Army home to another.

This transformation streamlines the flow of funding directly from IMA to garrison commanders; therefore, they can better plan and execute installation support programs. In addition, IMA seeks efficiencies by maximizing technological enhancements and standardizing statements of work and business processes.

IMA positions installations for Army and Department of Defense transformation initiatives. Clearly, IMA represents a new commitment to improve installations, preserve the environment, enable well-being of soldiers, civilians and family members and support mission readiness of all stakeholder units.

30. Senator AKAKA. Secretary Fiori, what are the benefits to the Army?

Secretary FIORI. An important part of the Army's overall transformation, IMA is another facet of the Army's effort to streamline operations to become more efficient and responsive in meeting a wide range of missions. IMA provides the Army with a structure focused solely on installation management support requirements and assets. IMA furthers the Army's long-standing programs to provide the best quality of life possible for soldiers and their families. IMA enables the development of multi-function installations to support evolving structure and needs. IMA also provides maximum management flexibility through a geographic focus, instead of a functional focus as in the past.

31. Senator AKAKA. Secretary Fiori, the primary purpose of the IMA is to create efficiencies, but one result has been that funds previously available to base commanders for their facilities are now directed through the regions and the overall IMA organization. What solutions might exist to address the shortfalls that base commanders previously depended upon to address maintenance problems for their facilities?

Secretary FIORI. Prior to this reorganization, separate Army MACOMs managed installation operations. Each MACOM commander divided his attention between installations and performing his primary mission. Examples of primary missions include training soldiers, maintaining ready forces, developing/maintaining/providing supplies and equipment, and operational testing. Previously, major command commanders received funds from the Department of Army to perform both installation and mission functions. With these funds came a level of discretion to reprogram between installation and mission accounts. As a consequence, installations often suffered, and soldiers encountered a wide disparity in terms of services and infrastructure provided from one installation to the next.

Centralized installation management will allow MACOM commanders to focus on their primary mission with the Installation Management Agency having the responsibility of managing installation support operations. A primary goal of the Installation Management Agency is to establish common levels of base support services. With the Installation Management Agency focusing on improving the quality of installations, better installation management decisions can be made. Centralized management of our installation operations ensures that the Army has a strong installation advocate and provides better control over installation funds.

The separation of mission and installation support functions and their respective funding support provides increased controls for ensuring funds will be spent for their intended purpose. To migrate installation support funds to support other activities requires the approval of Department of Army and provides added control over their being used in areas other than their originally designated purpose.

32. Senator AKAKA. Secretary Fiori, what is the current status of the IMA and any future plans for the organization?

Secretary FIORI. Currently, IMA is at initial operating capability. IMA is meeting the mobilization, deployment, redeployment, and other related support requirements of the Army. IMA is creating partnerships with Network Enterprise Technology Command (NETCOM) and the Army Contracting Agency to improve efficiencies. Recruiting continues to fill vacancies at headquarters and regions. The Army Reserve integrated its headquarters engineering functions into the IMA Headquarters, with an additional policy office established at the Assistant Chief of Staff for Installation Management. The transfer of the remaining headquarters base operations functions will be accomplished in conjunction with the Army Reserve Restructuring initiatives.

Starting in fiscal year 2004 headquarters, IMA will fund the garrisons directly. Volunteers will move among region offices into permanent positions (right skills in the right locations). Garrisons will be on the IMA table of distributions and allowances (TDA). By the end of fiscal year 2004 region TDAs will be adjusted to reflect business process redesign and full operating capability will be achieved.

33. Senator AKAKA. Secretary Fiori, how have current operations and funding to support them affected the Army's implementation of IMA?

Secretary FIORI. Current operations have not expressly hurt Army's implementation of IMA but have made IMA's mission much more complex. The requirement to cash-flow or borrow against current funds to support the global war on terrorism and Operation Iraqi Freedom has put pressure on an already constrained base support program. In addition to the cash-flow complexity, installation facilities and services are operating at increased levels to support soldiers and their families, driving costs further above budgeted levels. As a consequence, the Army's cash position is getting perilously low, and we urgently need full restoration in the form of a supplemental appropriation. IMA has instructed installation commanders that support of current operations supercedes other requirements and to fund these needs as they arise. In order to remain solvent many installation commanders have deferred facility restoration and modernization projects to conserve funds for these needs. Without adequate restoral from requested supplemental appropriations, installation facilities will continue to deteriorate and many vital services will suffer.

NAVY INSTALLATION COMMAND

34. Senator AKAKA. Secretary Johnson, in your written testimony you discuss the creation of the Navy Installation Command planned for October 2003 with an associated cost savings estimate of $1.6 billion over the next 6 years. What are the factors of this initiative that account for the estimated $1.6 billion cost savings?

Secretary FIORI. We anticipate savings in personnel, facilities and base operational costs due to:

- Streamlining of shore installation management procedures and policies;
- Elimination of redundant headquarters management functions and cost;
- Greater contractual efficiencies to provide facilities services;
- Simplification of the budgeting and funding process;
- Increased consistency in standards and levels of performance for base operations across Navy installations;
- More focused support from contractors and support organizations;
- Expansion of regional management concept in providing installation support; and
- Greater use of information technology tools to increase efficiency.

35. Senator AKAKA. Secretary Gibbs, what steps has the Air Force taken to efficiently manage its installations and to ensure that the correct facilities are receiving the funding that they need?

Secretary GIBBS. The Air Force considers its installations critical to operational success. We fly and fight from our installations, both overseas and in the United States. During Operation Enduring Freedom, we flew the longest bomber combat mission in history . . . 44 hours traveling more than 16,000 miles . . . from White-

man Air Force Base, Missouri, against targets in Afghanistan. We believe that facility management success begins at the bottom—direct installation commander involvement is crucial.

Accordingly, ultimate responsibility for an installation rests with the installation commander. Installation commanders are kept apprised of facility related issues and control the major facility management priorities for the installation. They "own" indigenous facility management capabilities—facility operations and maintenance; engineering planning, design, and construction management; fire protection; and environmental management.

The Air Staff and MAJCOMs employ facility management staffs to support installations with continuity of management standards and certain core technical expertise not practically staffed separately at each installation.

Although the Air Force takes a generally decentralized approach to installation management, certain programs are managed centrally at the Air Staff.

Military construction project prioritization. Installations develop and submit military construction project programs to the MAJCOMs (including the Air National Guard and Air Force Reserve), who in turn submit MAJCOM military construction programs to the Air Staff. The Air Staff uses the Air Force MILCON Model to develop a single, integrated priority list (IPL). The resultant IPL emphasizes overall Air Force priorities, which stem directly from installation commander priorities.

Military family housing and dormitory investment prioritization. The Air Force's family housing and dormitory master plans are road maps for meeting OSD's housing and dormitory investment goals. The Air Staff centrally manages these plans, in order to provide consistent facility standards and investment recommendations across all MAJCOMs and installations. Our annual housing and dormitory budget requests are developed using these plans.

Environmental restoration. The restoration program and funding strategy are aligned with Defense Planning Guidance restoration program goals to address Air Force-wide "worst first" requirements, based on risk to human health and the environment.

HOUSING INITIATIVES

36. Senator AKAKA. Secretary Johnson, Secretary Fiori, and Secretary Gibbs, it seems that each of the Services has a different approach to addressing inadequate housing concerns. Could each of you please discuss your priorities for improving both barracks or dormitories and family housing?

Secretary JOHNSON. Eliminating inadequate family and bachelor housing is a high priority for the Department of the Navy. We are on track and aggressively pursuing the elimination of inadequate family and bachelor housing by fiscal year 2007.

Secretary FIORI. The Army places a very high priority on improving housing for single soldiers and families. The fiscal year 2004 budget contains $737.9 million in Military Construction, Army funds to improve barracks for 5,500 soldiers bringing our extensive capital investment campaign to 79 percent of completion. Three years ago we had a program to improve our family housing by 2014. Today, thanks to significant funding and an aggressive privatization program, we have plans and funding in place to eliminate our inadequate housing by 2007. Further, DOD has raised housing allowances so families living off post are able to find adequate housing.

Secretary GIBBS. The Air Force Dormitory Master Plan is a comprehensive, requirements-based plan, which identifies and prioritizes our dormitory military construction requirements. The plan includes a three-phased dormitory investment strategy. The three phases are: (1) fund the replacement or conversion of all permanent party central latrine dormitories; (2) construct new facilities to eliminate the deficit of dormitory rooms; and (3) convert or replace existing dormitories at the end of their useful life using a private room standard to improve airman quality of life. Phase 1 is complete, and we are now concentrating on the final two phases of the investment strategy.

Our priority for family housing investment is to eliminate all of our inadequate housing. The Family Housing Master Plan is our roadmap and outlines our requirements for revitalization, divestiture through privatization, and demolition. Currently, the Air Force has 40,000 inadequate units in its inventory. With the exception of four bases, we will eliminate all of our inadequate housing in the United States by 2007. The remaining U.S. bases will be complete in 2008, and inadequate bases at our overseas bases will be eliminated by 2009.

37. Senator AKAKA. Secretary Johnson, Secretary Fiori, and Secretary Gibbs, please discuss your experience with privatization programs to date.

Secretary JOHNSON. The Department of the Navy has executed 9 Public-Private Venture Family Housing projects to date (Corpus Christi/Ingleside TX, Kingsville TX, Everett 1 and 2 WA, Camp Pendleton 1 CA, San Diego 1 CA, New Orleans LA, South Texas, and Beaufort/Parris Island SC) resulting in the privatization of over 8,300 homes. These 9 projects conveyed 1,100 adequate homes (no renovation work required) and will result in the renovation, replacement or new construction of over 7,200 homes over the first few years.

The Department of the Navy has realized over $746 million in initial construction for a Government investment of only $159 million. This is over four times as many homes as we would have been able to address utilizing traditional methods, with quality that surpasses traditional military construction projects.

The Defense Authorization Bill for Fiscal Year 2003 contained pilot Public Private Venture (PPV) authority for acquisition or construction of bachelor housing. This legislation gave the Department of the Navy authority to pursue no more than three unaccompanied bachelor housing PPV pilot projects. We are developing pilot unaccompanied housing privatization projects for Hampton Roads, VA; Camp Pendleton, CA; and San Diego, CA. We hope to be able to complete the concepts for these projects before the end of this fiscal year.

Secretary FIORI. The 1996 Military Housing Privatization Initiative (MHPI) improves housing much faster and at less expense than traditional military construction (MILCON). The Army's flexible procurement approach reduces time, costs, and allows for the collaboration with a development partner to design and build integrated residential communities. We have seen significant progress at the 4 installations that have transitioned to privatized operations. Over 700 new homes have been constructed, more than 1,000 homes renovated; and over 700 new homes are under construction. We have learned and applied many lessons in the process.

Key stakeholder involvement is critical to the success of the project (e.g., local governments, school districts, businesses, employees, and soldiers and their families). Key issues such as schools, infrastructure upgrades, environmental issues, historic preservation compliance, housing market analysis, basic allowance for housing surveys, and other issues must be addressed early on and during the entire process. The Army developed RCI minimum standards for new and replacement housing to ensure quality housing and communities for all installations. The RCI program is also developing standard boilerplates where appropriate, but generally each Community Development and Management Plan is negotiated to reflect the unique characteristics of the installation and local community. Further, as the process evolves and the different review agencies gain familiarity with the program/projects, review times are being reduced.

The Army is implementing a portfolio management process for monitoring construction, renovation, operations, and project finances. The goal of portfolio management is to systematically oversee the management of real estate assets to protect the government's interests over the 50-year term of the projects.

Secretary GIBBS. We have had success with our program to date, with five projects awarded. While this equates to less than one project per year since we received the Military Housing Privatization Initiative authorities in fiscal year 1996, we expect to award an additional eight privatization projects in the next 12 months.

While each project is different, we have been successful in leveraging private-sector funds in each housing privatization project, with an average in excess of 6: 1. This means that for every dollar of government funds we commit to the project, we get better than six dollars in equivalent military construction, a very good return on our investment.

The projects that have been awarded to date were pilot projects, and we have learned many lessons from each of these projects as well as the projects that are currently in solicitation. We are incorporating these lessons into each new project. For example, we use a generic Request for Proposal template to accelerate and standardize the submissions and evaluations, and we benchmark the fees and construction costs the developers propose to ensure that we are getting a good deal and maximize the benefit to the government.

In terms of quality of life on the part of the military member and their families, they are very satisfied with the quality of the homes and with the operations and maintenance by the real estate management firms. Despite initial misgivings on the part of some commanders, the projects are now well received by the commanders, as they see the benefits to the member and to the Air Force.

38. Senator AKAKA. Secretary Johnson, Secretary Fiori, and Secretary Gibbs, what are your plans for privatization in the future?

Secretary JOHNSON. The Department of the Navy ultimately plans to privatize approximately 69 percent (53 percent Navy and 95 percent Marine Corps) of its world-

wide family housing inventory by the end of fiscal year 2007 in order to eliminate all inadequate family housing and improve community support facilities for marines, sailors, and their families.

The quality of homes and services obtained through public-private venture initiatives has been excellent and residents have been pleased. Privatization initiatives will not only accelerate the improvement of family housing, but will ensure the homes and facilities are maintained in good condition over the next 50 years.

We are developing pilot unaccompanied housing privatization projects for Hampton Roads, VA; Camp Pendleton, CA; and San Diego, CA.

Secretary FIORI. The Army's RCI program includes 28 projects totaling over 71,000 houses in the U.S. projects at Forts Carson, CO; Hood, TX; Lewis, WA; and Meade, MD (consisting of over 15,700 houses) have been implemented, and the remaining 24 projects are in progress or planned through fiscal year 2005. Our plans are to transition these projects to privatized operations in a timely manner, while ensuring the long-term value and stability of the privatization agreement. Ongoing and future project information is provided below.

The Army has selected partners for nine additional projects: (1) Fort Bragg, NC; (2) Presidio of Monterey and Naval Postgraduate School, CA; (3) Fort Campbell, KY; (4) Fort Belvoir, VA; (5) Fort Hamilton, NY; (6) Fort Irwin, Moffett Community Housing and Parks Reserve Forces Training Area; (7) Fort Stewart and Hunter Army Airfield; (8) Forts Eustis, Story, and Monroe; and (9) Fort Polk. Installation teams are collaborating with these partners to develop 50-year business plans called Community Development and Management Plans. Transfers of assets and operations are expected to occur in late fiscal year 2003 and fiscal year 2004.

The Army has four projects in various stages of procurement: (1) Picatinny Arsenal, NJ; (2) Walter Reed Army Medical Center, DC; (3) Fort Detrick, MD; and (4) Fort Shafter and Schofield Barracks, HI.

The Army plans to solicit partners for the remaining 11 projects in fiscal year 2003 and 2004: (1) Fort Leonard Wood, MO; (2) Fort Sam Houston, TX; (3) Fort Bliss, TX; (4) Fort Drum, NY; (5) Carlisle Barracks, PA; (6) Fort Benning, GA; (7) Fort Rucker, AL; (8) Fort Gordon, GA; (9) Fort Knox, KY; (10) Fort Leavenworth, KS; and (11) Redstone Arsenal, AL.

The Army is also implementing a portfolio management process for monitoring construction, renovation, operations, and project finances. The goal of portfolio management is to systematically oversee the construction, operations, finances, and management of the project to ensure operational compliance and financial stability over the 50-year term of the projects.

Secretary GIBBS. We plan to award eight projects in the next 12 months, and we continue to analyze our U.S. bases for additional privatization opportunities. We may add as many as 19 additional privatization initiatives to meet our aggressive 2007 timeline. In the end, we expect to privatize roughly 60 percent of our U.S. housing inventory.

39. Senator AKAKA. Secretary Johnson, could you please give us an update of the Navy's Homeport Ashore initiative?

Secretary JOHNSON. There are approximately 18,100 sailors worldwide who are required to live aboard ship even while in homeport. This requirement is less than reported last year because of a recent change to Navy policy allowing unaccompanied E4s to live off base. This new policy is tied to the National Defense Authorization Act for Fiscal Year 2001 that allowed the payment of BAR to E4s without dependents who are assigned to sea duty. The Navy expects to achieve its "home port ashore" initiative by fiscal year 2008 by housing two members per room. Our fiscal year 2004 budget includes two "homeport ashore" projects. One represents the second increment of a Norfolk, VA project that will provide a total of 500 spaces. The second project would construct 500 spaces for shipboard sailors at San Diego, CA.

40. Senator AKAKA. Secretary Johnson, in your written testimony you state that the Navy "relies first on the local community to provide housing for our sailors, marines, and their families." Given today's threat environment, how does the Navy propose to address force protection concerns for those sailors and marines living off base on the local economy?

Secretary JOHNSON. The Navy's force protection plans for families living in the private sector are much the same as for civilians. Currently, about three out of every four Navy families live in the private sector, side by side with their civilian counterparts. Security and protection for these families are provided through the existing network of Federal, State, and local law enforcement authorities currently protecting all of our citizens.

The dispersal of military personnel into the private sector reduces the exposure of military personnel to force protection threats.

The regular training and awareness provided active duty members on the issue of anti-terrorism and force protection contributes to the safety of military families regardless of where they live.

UTILITIES PRIVATIZATION

41. Senator AKAKA. Mr. DuBois, in last year's testimony you stated that the Department was in the middle of reviewing the direction to the Services to privatize all utility systems by September 2003. As a result of your review, have you adjusted the completion milestone for utilities privatization? If so, what is the new completion target date?

Mr. DUBOIS. Yes, following a review of each of the Service's plans for completing utility privatization evaluations, the Deputy Secretary of Defense directed the Defense Components to make source selection authority decisions on all utility privatization evaluations by September 30, 2005.

42. Senator AKAKA. Mr. DuBois, what were the factors that contributed to the decision to move back the completion date?

Mr. DUBOIS. The DOD Utilities Privatization Program has proven to be more complex and time consuming than originally envisioned. The Defense Components have taken longer to complete evaluations than was anticipated when the previous completion date was set in 1998. In the fall of 2001, industry representatives indicated that the quantity of utility privatization solicitations was too great for them to complete quality proposals prior to the closure dates. With over 750 solicitations already pending and the potential for another 500 being issued, it was prudent to refine the guidance to incorporate numerous lessons learned by the Components in new solicitations to make a number of process improvements. The Components are aggressively executing their utility privatization programs on schedule.

43. Senator AKAKA. Secretary Johnson, Secretary Fiori, and Secretary Gibbs, could each of you please discuss the status of your utilities privatization efforts?

Secretary JOHNSON. The Department of the Navy is following a thorough and deliberate process of privatizing its utility systems. As of March 2003, the Department has issued requests for proposal (RFPs) for 618 of 662 utility systems, or 93 percent. Of these 618 proposals, RFPs for 278 systems, or 45 percent, have closed, and these systems are now being evaluated, and three systems have been privatized. A total of 24 systems have been exempted from privatization due to security concerns prior to issuance of an RFP, or due to economic reasons as a result of the RFP.

Secretary FIORI. The Army has a successful utilities privatization program. At overseas locations, we use host nation laws and regulations and international agreements to privatize eligible systems. We have privatized 215 of 589 systems in Europe. In Japan and Korea, 128 systems are exempted because privatization is not possible. We are focused on privatizing large systems in the United States and have privatized 67 and exempted 27 of 351 eligible systems. The remaining 257 systems are in various stages of the privatization procurement process.

Secretary GIBBS. In accordance with OSD guidance, the Air Force will attempt to privatize its utility systems through competitive sourcing first, followed by sole source negotiations with the local provider if there is no market interest. Of the 499 utility systems available for privatization, there are 194 utility systems still remaining to go through a privatization evaluation. These systems will be released by May 2004, under revised Request for Proposal and Right of Way templates that were developed in conjunction with utility industry representatives. In addition, we have developed a Request for Proposal template specifically for sole-source solicitations with regulated utility providers. We anticipate these efforts will increase interest in Air Force systems and streamline the evaluation process.

44. Senator AKAKA. Secretary Johnson, Secretary Fiori, and Secretary Gibbs, how many of your utilities systems have been identified as candidates for privatization?

Secretary JOHNSON. The Department of the Navy has 662 utility systems that have been identified as available to privatize. Of these, 24 systems have been exempted to date for either security or economic reasons. The remaining 638 systems are candidates for privatization. Of these, three systems have been privatized.

Secretary FIORI. The Army identified 351 systems for privatization in the United States. Of these, the Army has privatized 67 and exempted 27 with the remaining 257 currently available as candidates for privatization.

Secretary GIBBS. Of the 650 utility systems in the Air Force, 499 are available to privatize.

45. Senator AKAKA. Secretary Johnson, Secretary Fiori, and Secretary Gibbs, approximately what percentage of your utilities systems do you expect to be able to privatize?

Secretary JOHNSON. The Department of the Navy has not made any predictions of what percentage of its utility systems will be privatized. Not all utility systems have the same potential to provide industry with the return on investment they feel necessary before they make a proposal. The final number of awards will be dependent upon industry's ability to develop innovative proposals. The Department's open-ended performance solicitations are meant to facilitate industry's ability to develop these business opportunities.

Secretary FIORI. We are advertising 100 percent of our systems for privatization. There are a total of 940 systems in Europe and the United States. Of that total we expect to privatize approximately 80 percent.

Secretary GIBBS. Based on the level of interest and the economics of the proposals we have received to date, we estimate privatizing 20 percent of our candidate systems.

46. Senator AKAKA. Secretary Johnson, Secretary Fiori, and Secretary Gibbs, are you on track to meet the date set by the Office of the Secretary of Defense?

Secretary JOHNSON. In its 9 October 2002 "Revised Guidance for the Utilities Privation Program," the Office of the Secretary of Defense established a date of 30 September 2005 for the Services to have a source selection decision for each of its utility systems. The Department of the Navy is on schedule to complete the utilities privatization process to meet this goal.

Secretary FIORI. Yes, the Army is on track to complete a privatization evaluation for each utility system by September 30, 2005 as set by the Office of the Secretary of Defense.

Secretary GIBBS. The Air Force has developed a very aggressive schedule that will allow us to meet OSD's 30 September 2005 completion milestone.

OVERSEAS BASING AND MILITARY CONSTRUCTION

47. Senator AKAKA. Secretary Johnson, Secretary Fiori, and Secretary Gibbs, could each of you please discuss the support you currently receive through host nation construction programs such as Japan Facilities Improvement Program (JFIP) in Japan and the Funded Construction Program in Korea as well as support in Europe?

Secretary JOHNSON. The Navy and Marine Corps receives host nation funded construction (burden-sharing) support from Japan and Korea. The Japanese Facilities Improvement Program is funded by the Japanese Defense Agency and supports four categories of projects: force structure or mission increases, family housing and community support, Japanese initiatives including environmental and safety issues, and service initiatives. In Korea, two cost sharing programs are in use including the Combined Defense Improvement Fund (CDIP) and the Republic of Korea Construction Fund (ROKCF). The CDIP supports construction of facilities to improve combat operations, war reserves and combined U.S./Korea operations. The ROKCF supports quality of life and sole U.S. use projects. In Europe, we use every available funding source, including the NATO Security Investment Program (NSIP) for those eligible projects, residual value and payment-in-kind in partnership with the host nations.

Secretary FIORI. The host nation funded construction programs consists of the Facilities Improvement Program (FIP) in Japan, the CDIP and the ROKFC program in Korea. In Europe, we also have a payment-in-kind (PIK) program in Germany under which we use residual value to build facility.

The primary host nation funded construction program is the FIP, which has provided about $700 million of construction per year. The program was implemented in 1979 and over the past 20 years, the Government of Japan has built $19 billion of new quality of life and operational facilities for our U.S. service members.

In Korea, the CDIP was initiated in 1982 by the Republic of Korea (ROK) to share the financial burden of maintaining U.S. forces in Korea. The CDIP funds projects that support only warfighting and operational facilities and total about $50+ million of construction per year.

The ROKCF program was established in 1991. It provides well-being facilities, infrastructure, as well as warfighting projects. The ROKCF program funds about $135+ million of construction per year.

Residual value is a method for Germany to provide compensation for the Army's improvements to facilities on installations we return to Germany. PIK is residual value that comes in the form of construction credits. The PIK program awarded $244 million in construction projects through fiscal year 2002.

Secretary GIBBS. The Air Force receives support, in the form of host-nation funded construction, from NATO, Japan, and Korea. In recent years, that support has averaged roughly $300 million per year. The funds provided by these countries are used to construct facilities that directly support Air Force missions, as well as facilities that support quality of life for Service members and their families stationed overseas.

For example, The NATO contribution helps offset construction supporting the Air Force's roles in the NATO mission. The Japan Facilities Improvement Program (JFIP) supports "defensive" warfighting capabilities, such as aircraft shelters, and may be used to replace "offensive" capability facilities that predate 1979. The Korean CDIP funds combined Republic of Korea-United States warfighting requirements; while the ROKCF program funds mission support and quality-of-life requirements.

In addition, under the Rhein Main transfer program, Germany is helping to pay for facility construction at Ramstein and Spangdahlem Air Bases necessary to relocate the missions currently at Rhein Main Air Base. In total, Germany is investing nearly $400 million to help pay for construction associated with this relocation. The majority of this construction will occur in 2004 and 2005.

48. Senator AKAKA. Secretary Johnson, Secretary Fiori, and Secretary Gibbs, what is the status of each of these programs and how do we currently benefit from these partnerships?

Secretary JOHNSON. All of these programs are active and help share the financial burden of a forward deployed posture. In fiscal year 2002 we received $341 million from the JFIP program to include $80 million for improvements to the Yokosuka Carrier Pier, and $4.5 million from ROKCF to include a $3.8 million Medical Clinic in Chinhae. In Europe, we use every available funding source, including the NATO Security Investment Program (NSIP) for those eligible projects, residual value and payment-in-kind in partnership with the host nations.

Secretary FIORI. The various host nation funded construction programs continue to be active and important programs for our forces overseas by providing quality of life and operational facilities at little or no cost to the U.S. taxpayer.

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49. Senator AKAKA. Secretary Fiori, could you please give an update on the Army's Efficient Basing East (EBE) initiative? What were the reasons to pursue these initiatives, and what are the benefits or cost savings that we expect to gain?

Secretary FIORI. EBE will consolidate the activities of 13 installations in Germany onto one installation in the Grafenwoehr area, allowing for the closure of 12 aging inefficient installations and the partial closure of a 13th. EBE will enhance unit readiness and effectiveness by improving command and control by consolidating a brigade now scattered over 25 square miles to one location. It will enhance force protection by reducing the number of installations that must be guarded. Training will improve by relocating units closer to major training areas. Soldier quality of life will also be improved because new housing, and renovated or new mission facilities will be provided in lieu of currently occupied poor condition and inefficient pre-WWII facilities.

EBE is a 5-year phased program (fiscal years 2003–2007). The total cost for EBE military construction, Army (MCA) construction is estimated at $558.2 million. In fiscal year 2003, projects for site preparation, utilities infrastructure, and barracks are funded at $69.9 million. In fiscal year 2004, $76 million has been requested to construct troop barracks, troop support facilities, maintenance facilities, and operations facilities. In fiscal year 2004, Department of Defense Education Activity has programmed $37.1 million for school projects and Department of Defense Health Affairs has programmed $12.6 million for a dental/health clinic expansion. Army family housing requirements will be satisfied with construction of 1600 build-to-lease units in fiscal years 2005–2008.

Approximately $19 million annually in estimated savings will be achieved once EBE is completed. Savings will be from reduced base operational costs and installation management overhead because of a reduced footprint and eliminating small, costly, and inefficient installations. Additional savings will also be realized from reduced operational training costs.

50. Senator AKAKA. Secretary Fiori, could you please give an update on the Land Partnership Plan with Korea?

Secretary FIORI. The Land Partnership Plan (LPP) agreement was signed in March 2002 and ratified by the Korean government in November 2002. It is now being executed though no land has been exchanged. However, host nation funded projects have been started at enduring locations associated with LPP. The locations of U.S. Forces Korea installations in the LPP are currently under review based on the requirement by the Secretary of Defense that geographic combatant commanders prepare an integrated presence and basing strategy by 1 July 2003. The LPP has a provision to modify the installations specified if needed.

51. Senator AKAKA. Secretary Johnson, Secretary Fiori, and Secretary Gibbs, recently there has been discussion surrounding the increased strategic importance of both Guam and Hawaii in considering future forward presence in the Pacific. Could each of you please discuss future strategic considerations for both Guam and Hawaii as they relate to your respective missions?

Secretary JOHNSON. The Navy and Marine Corps has long recognized the strategic value played by both Guam and Hawaii in support of the Joint Force. Both are essential to maintaining the U.S. forward Naval presence within the Asia Pacific Rim and significantly improve the operational flexibility and efficiency of Naval forces.

Together with the Office of the Secretary of Defense, we are studying various options for both Guam and Hawaii as we move forward with the Navy and Marine Corps' new Global Concept of Operations (CONOPs). Under the Global CONOPs, today's carrier battle groups (CVBGs) and amphibious ready groups (ARGs) will be re-configured into carrier strike groups (CSGs) and expeditionary strike groups (ESGs). In addition, the CONOPs also envisions surface action groups (SAGs) devoted to theater ballistic missile defense. Both Guam and Hawaii are being reviewed in various contexts to ascertain the best way of maximizing the forward deterrent value of these forces.

The Navy has already taken steps to improve its forward deployed posture by implementing a plan to homeport three fast attack submarines (SSNs) in Guam. Submarine Squadron 15 was established in Guam in fiscal year 2002, the U.S.S. *City of Corpus Christi* arrived in October 2002, the U.S.S. *San Francisco* arrived in December 2002, and the U.S.S. *Houston* is to arrive in 2004. Forward basing SSNs in Guam reduces transit time to/from station, equating to greater time "in theater" and additional mission days to fulfill national and fleet requirements. Guam is 2,100 nautical miles (7 full steaming days) closer to the Arabian Gulf than Norfolk and Pearl Harbor, and as such, it is uniquely positioned to support continued Naval forward presence in the Pacific in the future. Additionally, its status as a U.S. territory allows storage and loading of pre-positioned war munitions without the need to obtain the consent of a foreign government. Moreover, Guam can be used as an intermediate staging base and safe haven for potential non-combatant evacuation operations within the Pacific theater. Finally, both Guam and Hawaii do not have any diplomatic issues to address. Guam, as a U.S. territory, is the only guaranteed fail-safe against the loss of basing rights in East Asia.

Hawaii is home to the Commander, U.S. Pacific Fleet, U.S. Submarine Force, three submarine squadrons and their 25 submarines assigned to Pearl Harbor. COMNAVMIDPAC Headquarters and numerous surface warships are homeported in Pearl Harbor, Hawaii. The Pacific Fleet's Maritime Surveillance and Reconnaissance Commander's headquarters (with four VP and VPU (P–3) squadrons) are located at MCB Kaneohe Bay. These forces are approximately 1 week closer to the Asia Pacific region than are West Coast forces, and thus, add flexibility/quicker re-

sponse times to mission essential tasking. Pearl Harbor is the largest U.S. Naval Base outside of the continental United States. Consideration is being given to a proposal to relocate additional warships from the West Coast to Pearl Harbor to take advantage of Hawaii's proximity to the WESTPAC theater of operations. However, considerable infrastructure would be required to make such a move. Lastly, NCTAMS PAC is the main hub for Pacific Command (Joint) Communications.

Secretary FIORI. East Asia and the Pacific will continue to be a region of strategic importance and is the focus of the Army's transformation efforts. Given the vast expanse of the Pacific Ocean and the great distances between the Continental United States (CONUS) and East Asia, stationing U.S. Army forces forward is absolutely critical to reducing response time for potential contingency operations in the region. Hawaii and Guam are key locations for basing of forces and providing sustained logistical support to Army forces.

In the future, Hawaii will continue to be an important forward base in support of U.S. military objectives in the Pacific. The 25th Infantry Division will play a critical role in the Army's efforts to transform the Legacy Force into the Objective Force of the future that will provide Commander, Pacific Command (PACOM) with a more lethal and survivable force that maximizes the use of the latest information technology. Starting in fiscal year 2004, military construction resources will be dedicated to preparing facilities in Hawaii for interim and future transformation efforts. Key programs include upgrades of training facilities, expansion of troop barracks and construction of an information systems facility.

Guam's location provides the Army with an indispensable support base for operations in the East Asian Littoral. While there are no active Army combat forces stationed on Guam, Guam provides important logistical and maintenance support for the Army vessels that make up the Army Pre-positioned Stocks (APS) 3 afloat fleet. With its airfield, seaport and strategic location, Guam can serve as an Intermediate Staging Base (ISB) to support contingencies in the East Asian Littoral, as well as Northeast Asia. The Army National Guard has a construction project in the Future Years Defense Program for a Combined Maintenance Facility on Guam.

Secretary GIBBS. Both Hickam Air Force Base, Hawaii, and Andersen Air Force Base, Guam, are important strategic enroute locations for air power projection in the Pacific theater. The robust infrastructure, to include extensive airfield pavement and fuel storage, at both locations make them key in creating and sustaining the airbridge connection between the continental United States and points in the Pacific region. With the global war on terrorism and heightened tensions in Southwest Asia, combined with the loss of our military installations in the Philippines, these bases have become increasingly vital.

52. Senator AKAKA. Secretary Johnson, Secretary Fiori, and Secretary Gibbs, what kind of MILCON requirements do you foresee in support of these missions?

Secretary JOHNSON. No additional military construction is currently needed at Guam to support the homeporting of three fast attack submarines.

The Navy is considering a proposal to relocate additional warships from the West Coast to Pearl Harbor to take advantage of Hawaii's proximity to the WESTPAC theater of operations. However, considerable infrastructure would be required to make such a move. If this proposal is considered to be in the best interests of the Navy, infrastructure requirements (if necessary) would be reflected in future budget submissions.

The roles of Guam and Hawaii in the Marine Corps strategic basing plans are under study. When the Marine Corps strategic plans are complete, MILCON requirements will be programmed accordingly.

Secretary FIORI. The Army is planning to make significant MILCON investment in Hawaii in support of our presence in the Pacific. Currently known Military Construction, Army (MCA) requirements that support the Hawaii transformation and combat systems include various training facilities, land acquisition, airfield upgrades, maintenance facilities, barracks and road improvements. The Army National Guard and Army Reserve have requirements that include training and maintenance support facilities and an Army Reserve Center.

The Army National Guard has a requirement for a Combined Maintenance Facility on Guam.

Secretary GIBBS. At Hickam AFB, we are bedding down C–17s, which will drive over $100 million in military construction requirements.

We are considering a number of permanent beddown options at Andersen AFB. If we decide to beddown any new missions at Andersen AFB, we will require military construction projects to enhance the flight line and base operations, construct additional personnel housing, improve the utilities infrastructure, and provide community support facilities.

VIEQUES

53. Senator AKAKA. Secretary Johnson, what are the MILCON or land acquisition requirements associated with the Navy's Training Resource Strategy and the cessation of training at Vieques?

Secretary JOHNSON. There are no MILCON projects for Training Resource Strategy (TRS) in the fiscal year 2004 future years defense plan. We are in the process of determining possible facility needs at NAS Key West in support of TRS.

The Training Resource Strategy uses existing Department of Defense ranges and training facilities along the East and Gulf coasts. The Navy is providing minor construction enhancements and repairs to existing facilities in order to provide the support needed for TRS requirements.

There are no known land acquisition requirements associated with TRS.

54. Senator AKAKA. Secretary Johnson, how many of these requirements are funded across the future years defense plan?

Secretary JOHNSON. All minor construction enhancement and repairs to existing facilities in order to provide support needed for TRS requirements are accounted for in the fiscal year 2004 future years defense plan.

There are no MILCON projects to support TRS in the fiscal year 2004 future years defense plan. However, if it is determined that MILCON is needed to satisfy TRS requirements, these projects would be included in future budget submissions.

ENVIRONMENTAL PROGRAMS

55. Senator AKAKA. Mr. DuBois, last year, Congress appropriated $478 million for pollution prevention (also called "P2") and environmental technology, the budget categories designed to help us with the environmental problems of the future. This year, the Department has requested only $362 million for P2 and technology, a reduction of almost 30 percent. Does the administration believe that its budget fully addresses all potential areas of environmental research and pollution prevention that would have a long-term payback for the Department, and that nothing has been left on the table?

Mr. DUBOIS. The Department has made great strides in implementing pollution prevention and there continue to be areas in environmental technology, including pollution prevention, that are ripe for investment.

Yes, the Department of Defense's budget request does fully address our pollution prevention needs. The Department's pollution prevention program has evolved over the past several years. The DOD components have achieved all of the pollution prevention goals previously established. They have also worked diligently to incorporate pollution prevention into every day decision making across all missions and functions. Many of the pollution prevention investments have been initial purchases of equipment and material substitution, which the DOD components have completed. Instead of using pollution prevention funds, the various functional areas are now investing in the new generations of equipment and materials that are both more efficient and less polluting, as part of normal equipment cycles and budgets. In addition, many of the investments in compliance, while they address a traditional compliance driver, are focused on the front end of a process or a material substitution—prevent the creation of pollution rather than collecting and treating pollution. The next evolution is the establishment of environmental management systems (EMS). Effective EMS will further help installations and activities identify, prioritize, and address risks—risks to mission, risks to resources, risks to the environment (pollution).

Executive Order 13148 established new pollution prevention goals—reduce Toxic Release Inventory (TRI) emissions 40 percent between 2001 and 2006. We have just received the 2001 TRI numbers. The DOD components are now analyzing the TRI numbers and identifying areas that are economically and technically feasible for reductions. They will budget to address these problems in future budget requests.

The Department is committed to sound investments in technology, including the Strategic Environmental Research and Development Program (SERDP). As reflected in the President's budget, the Department continues to be strongly committed to SERDP. This technology program is critical to meeting our environmental obligations, preserving access to DOD ranges, and lowering the environmental costs across the Department.

56. Senator AKAKA. Secretary Gibbs, we have been told that the Air Force has agreed to indemnify Lockheed Martin approximately $100 million for the cost of remediating perchlorate in the ground water at a Lockheed plant. Section 348 of the

National Defense Authorization Act for Fiscal Year 1998 required the Department to develop uniform guidelines for cost recovery and cost-sharing in environmental remediation. Section (c)(2) of that provision specifically required the Department to develop a process to "identify any negligence or other misconduct that may preclude indemnification or reimbursement by the Department of Defense for the costs of environmental restoration at (an environmental remediation) site or justify the recovery or sharing of costs associated with such restoration." Is it true that the Department has agreed to indemnify Lockheed-Martin $100 million for perchlorate releases at one of its defense plants?

Secretary GIBBS. Current policies and procedures under the Defense Contracting Audit Manual, Section 7–2120.3 (2002) allow contractors to recover environmental costs from the United States as a cost of doing business absent a showing of gross negligence or willful misconduct. While the Air Force has a continuing dialogue with Lockheed Martin about perchlorate clean-up at one of its facilities, there is no agreement to indemnify it for any portion of the clean-up.

57. Senator AKAKA. Secretary Gibbs, has the Department conducted a legal analysis to determine whether it is required to indemnify the contractor for such clean-up?

Secretary GIBBS. A legal analysis has been initiated therefore the issue of indemnification has not been resolved. Issues of potential negligence or misconduct have yet to be fully investigated or addressed. Be assured that any agreement in this matter will be fully investigated and analyzed in accordance with applicable law.

58. Senator AKAKA. Secretary Gibbs, did the analysis specifically address the question of possible negligence or other misconduct by the contractor?

Secretary GIBBS. As previously indicated, the analysis has been initiated therefore, the issue of indemnification has not been resolved. Issues of potential negligence or misconduct have not yet been fully investigated. Please be assured that this matter will be fully investigated and analyzed in accordance with applicable law. Any future agreement will be made on the basis of that investigation and the applicable law.

59. Senator AKAKA. Secretary Gibbs, may we have a copy of any such analysis?

Secretary GIBBS. We do not have a completed analysis at this time. Once completed, if the analysis is not otherwise privileged from disclosure, we would be pleased to provide you a copy.

60. Senator AKAKA. Secretary Gibbs, in view of the fact that this $100 million expenditure could just be the tip of the iceberg in terms of perchlorate remediation, would you agree that the Department has a strong interest in developing more cost-effective means of remediation?

Secretary GIBBS. The Department has and continues to have a strong interest in developing more cost-effective remediation technologies. The DOD Strategic Environmental Research and Development Program (SERDP) has recently developed new remediation technologies that will significantly reduce the cost of perchlorate clean-up. These technologies are now undergoing field testing under the Environmental Security Technology Certification Program (ESTCP); In addition to investing in improved remediation technologies, the DOD through SERDP plans a significant future investment to develop perchlorate replacements to avoid future contamination.

61. Senator AKAKA. Secretary Gibbs, can you tell us how much the Department proposes to invest in such technology in this year's budget?

Secretary GIBBS. The DOD through the SERDP and the Environmental Security Technology Certification Program (ESTCP) invested $1 million in fiscal year 2002, is investing $1.1 million in fiscal year 2003 and plans to invest $1.5 million in fiscal year 2004 in perchlorate remediation technology.

RANGE MANAGEMENT

62. Senator AKAKA. Mr. DuBois, Secretary Johnson, Secretary Fiori, and Secretary Gibbs, DOD is actively engaged in a number of activities to operate and fund ranges. These include normal testing operations, Service and joint training, and experimentation. Given the increasing pressures on range requirements, including increasing weapon ranges and challenges of urbanization, it seems that the imperative for maximizing the use of DOD ranges is growing. To that end, what are each

of you doing to ensure that range use for all three purposes (testing, training, and experimentation) is being optimized?

Mr. DUBOIS. The pressures and demands facing our range infrastructure are certainly increasing. DOD recognizes that we must find flexible and creative solutions to be able to continue to test and train effectively. While our existing range lands are clearly critical to the military mission, we realize that we cannot easily expand or duplicate these capabilities elsewhere to satisfy emerging needs. DOD is responding aggressively to optimize the use of our ranges. The Sustainable Ranges Initiative is identifying range requirements, documenting capabilities and shortfalls, and considering utilization solutions as one aspect of a comprehensive solution to long-term preservation of our Nation's test and training capabilities.

The distinction between testing and training ranges is already blurred. Many of our premier test ranges are heavily involved in Service and joint training activities, and vice versa. Eglin AFB, FL, is a prime example; as a premier Air Force test range, it supports a wide range of weapons systems and ordnance testing, while simultaneously sustaining a spectrum of Air Force, sister Service and joint training and experimentation needs. San Clemente Island, CA, a naval training range supporting the Pacific Fleet, conversely supports a number of testing activities for the Navy and sometimes other Services. Many other test and training ranges support each other's requirements, and this trend towards increasing collaboration will continue. As you note, joint training and experimentation capabilities are also of increasing importance to our Nation's defense. The Joint National Training Capability, a new DOD initiative to meet today's joint force training needs, will stress the development and implementation of joint training/exercise capabilities at many premier ranges. This and similar DOD efforts are leading the way to more integrated range use.

Secretary JOHNSON. Department of Defense ranges serve a wide variety of users who, in turn, have a wide variety of requirements that must be met. Historically, we have managed our ranges based on their principal mission and the associated instrumentation required to support that mission. "Customers" utilize the ranges that best fit their respective circumstances and needs. For example, training events are nearly 20 percent of the Navy Test and Evaluation (T&E) range customer base, where they perform training missions such as Electronic Warfare (EW), Mining Exercises, Air-to-Ground ordnance delivery, undersea warfare and missile shoots. Similarly, operational T&E is normally conducted in conjunction with fleet training events using training venues. Various events in T&E, training and experimentation are conducted where it makes the most sense to accomplish the task.

In order to bring together the range managers and range users at all levels, the VCNO chartered the Navy Training Range and Oparea Organization (NTROO) in the fall of 2001. With a 2-star executive steering group and membership across all Navy disciplines, NTROO ensures a better coordinated plan to address range needs and concerns through a regularly held collaborative venue. The organization includes not only training range members, but also representatives from the T&E ranges and Marine Corps Training and Education Command.

For the East Coast, the implementation of the Training Resources Strategy (TRS) will increase the use of some of the CONUS-based ranges as a result of the closure of Vieques. However, this increased activity at the ranges fits well within their operating capacity, and TRS encourages greater joint interaction opportunities since we are using multiple resources in closer proximity to our force's home bases. Using existing range capabilities and capacities regardless of Service affiliation optimizes training. Optimized use of these ranges is further enhanced by ongoing regional range cooperative agreements used to link range missions together in an effort to share limited resources supporting Service training and test requirements. Examples of these efforts include, but are not limited to, Navy SEALs training at the Army's Aberdeen Range, Ft. Knox, KY, and the USMC's Chocolate Mountain Range in Arizona. Under TRS, aircraft from carriers in the Gulf of Mexico will use Eglin AFB's range of real world electronic threats and deliver live ordnance against defended targets.

Though the Marine Corps does not have any ranges specifically dedicated to testing or experimentation, it does have extensive training lands that have been subjected to all of the pressures of urbanization and that face the ongoing challenge of meeting the changing training demands dictated by new weapon systems and new tactical employment doctrine. The Marine Corps established an Office of Range and Training Area Management in October 2001 and that office has embarked upon a three-part program to sustain, upgrade, and modernize ranges to assure their continued accessibility and viability.

To preserve and protect our ability to train today and in the future, the Department of the Navy is fully supporting the Range Readiness Preservation Initiative

currently before Congress. The provisions approved by the last legislative session included the critical ability to acquire buffer lands around our ranges to assist in mitigating the impacts of urbanization. We have a number of initiatives underway to make use of that legislation by obtaining land that would help in buffering both the direct effects of urban building at base boundaries and the secondary consequences of urban growth that have made our bases "islands of biodiversity" in otherwise unconstrained urban growth areas. In addition, to better optimize our use of ranges today, the Marine Corps has partnered with the United States Army to develop a web-based range scheduling and utilization program that will provide efficiencies in range usage, promote cross-Service utilization of ranges, and help relate our ranges to the readiness of our bases and forces. The program will also allow us to better articulate the value of ranges that are threatened by encroachment and to better plan for future range development.

To ensure that our ranges meet our future training needs, the Marine Corps has commissioned a study to assess future training requirements and their associated range requirements and has articulated, and begun to fund, a range investment strategy that will permit our ranges to meet both emerging Service and joint training standards.

Secretary FIORI. Let me address how we are optimizing testing, experimentation and training range assets in the Army. Some of our test activities, particularly operational tests, and most experiments are already conducted on installations that house operational units or schools that are primarily focused on training. So, training ranges are used for testing and experimentation. An example of that is Fort Hood, TX. Our four major test ranges: Aberdeen Proving Ground, MD; Yuma Proving Ground, AZ; Dugway Proving Ground, UT; and White Sands Missile Range, NM, are uniquely configured to test specific families of weapons systems and weapons systems capabilities. However, their ranges also routinely host training. Such training is primarily conducted by the Reserve component (RC), but is not limited to our RC. Active component units engaged in supporting operational tests at those locations will take advantage of time and facilities there to conduct training. In addition, we are continuously seeking synergism and commonality in range technology (targetry and instrumentation) for the testing and training range functions. Finally, we are undertaking the development of an Army Range and Land Strategy that will review capabilities and attributes of all ranges to seek improved dual testing and training use and to support the Secretary of Defense's Training Transformation (T2) initiative.

Secretary GIBBS. The Air Force is continually assessing the adequacy of its ranges in relation to mission. Adequacy can be thought of in terms of time, proximity, volume, and attributes. Time relates to having ranges and airspace available when they are needed. Proximity relates to the distance traveled to a range or airspace. Volume relates to the physical dimensions of the range or airspace. Attributes relate to things such as terrain, scoring systems, instrumentation, facilities, etc. that are necessary to accomplish a given mission. When a range is judged to be inadequate for a mission an assessment of the tradeoffs among the various variables needs to be made. In cases where a change needs to be made that will establish, change the use of, modify, or delete ranges and airspace a review process exists to vet how best to meet the requirement in the broader context of total ranges and airspace available. For instance, although a range may already exist to meet a particular mission requirement, the time that would be spent in just traveling back and forth to it would make it more cost effective to build a new range closer to the user. Analysis such as these have resulted in the Air Force opening 5 new ranges over the last 5 years while shutting down two and relinquishing another approximately 140,000 acres of public land deemed no longer critical to mission accomplishment.

63. Senator AKAKA. Mr. DuBois, Secretary Johnson, Secretary Fiori, and Secretary Gibbs, are the funding structures (i.e., revolving funds vs. appropriations, Service vs. joint funding) appropriate for and adequate to support the best use of our military land? If not, what changes would you propose?

Mr. DUBOIS. As a rule, existing funding structures are appropriate to support the best use of military lands. In general, range funding should continue to flow through the appropriations cycle to the Services, allowing them to address their Title 10 range management responsibilities in ways most appropriate for their needs. DOD has no concrete recommendations for change at this point in time. We will continue to assess the situation and work with Congress as necessary to address emerging range funding issues.

Secretary JOHNSON. Yes. The current systems meet the needs of both the suppliers and users of range services.

There are some concerns in planning for future range usage because of the emerging and still evolving joint training standards that may dictate particular range technologies that have not been resourced. We will continue to work closely with the Joint Forces Command and the Office of the Secretary of Defense to ensure that we are appropriately positioned and resourced to support the goals of training transformation as they pertain to ranges and training areas.

Secretary FIORI. The Army's current means of funding ranges involves a number of appropriations. We believe the current system of funding by appropriation within the Services serves our needs.

Secretary GIBBS. I believe adequate mechanisms are being pursued to make the best use of our military lands, although all these efforts are in the early stages and will require some time. A number of appropriations support the use of our military lands with a diverse mix of functional communities managing these funds. Our operators use operation and maintenance funds to fulfill day-to-day test and training activities at our ranges. For example, the civil engineers fund for functions like natural and cultural resource management. There are also active duty, Guard, and Reserve components responsible for the ranges—each with different funding sources.

In order to better understand how this all fits together, our range community is working towards building a comprehensive range plan that will delineate requirements and costs for ranges along various investment areas. We have also instituted an Air Force Ranges Investment Council. This body reviews investments being made in USAF ranges by the test and training communities to ensure compatibility and synergy while minimizing unnecessary duplication.

Finally, we are pursuing capabilities based planning and programming to help us define the test and training requirements that underpin our range requirements. From the joint perspective, we are working with OSD, JFCOM, and the other Services to build a Training Transformation Implementation Plan that will help us further make the best use of our lands and resources.

[Whereupon, at 3:55 p.m., the subcommittee adjourned.]

DEPARTMENT OF DEFENSE AUTHORIZATION FOR APPROPRIATIONS FOR FISCAL YEAR 2004

THURSDAY, MARCH 13, 2003

U.S. SENATE,
SUBCOMMITTEE ON READINESS AND
MANAGEMENT SUPPORT,
COMMITTEE ON ARMED SERVICES
Washington, DC.

THE IMPACTS OF ENVIRONMENTAL LAWS ON READINESS AND THE RELATED ADMINISTRATION LEGISLATIVE PROPOSAL

The subcommittee met, pursuant to notice, at 2:10 p.m. in room SH–216, Hart Senate Office Building, Senator John Ensign (chairman of the subcommittee) presiding.

Committee members present: Senators Inhofe, Ensign, Levin, Akaka, E. Benjamin Nelson, Clinton, and Pryor.

Majority staff members present: William C. Greenwalt, professional staff member; and Ann M. Mittermeyer, counsel.

Minority staff members present: Maren R. Leed, professional staff member; Peter K. Levine, minority counsel; and Christina D. Still, professional staff member.

Staff assistants present: Michael N. Berger, Andrew W. Florell, and Jennifer Key.

Committee members' assistants present: John A. Bonsell, assistant to Senator Inhofe; Russell J. Thomasson, assistant to Senator Cornyn; Davelyn Noelani Kalipi, assistant to Senator Akaka; William K. Sutey, assistant to Senator Bill Nelson; Eric Pierce, assistant to Senator E. Benjamin Nelson; Andrew Shapiro, assistant to Senator Clinton; and Terri Glaze, assistant to Senator Pryor.

OPENING STATEMENT OF SENATOR JOHN ENSIGN, CHAIRMAN

Senator ENSIGN. Good afternoon. The Subcommittee on Readiness and Management Support is meeting to review a series of environmental issues that the administration has identified as having adverse impacts on military readiness. We will also address the administration's related legislative proposals.

Senator Akaka will be here shortly. I look forward to working with him. In an effort to accommodate his interests, the subcommittee will hold a second hearing that will address the interests of States and environmental interest groups. I believe that together these hearings will reflect a shared desire to seek meaning-

ful and informative testimony that will help the subcommittee to better understand these environmental issues and the administration's legislative proposal. I know Senator Akaka joins me in welcoming the distinguished witnesses.

I very much appreciate the participation of General John Keane, Vice Chief of the Army, Admiral William Fallon, Vice Chief of Naval Operations, General William Nyland, Assistant Commandant of the Marine Corps, and General Robert Foglesong, Vice Chief of the Air Force.

Specifically, the issues that the subcommittee will cover in this hearing will relate to endangered species and critical habitats, marine mammals, general conformity under air pollution controls, and the management of munitions and unexploded ordnance on active ranges. I anticipate that we will be exploring both the individual and cumulative impact of these issues.

I am aware that the military departments have been grappling with these issues for several years. In fact, last year, Congress received the administration's legislative proposal for the first time. Unfortunately, those proposals were submitted relatively late in the year, and it was difficult for Congress to address them in any kind of meaningful way.

This year, it is my hope that a valuable record will be developed as these issues are revisited in this Congress. The administration's proposed legislative changes have triggered controversy over the fear that this is an attempt to roll back important environmental laws. It is my understanding, however, that efforts to provide training flexibility within the existing statutory and regulatory framework have resulted in litigation.

Recently, a Federal district court in Arizona held that the natural resource management plans could not be used as a substitute for critical habitat designation under the Endangered Species Act. The Marine Corps Air Station at Miramar was confronted with a similar challenge. Both cases raise concerns about the ability of the U.S. Fish and Wildlife Service to use management safeguards as a substitute for critical habitat designation under current law.

The Marine Mammal Protection Act has been the basis of several lawsuits that impacted the Navy's ability to implement mission-critical low range, low frequency sonar and stopped the testing of whale-tracking sonar that could help vessels avoid hitting whales.

These cases suggest that the current definition of "harassment" has profoundly affected both vital training and research. On April 14, 2002, a coalition of environmental groups sued the Army and asserted that munitions deposited on the range at Fort Richardson, Alaska violated environmental laws. These groups are seeking a permanent injunction to halt live-fire training at Fort Richardson. If the court rules against the Army, this case would establish a bad precedent for other live-fire military training ranges.

I would like to hear about the impact of environmental laws on readiness, particularly in light of the increased litigation in this area. With the possibility of war in Iraq, I am very concerned about environmental restrictions that may diminish the quality of testing and training capability within the military departments. I fundamentally believe that it is possible to strike a balance between

environmental requirements and the need to ensure the readiness of our Armed Forces.

That said, I hope that Congress, the administration, and other stakeholders will work cooperatively, as this subcommittee and other committees of jurisdiction review these environmental restrictions on training and the administration's related legislative proposal.

All of your prepared statements will be made part of the record, and I urge you to keep your oral statements to less than 5 minutes, if possible, in order to allow sufficient time for questions.

Senator Akaka is not here, so we will reserve his time for making an opening statement when he makes it.

I also want to welcome Senator Inhofe, who is going to be chairing. I am also on the Budget Committee and we are doing a lot of votes today, so Senator Inhofe may be chairing quite a bit of this. He has shown a lot of leadership, and certainly with the chairmanship of the Committee on Environment and Public Works, he will be handling this issue as well. I welcome Senator Inhofe to the table. There is nobody else here, so if you would want to make any opening remarks, please proceed.

Senator INHOFE. I have an opening statement I will submit for the record. I had the honor of chairing this subcommittee for a number of years, and since I am now chairing a full committee, the Environment and Public Works Committee, that means I cannot chair a subcommittee.

Senator ENSIGN. I appreciate that. [Laughter.]

Senator INHOFE. Which you appreciate, yes. But anyway, this has been something—I want to submit my entire statement for the record and then say that in talking to many of the people that have come into my office to get good examples, it is just shocking what is going on today. I think a lot of you know—certainly Admiral Fallon knows this because of the Pace-Fallon report that you went through—I spent 3 years of my life trying to keep live fire at Vieques, because we are losing our ranges all around the world, and because of losing that live-fire capability. To show this is a life and death issue, we actually lost five lives, four of whom were Americans, at the Adari Range in Kuwait. The accident report said they did not have adequate training because of the restrictions and encroachment on that training range, so it is a life or death issue.

We look at places like Camp Pendleton. It has 17 miles of shoreline, but you can only use about 200 yards of it for amphibious landings, and it is all encroachment problems. So I think this is something, all these frivolous lawsuits by these great American organizations, Friends of the Earth and all of that, they just put us in a situation where they do not seem to have any concern over the fact that we have to train these people. I become more and more convinced, Mr. Chairman, that many of these people do not think we need a military anyway.

So it is a serious problem. It is one that I am glad you are addressing, and at the same time, we are going to be addressing it from our other committee also.

[The prepared statement of Senator Inhofe follows:]

PREPARED STATEMENT BY SENATOR JAMES M. INHOFE

As the United States prepares for war to disarm Saddam Hussein, our troops are facing a growing crisis in training and readiness. This is not because we don't have the finest men and women serving our country. We do. The problem stems from the extreme agenda of some environmental groups whose hostile lawsuits threaten to impose dangerous burdens and restrictions on training bases nationwide.

Environmental groups such as the Natural Resources Defense Council and the Center For Biological Diversity have launched an unconscionable war on the military. They believe there are no compromises, even when the issue involves protecting and preparing our troops for battle. They would rather file a lawsuit—something they're quite good at, by the way—than find common sense solutions to balance environmental protection with the best military training available.

These lawsuits are gradually eroding not just the land available for training and readiness, but are constraining and seriously undermining the actual training exercises and live-fire simulations that are so critical to prepare for real-life combat.

Despite the claims made by environmental groups, the Pentagon has demonstrated a strong commitment to environmental stewardship. The evidence is overwhelming. But land development is fast encroaching upon military facilities, driving wildlife and endangered species into the relative sanctuary of training ranges.

The military has made environmental accommodations time and time again, but there is only so much it can do. The flood of environmental lawsuits is diverting the military away from its all-important training mission. As a result, training slowly but surely is dying a death of a thousand cuts.

There are too many egregious examples to recount here. But let me briefly mention the situation facing Camp Pendleton in California, which is considered the premier training base for the Marines. Because of a lawsuit filed by the Natural Resources Defense Council to list the Gnatcatcher as endangered, 57 percent of the base became "critical habitat," which in effect means no training and readiness exercises in that area.

Also, there are 17 miles of beach at Camp Pendleton. Because of environmental restrictions, only 200 yards of beach are available to practice amphibious landings. All military vehicles that come ashore during an amphibious landing are restricted to designated roads. Troops can only come ashore in single file columns, which is hardly a good simulation of actual warfighting conditions.

To help stop the degradation of training on our bases, the Pentagon has proposed reasonable, commonsense legislation to clarify existing environmental laws. Notably, the Pentagon is not seeking blanket exemptions from current laws. In fact, many of the Pentagon proposals were first implemented by the Clinton administration's U.S. Fish and Wildlife Service.

For example, allowing the military to use Integrated Natural Resource Management Plans in place of critical habitat designations—a key component of the Pentagon's proposal—was initially implemented during the Clinton administration. This will enable the military to protect natural resources while carrying out critical training exercises.

The increasing burdens and restrictions on training simply cannot be tolerated any longer. We are morally obligated to ensure that our troops are fully trained and prepared for war. Protecting our natural resources is important, but protecting the lives of the men and women who serve our country is absolutely essential.

Senator ENSIGN. I would like to welcome the ranking member of the subcommittee, and welcome any opening comments you may have.

STATEMENT OF SENATOR DANIEL K. AKAKA

Senator AKAKA. Thank you very much, Mr. Chairman. Thank you for calling this hearing today, and I want to welcome our panelists to this hearing. It is our responsibility as a subcommittee to examine issues impacting military training and readiness, and I have no doubt that our military has had to adjust training practices and incur added expenses to address concerns about critical habitats, the marine environment, air space management, spectrum availability, air pollution, unexploded ordnance, and even noise pollution.

Despite these training challenges, the Chairman of the Joint Chiefs of Staff and the military service chiefs have testified before our committee that our Armed Forces are more ready today than they have ever been before, great news for us. That is because the military services have gone the extra mile to find constructive ways to comply with the applicable laws and regulations with a minimum impact on training and readiness. It takes hard work with regulators and impacted communities on a case-by-case basis to achieve these solutions, but the payoff comes in the credibility the Department of Defense has earned as a good neighbor and a faithful custodian of public lands.

In my State of Hawaii, I have worked with the military to try to address issues raised in the community about the impact of training on cultural and historical sites, endangered species, fire damage, and other issues. By working together in this way, I am hopeful that we can continue to find constructive ways to reconcile military training requirements with conflicting priorities.

I am also hopeful that this kind of cooperative, case-by-case approach can help us avoid recurrences of the situation in Vieques, where festering disagreements between the Department of Defense and the local community will soon result in the cessation of military training at one of the Navy's most important facilities.

Legislative action to exempt the Department from an environmental requirement may be necessary in some cases, as it was last year when we acted on the Migratory Bird Treaty Act, but it must always be a last resort, not a first resort. Where we do act, I believe that our legislation should be as narrowly tailored as possible to avoid unintended side effects.

Last week, the administration submitted a legislative proposal that would exempt a wide range of DOD activities from the Endangered Species Act, the Marine Mammal Protection Act, the Clean Air Act, and the Solid Waste Disposal Act, each of which was rejected by the last Congress. These proposals deserve the close scrutiny that we will start to provide with today's hearing.

As we address the issues before us today, we should keep in mind that the positive relationship between our military installations and the governments and citizens of the States and communities in which they are located is dependent to a significant extent upon the Department's role as a good neighbor and a faithful steward of the public lands. I believe that we should do everything in our power to avoid enacting overreaching legislative proposals that would undermine the positive relationship.

Mr. Chairman, these are very difficult issues, not only because of the competing interests of military readiness and environmental protection, but also because of the complexity of some of the statutes and regulations involved. That is why I appreciate your decision to schedule a second hearing on this subject at which we will have an opportunity to hear from the representatives of some of the 23 environmental groups and 33 State Attorneys General who contacted the committee in the last Congress to express concerns about the administration's legislative proposal. I hope that we will be able to listen together to the broad range of views on these issues and to work together to develop a common understanding and constructive approach to the problem.

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

Senator ENSIGN. General Keane, we will start with you.

STATEMENT OF GEN. JOHN M. KEANE, USA, VICE CHIEF OF THE ARMY

General KEANE. Mr. Chairman, Senator Akaka, Senator Inhofe, I am honored to be here today with my fellow service Vice Chiefs, and appreciate the opportunity to appear before the subcommittee to discuss this important issue.

We are a Nation at war, and clearly the events of the last year and a half in Afghanistan and in the Philippines demonstrate that our soldiers are trained and ready. This state of readiness, however, does not just happen. It requires tough, realistic training under demanding battlefield-like conditions to effectively meld soldiers and equipment into the best fighting force in the world.

I talked to a wounded young soldier from the Tenth Mountain Division, who fought in one of the battles of Operation Anaconda in Afghanistan. He was in a 12-hour fight against a force of al Qaeda that outnumbered them six to one, and our soldiers won that fight. Given those odds, I asked him at Walter Reed Medical Center what he thought made the difference in the fight. He said, "sir, they were as tough as we are. They gave no quarter. They did not back up. Fundamentally, the difference was our skill. We shot better than they did, and we fired and maneuvered better than they did."

That is the essence of our training, and it produces those kinds of extraordinary results. Our soldiers cannot fight with confidence without realistic live-fire and maneuver training, and we need training areas, maneuver land, and live-fire ranges to make this happen.

The first time soldiers conduct a realistic operation cannot, cannot be during time of war. We must train as we intend to fight, and it is becoming increasingly difficult to do so under such environmental restrictions. A 2002 General Accounting Office (GAO) report confirmed that encroachment is having a negative impact on training at every Army facility surveyed. That report found that encroachment is diminishing training realism and restricts the types, locations, and time of training events, and confirms the need for congressional action to clarify our environmental legislation.

The Army's major concerns are training restrictions that stem from two major issues. The first is the management of threatened and endangered species, and the second is expanded application of environmental regulations to the use of military munitions.

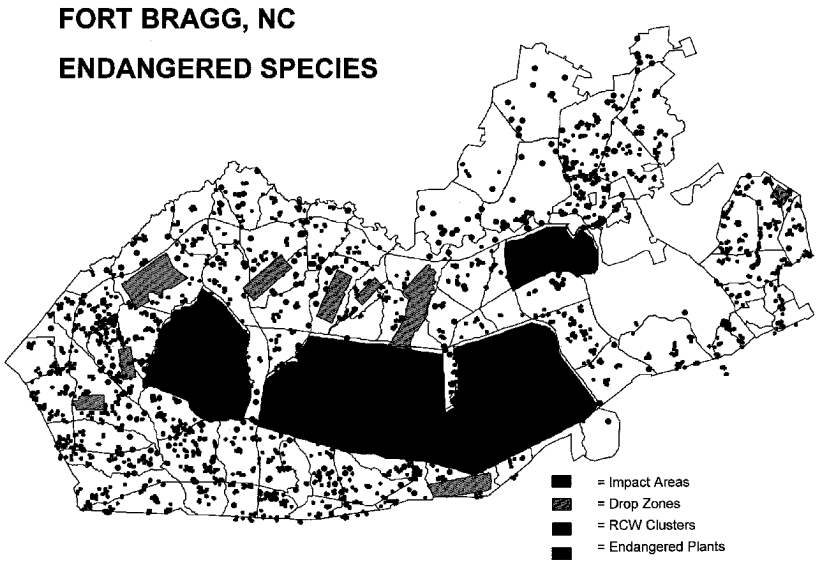
In terms of our management of threatened and endangered species, there are 172 endangered species on 99 Army installations. Critical habitat has been designated on four installations. At three of those four installations, the endangered species has not arrived yet.

That includes Fort Lewis, where 72 percent of the training land is designated as critical habitat for the Northern Spotted Owl, who has yet to arrive, and I ask, does this pass the common sense test? At Fort Bragg, we have other restrictions that impact our training,

as well as other installations supporting the Red-Cockaded Woodpecker.

What I would like to do is point out to you some of the restrictions that are currently imposed on us at Fort Bragg so you can understand the magnitude of what our soldiers and our leaders have to deal with. I refer to the handout and the chart that is before you here.

[The information referred to follows:]



It encumbers the circumference of Fort Bragg, and you can see that the impact area is in purple, the drop zones where us old folks maintain our youth are in yellow, and the Red-Cockaded Woodpecker cavities and the endangered plants are in green and red respectively.

Around each cavity tree, or red area that is depicted on your map, which are plentiful in number and cover, as you can see, the vast majority of the 130,000 acres at Fort Bragg, there is a 200-foot buffer around each tree. Within that buffer, there is no bivouacking or occupation for more than 2 hours, there is no use of camouflage, no weapons firing other than 7.62 millimeter and .50-caliber blank ammunition, no use of generators, no use of riot agents, no use of incendiary devices, no use of white smoke, and no digging tank ditches or foxholes. Vehicles cannot come closer than 50 feet.

The impact is profound. We must work around all of these restrictions to conduct realistic training. At times it is artificial and, as you can imagine, it frustrates our leaders and soldiers. I ask again, does this pass the common sense test? It is tough explaining that to our leaders and our soldiers.

The Readiness and Range Preservation Initiative (RRPI) proposal related to the Endangered Species Act that we are proposing

seeks to codify the existing U.S. Fish and Wildlife Service policy of using management plans to serve as an alternative to designating an area as critical habitat. These so-called Integrated Natural Resources Management Plans (INRMPs) have already proven to be a successful method of managing an endangered species at a number of Army installations, to include Fort Bragg.

The problem is that their use of the INRMPs for this purpose is under challenge, as you pointed out, Mr. Chairman, and it involves the court case in Arizona which jeopardizes the progress we had made managing the endangered species using the INRMP. This is a major step back for us.

Our other concern relates to the application of Resource Conservation and Recovery Act (RCRA) and Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and the provisions of the RRPI seek to clarify Congress' original intent in the application of these statutes as they pertain to military live-fire training and operating military ranges. The current statutory language can be used to shut down live-fire training, and to require investigation and cleanup of munitions. This would make it nearly impossible for the Army to fulfill its national security mission.

As you mentioned, the Army at Fort Richardson is currently engaged in a lawsuit in which the plaintiffs allege violation of RCRA and CERCLA associated with firing munitions at Eagle River Flats Range. In other words, the munitions are solid waste or hazardous waste. If the court agrees with the plaintiff, then live-fire training and testing operations at every Army range, which are more than 400 in number, could be subject to the same code, and would effectively shut us down. This is an absolute train wreck for the Army, and would have a dramatic impact on readiness, and we have to ask, was this really the intent of Congress when we enacted these laws to protect our environment?

The RRPI proposals affecting RCRA and CERCLA look to clarify that live-fire training does not constitute disposal of solid waste or release of hazardous substances. We do not desire the elimination of environmental laws. What we desire is targeted legislation appropriate to provide the flexibility needed to accommodate both military needs and environmental requirements. We believe this issue is a national priority, and we are convinced that we can provide for a national defense while still protecting the environment.

Thank you, Mr. Chairman. I look forward to your questions.

[The prepared statement of General Keane follows:]

PREPARED STATEMENT BY GEN. JOHN M. KEANE, USA

Chairman Ensign, Senator Akaka, and distinguished members of the subcommittee, thank you for this opportunity to testify before you on the fiscal year 2004 Defense Department RRPI legislative proposals.

I would first like to thank you for your continued interest in this subject and for the action taken in the National Defense Authorization Act for Fiscal Year 2003 to grant the military departments the authority to establish buffer zones around our ranges to manage encroachment and ensure compatible land use. This legislation will not only help prevent urban development that threatens testing and training, it will facilitate preservation of needed habitat for potentially imperiled species and lessen the need for additional legal restrictions on military installations. Your support of this legislation is a significant step in the right direction, but there is more work to do. If enacted by Congress, the legislative proposals within the fiscal year 2004 DOD RRPI will assist us in our continuing struggle to achieve an appropriate

balance between maintaining military readiness and protecting the land and resources America entrusts to us.

Today our Army is engaged throughout the world—fighting the global war on terrorism, providing peace and stability to regions throughout the world, and preparing for a potential war in Iraq. Every day our soldiers demonstrate that they are trained and ready to respond to these requirements—to fight and win the Nation's wars. This state of readiness, however, does not just happen. It requires realistic, multi-echelon training under battlefield-like conditions to meld soldiers and equipment into the best fighting force in the world.

During the 12-day battle of Operation Anaconda, our soldiers often fought outnumbered against a tough, determined enemy that gave no quarter and did not back down. That battle typifies combat for our soldiers—a close-range test that is fundamentally about will and skill. More than anything else, our success in the Shah-i-Kot Valley came down to our soldiers' skill—we shot better than they did and we fired and maneuvered better than they did. It was our training that made the difference. Maneuver land and live-fire ranges are an essential element of this training process—without them, our soldiers cannot develop the confidence and skill demonstrated during Operation Anaconda. We must retain those resources that allow our forces to maintain the level of readiness the American people have come to expect, and deserve.

Thirty years ago, we were less aware of the environmental impact of our training. Looking back, we could have done a much better job protecting the natural resources entrusted to us. As the consciousness of America was aroused to protect our natural resources, so too was the consciousness of the United States Armed Forces. We changed attitudes and behaviors through education; we committed significant resources to the preservation of our lands—to include $74 million for compliance with the Endangered Species Act over the past 5 years alone; and, in the process, amassed a good record of environmental stewardship. The Army does not seek to eliminate its responsibility to protect the environment. Rather, we need to ensure the application of existing law does not preclude us from conducting quality training.

The fiscal year 2004 DOD RRPI proposals address several of the Army's concerns regarding environmental encroachment, training restrictions that stem from the management of threatened and endangered species and the expanded application of environmental regulations to the use of military munitions. One proposal confirms an existing U.S. Fish and Wildlife Service policy that allows integrated natural resource management plans to make the designation of critical habitat on DOD lands unnecessary. The other proposal confirms that military munitions on active military ranges should not be subject to hazardous waste or Superfund clean-up requirements. These RRPI provisions will be a major step forward in providing the legislative clarification we require to continue to train and maintain the best military force in the world.

THREATENED AND ENDANGERED SPECIES AND CRITICAL HABITAT

The RRPI proposal related to the Endangered Species Act (ESA) and critical habitat (CH) seeks to codify the U.S. Fish and Wildlife Service (FWS) policy of allowing the existence of FWS-approved INRMP to serve as an alternative to designating CH. The Sikes Act requires military installations to prepare plans that integrate the protection of natural resources on military lands with the use of these lands for training. The Sikes Act also requires installation personnel to consult with the FWS and concerned State agencies as the INRMP is prepared and to seek their concurrence, as well as public comment, on the final plan.

"Critical habitat" as defined in section 3(5)(a) of the act includes both areas within the geographical area occupied by a species, at the time it is listed, on which are found physical or biological features that are essential to the conservation of the species and that may require special management considerations or protection; and areas outside the geographic area occupied by a species at the time it is listed that are essential for the conservation of the species.

Army lands host 172 Federally listed species on 99 installations. The FWS has designated critical habitat on 14 installations to include Fort Lewis, Washington and Fort Irwin, California—two installations that are critical to maintaining the warfighting readiness of the Army. Designation of critical habitat on Army installations adds management costs and reduces the availability of land on which to train. New designations require installations to enter into consultation with the FWS and limit or cease training activities while consultation is conducted. Each time the Army proposes an action that may adversely modify the habitat we must enter into consultation. However, large scale programmatic consultations can address most of

the training needs of a military installation, potentially precluding the need for separate consultation on individual actions. Use restrictions and consultation requirements can even apply when critical habitat is designated on military installations where the species in question does not reside. For example, at Fort Lewis 72 percent of the training land is designated as critical habitat for the Northern Spotted Owl and yet the owl is not resident anywhere on the installation. This scenario is also found at two other Army installations.

At the National Training Center (NTC) in Fort Irwin, California, 22,000 acres are designated as critical habitat for the Desert Tortoise. This designation has effectively eliminated maneuver training on the 22,000 acres and reduces the amount of training that can be conducted on the installation by limiting maneuver training to only one area—the central corridor. We need two corridors to conduct the kind of training required on the modern battlefield. After almost 20 years of effort, the expansion of the NTC and reopening of these 22,000 acres to training are nearly a reality. We are committed to the protection of endangered species here, but these efforts come at a cost. In 2000, Congress authorized the expenditure of up to $75 million to acquire and manage additional land for preservation of and mitigation measures for the Desert Tortoise and Lane Mountain Milkvetch. We are in the process now of working with FWS and state regulators to define the scope of these requirements. Only after we implement the mitigation measures will it be possible for the Army to use these areas.

In addition to the Army installations where critical habitat has already been designated, the FWS has proposed to designate habitat for 146 additional species in Hawaii. This proposal affects seven Army training facilities to include the Pohakuloa Training Area where we already have a $25 million Multi-Purpose Range Complex that never opened due to endangered species management requirements.

The Army has been very successful protecting endangered species by working with adjacent landowners to achieve mutual conservation goals. These installation programs are recognized as models for balancing military missions with species conservation on a regional level. As a matter of policy, we also develop specific Endangered Species Management Plans for each listed species in consultation with the FWS and National Marine Fisheries Service (NMFS). We regularly consult with these two agencies under Section 7 of the Endangered Species Act (ESA) to fully consider the effects of military activities on listed species. These programs are a testament to the Army's commitment to balancing the management of the land entrusted to our care to meet the requirements of both the military mission and protection of threatened and endangered species.

The Army also actively participates in the development of Recovery Plans for endangered species. Based largely on our active role, and on the existence of approved INRMPs, a number of Army installations have avoided the need to designate critical habitat. By allowing approved INRMPs to preclude the need to designate critical habitat, the FWS provides military installations with the flexibility to manage their natural resources to support the military mission while providing for the protection of endangered species.

INRMPs take a more holistic approach to managing natural resources than critical habitat designation and have proven to be a successful method of managing endangered species habitat at a number of Army installations. They strike the necessary balance by integrating military training needs with natural resources management practices to ensure that the imperatives of national defense and species protection are both met. Management under an INRMP, in lieu of critical habitat designation, allows Army commanders increased flexibility to use the land on the installation to meet changing mission needs.

Nonetheless, a Federal district court in Arizona recently decided FWS' reliance on INRMPs to provide adequate habitat protection in lieu of designation of critical habitat is unlawful. The Army is concerned this court decision will call into question all of the instances where critical habitat has been avoided based in part on the existence of an INRMP. This case reinforces the need for Congress to pass the RRPI provisions to explicitly support our common sense approach.

RESOURCE CONSERVATION AND RECOVERY ACT (RCRA) AND COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA), COMMONLY KNOWN AS SUPERFUND

The number of live-fire exercises conducted by the Army cannot be reduced without serious degradation to readiness and the concurrent increased risk to our soldiers. The Army determines live training iteration requirements based on the premise that certain skills are perishable and must be periodically exercised. Army standards identify the minimum number of times and specific firing events on which

a soldier must train to achieve a given level of proficiency. Many ranges operate at maximum capacity so that units can meet the standard. Any further limitations placed on training facilities would inevitably cause a reduction in live training below that needed by soldiers to remain minimally proficient.

Under the current statutory language, it is likely that the use of environmental statutes, such as the CERCLA and the RCRA, can be used to shut down live-fire training and to require investigation and cleanup of munitions and munition-constituents on operational military ranges. This would make it nearly impossible for the Army to fulfill its national security mission.

The RCRA and CERCLA provisions of the RRPI seek to clarify Congress' original intent in the application of these statutes to military live-fire training and operational military ranges. Historically, environmental regulatory agencies have used great discretion in the application of RCRA and CERCLA to operational ranges. They recognize that these facilities are extremely valuable national assets and the training conducted on them is critical to national security. They also recognize that the typical application of these statutes is to clean up the impacts associated with past practices at industrial or waste management facilities that are being put to other uses or to respond to accidental releases or spills of hazardous substances.

For these reasons, the EPA has never required a RCRA corrective action to respond to the effects of military training on operational ranges. Environmental regulators have only used CERCLA authority in a very small number of cases on operational ranges and only in cases where they have determined the conditions pose an imminent and substantial endangerment to human health or the environment. The RRPI provisions seek to codify this historic practice and prevent expanded application of these laws beyond Congress' original intent.

In our view, a clarification of the statutory framework applicable to military training operations is an appropriate manner in which to address this issue. The development of Federal, State, and local environmental statutes and requirements addressing waste management, pollution elimination, and clean-up of contamination did not take into account, nor foresee, application to military training lands and military weapon systems. Regulators themselves are vulnerable to citizen suits for not vigorously applying these and other environmental laws to munitions and munitions constituents on operational ranges.

The Army at Fort Richardson, AK, is currently engaged in a lawsuit in which the private party plaintiffs allege violation of RCRA and CERCLA associated with firing munitions at Eagle River Flats (ERF) range. The RCRA allegation is that munitions fired into ERF—an operational range—are subject to state solid waste requirements under RCRA. If munitions used for their intended purpose are considered solid waste subject to RCRA's waiver of sovereign immunity, the Army could be forced to seek an operating permit and to perform corrective action or remediation of ERF. Live-fire training during the remediation would be impossible and the only mortar and artillery impact area at Fort Richardson would be unavailable for training.

The court challenge alleges that CERCLA is rightfully applied to the act of firing munitions onto an operational range and that the continued presence of those munitions on the range constitutes a release of hazardous substances requiring reporting, characterization, and remediation. If the court agrees with the plaintiff, then live-fire training and testing operations at every Army range (more than 400 sites) could be subject to CERCLA response requirements. These findings, along with the potential for further lawsuits, could compel EPA and state regulators in all U.S. regions to enforce the same standards on other military ranges. Live-fire training would be severely constrained throughout the Department and military readiness would decrease dramatically.

Live-fire training is essential and is often the capstone-training event of a unit's training cycle. The United States set aside areas specifically for this purpose as well as to isolate the dangers associated with this training from the public. These areas are DOD's operational ranges. They are crucial to maintaining national security and comprise just over 1 percent of the U.S. land mass. The activities conducted on this land ensure the security of the United States and that the young men and women of the U.S. military are ready to do what is asked of them. The relatively small portion of the U.S. that is set aside to ensure military readiness provides tremendous benefit to the entire Nation and the necessary training and testing conducted on this land should be protected.

The RRPI proposals affecting RCRA and CERCLA clarify that live-fire training does not constitute disposal of solid waste or releases of hazardous substances. Furthermore these proposals seek to codify the existing practice by the Environmental Protection Agency and state environmental regulatory agencies and remove ambiguity currently in the law. This clarification will help protect the Army and DOD from the immediate vulnerability of citizen lawsuits.

Furthermore, RRPI proposals confirm that the cleanup of military munitions is not required so long as munitions remain on operational ranges where they were fired. The policies governing cleanup of munitions located off an operational range and munitions causing imminent and substantial danger on-range would remain unchanged—as would policies governing cleanup of former ranges and other defense sites.

These provisions do not seek to avoid the Army's responsibilities to cleanup formerly used defense sites or to protect the environment from potentially harmful impacts. Rather, they seek to clarify and affirm existing policies and ensure that military ranges, set aside to allow live training and contain potential impacts, remain available to the soldiers that need to train for combat. I do not believe that Congress enacted RCRA and CERCLA with the intent that they be used to deny the military use of designated training areas. We therefore request that Congress alleviate this line of litigation by clarifying language in RCRA and CERCLA.

ARMY STEWARDSHIP OF LIVE-FIRE TRAINING AND TESTING AREAS

Although the Army is concerned with the impact that environmental encroachment has on training, we are also mindful of public concern for the potential impact that training and testing may have on the environment. We are aggressively developing and implementing an effective, comprehensive Sustainable Range Program. As part of this effort, we continue to implement studies and local community outreach programs to better understand and manage the environmental implications associated with live-fire training.

The Army is conducting Regional Range Studies designed to gather credible data on the true environmental impact of live-fire training and weapons testing. The concept is to study ranges at different installations representing a wide variety of climatic, geologic, and ecological settings. The program includes the development of field assessment protocols, field studies and a lessons-learned report that will include a tool to prioritize future range assessments. Soil, surface water, sediments, ground water, and vegetation are sampled and analyzed for explosives and metals related to live fire. Small mammals are also studied to determine ecological impacts. Field protocols are being developed and will be continually refined over the course of the Regional Range Study.

The Army is studying the behavior of military-specific chemical compounds and the potential effects they may have on human health and the environment. The major objective of this project is to identify available data for modeling of chemicals typically associated with munitions and their respective emissions and to compile toxicity benchmarks for these chemicals. Our findings will help develop strategies for the removal or destruction of harmful byproducts, or to design processes and products that minimize environmental impact.

Testing and training ranges produce scrap metals as byproducts of live-fire training. We regularly remove this scrap from the range as part of maintenance operations. Much of the range scrap contains valuable metals that can be recycled and some of this scrap may contain hazardous residues that are handled in compliance with state and Federal requirements. In response to issues associated with the removal of range residue, the Army is chemically characterizing this material and developing best management practices for solid wastes generated from the use of munitions at Army troop training ranges.

We are also investing in research and development to eliminate potentially harmful compounds from our ammunition throughout their lifecycle. The most notable of these efforts is the Army's "Green Bullet." The Army has developed a substitute, non-toxic material (tungsten/tin or tungsten/nylon) for the lead core bullet of our 5.56mm (M–16) round. We have authorized the procurement of approximately 5 million rounds this year and expect to complete our transition to the "Green Bullet" by fiscal year 2005. A similar effort is underway for our other small arms rounds including 7.62mm and 9mm rounds. The Army also recognized the need to eliminate potentially harmful dyes from two smoke grenades and developed alternative materials for these smoke grenades.

CLEAN AIR

The RRPI proposal affecting the application of the Clean Air Act to military training seeks a 3-year window for new operations to come into conformity with State Implementation Plans. As the Army transforms and fields the new weapons systems for the Stryker Brigade Combat Teams and the Objective Force, we require this 3-year window to develop methods of compliance that do not cause unacceptable training impacts. We also recognize that the RRPI Clean Air Act provision is extremely

valuable to our sister Services and will allow them vital time to plan for and execute stationing decisions for their fighter and bomber aircraft.

MARINE MAMMAL PROTECTION ACT

DOD also seeks to clarify the definition of the term "harassment" within the Marine Mammal Protection Act (MMPA) to make it more consistent with what we believe was Congress' original intent. Although the Army has not identified any specific training constraints associated with application of this statute to Army operations, we believe it is a common sense and important modification for all Services. Given the joint nature of military operations, any degradation in the ability of our sister services to conduct realistic training impacts directly upon the Army's ability to effectively execute complex joint operations.

NATIONAL SECURITY EXEMPTIONS

The existence of National Security Exemptions is frequently used as an argument against the legislative clarifications proposed in DOD's RRPI. Although some environmental statutes do allow for national security exemptions, they were never intended as a permanent solution to recurring requirements. Such exemptions are generally reserved for approval at the presidential level, apply only to very specific activities at individual sites, and remain in effect for only 1 year. The readiness activities we are concerned with are not "one-time" events. They are part of the day-to-day training regimen of our soldiers and it is simply unrealistic to expect the military to request exemptions for training that must occur on a regular basis. Rather, we should resolve the basic issue through the clarification of Congress' original intent.

CONCLUSION

The Army is committed to its responsibility as an environmental steward for the 16.5 million acres America entrusts to us. However, we are equally committed to another precious resource that America entrusts to us—her sons and daughters. We are obligated to provide our soldiers with the most realistic training scenarios possible to prepare them for the rigors of war. The Army will never abandon its environmental responsibilities, but we must have land to train.

Unless we can resolve several issues at our key training areas, we face the very real possibility that we will lose some of our critical training areas or, at a minimum, we will be forced to deny our soldiers the opportunity to participate in the number and type of exercises required to learn and retain perishable skills.

For nearly 228 years, the Army has kept its covenant with the American people to fight and win our Nation's wars. In all that time, we have never failed them, and we never will. Building and maintaining an Army is a shared responsibility between Congress, the administration, those in uniform, and the American people. Working with Congress, we will keep the Army ready to meet the challenges of today and tomorrow.

Thank you, Mr. Chairman and distinguished members of the subcommittee, for allowing me to appear before you today. I look forward to working these issues with you.

Senator ENSIGN. Admiral.

STATEMENT OF ADM. WILLIAM J. FALLON, USN, VICE CHIEF OF NAVAL OPERATIONS

Admiral FALLON. Thank you very much, Mr. Chairman, Senator Akaka, Senator Inhofe.

Senator ENSIGN. I am sorry, we had a vote that started. I think we can hear one more statement and then we can go and come back. We will hear from Admiral Fallon and then we will recess and we will come back and reconvene.

Admiral FALLON. Mr. Chairman, distinguished members of the subcommittee, it is truly an honor to be back before the subcommittee to represent the United States Navy to testify on this very, very important matter for us. We need high-quality, realistic training. Without it, we do not feel we are going to be in a position to carry out our responsibilities to organize, train, and equip our forces.

As with General Keane, we have had recent combat experience, and if I could relate a couple of anecdotes, I also had a chance to visit one of our servicemen, a Navy SEAL who was critically wounded in the same battle at Operation Anaconda up on the mountains in Eastern Afghanistan. This young man lost a leg as a result of his wounds, and he spent an overnight on a mountain alone. He survived because of his guts, determination, and the teamwork of his fellow SEALs, and because he was aided by members of all the other armed services that were coordinated in that battle.

He credited his survival to his training. Sometimes we can, I think, forget about the impacts, or do not realize how significant seemingly minor restrictions on training can be, but there is a direct tie here. This SEAL and his fellow team members have only a few places in the United States where they can actually train with live fire. One of them happens to be out in the Chocolate Mountains of California.

Because of critical habitat designations, the places where they can do small arms live-fire training is effectively limited to one sector of the compass. This is not the kind of environment they encountered in Afghanistan. It is not likely to be what they will encounter should they be called upon in Iraq and other places. These are the kinds of things that we do, our people are interested in trying to accommodate both sides of this issue. We often make compromises, but the end result I think has a major impact when our forces go forward around the world.

One other comment, an example from Afghanistan. 80 percent of the sorties that were launched from our aircraft carriers did not have their targets fixed before they came off of the decks of the carriers. They were able to be highly successful in their efforts because of the confidence they had in their training, in the fellows, in the teams that they had practiced with in their live ordnance training prior to that time, and it is these critical competencies that we are very mindful of and seek to retain.

Our forces today are very well-trained. Senator Akaka, you mentioned the high readiness levels that we enjoy, and I will tell you right now that your Navy is in great shape. Witness the number of ships, two-thirds of the Navy, almost 70 percent of our entire Navy is forward-deployed as we sit here today. Their training levels are high, their readiness levels are high, but there are many factors that go into those readiness levels. I will tell you, and tip my hat to you and to your colleagues, the most important factor that I think is at play here is that our people are there in the numbers that we need to sustain the effort that we have ongoing. The reason that we are manned at about 99 percent across-the-board in the Navy today is because our people have made the decision to stay with us. We were able to recruit high-quality people and, more importantly, to retain the people that we have, and that would not happen, first and foremost, without the support that you and Congress have given to them over the past year, and 2 years in particular, I salute you for that.

There are lots of other factors. One of the most critical things is the issue we are facing today. How do we sustain this readiness, and how do we ensure the readiness in the future for our people

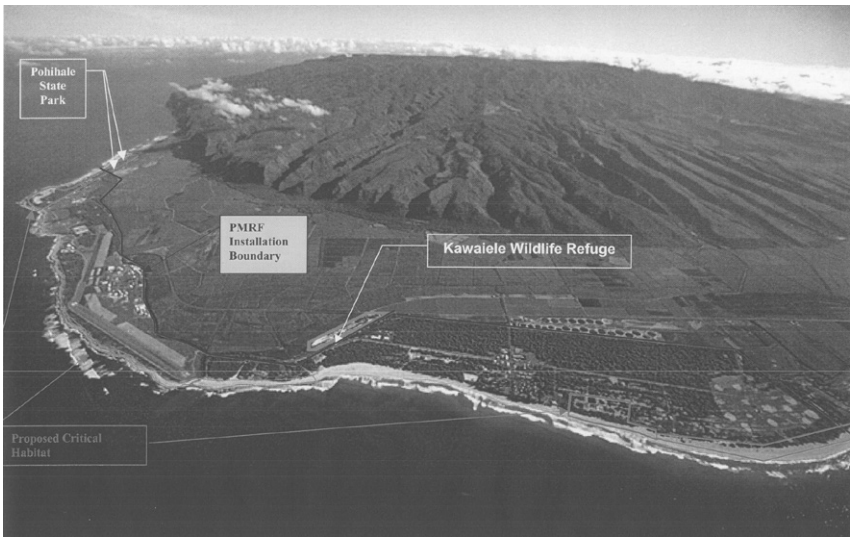
who are going to come behind that, given the environment? The reality today is that we are facing an increasingly challenging task to provide appropriate training because of this constant pressure and encroachment from a whole range of issues, most of them large, when taken individually, but collectively are really beginning to have an effect.

We are committed to maintaining the readiness of our forces, and we are also committed to maintaining the environment. We believe we are good stewards of the environment. We would invite you, and certainly the American people, to come look at our record over the past couple of decades, and I think we will demonstrate pretty clearly not only our good intentions, but the results.

We ask your support today, and we need your help. There are existing laws on the books that are being interpreted in ways unintended, based on our read of the history, which are severely inhibiting our ability to carry out our responsibilities in the readiness area. What we are seeking is a rebalancing of these issues. We intend to react and accommodate both imperatives for ourselves and the American people, but we really need your help.

If I could give you a couple of examples of the challenges we face today, I have a chart up.

[The information referred to follows:]



We have an event that just occurred here in the last week. Out in Hawaii, Senator Akaka, on the Island of Kauai, we have a facility on the west coast—you can see in the picture, I hope you can see this at least to some degree from the podium. This facility is the Pacific Missile Range facility. It is very, very narrow, less than a ½-mile wide, a strip about 7 miles long that runs down the coast.

The issue today is that just last week significant portions of this very narrow coastal strip have been designated a critical habitat for a grass that does not even exist on those lands. This is the kind of thing that we are facing today on an increasing basis.

This facility, I believe, is one of our most critically important installations as we look to the future. This is primarily because, as we attempt to come up with a missile defense system for this Nation, it is ideally located in one of the very few largely uninhabited areas with a large water and land air space adjacent to it in which we can test the long range missiles. The missiles that we think we are going to need and employ. We have had a number of shots here in the last year launching out of this facility, and so encroachment in this area is going to have an immediate and severe effect on that program and other ongoing activities.

One other area which has been severely impacted this year is related to the Marine Mammal Protection Act. We have a system, a new system called low frequency active sonar, or LFA, for short. We have been attempting to test this system for 7½ years.

We have had an environmental impact statement done and concluded an agreement with the regulatory agencies. We have currently been enjoined by a court which has effectively stopped, or actually severely restricted the training. We have a limited period in which we can do some testing, but for example, the area that we had already agreed in the environmental impact statement has been reduced by 90 percent. We are restricted to severe limits on what we need to do.

This system is important because in today's world, the submarine threats that we face are different from what they were in the Cold War. We are faced now with very, very quiet diesel submarines operating coast to coast. The way we used to go about detecting these submarines primarily was by passive acoustic means, where we would listen, pick up these sounds of these moving, typically nuclear submarines. These new boats operate in a very different manner. They are very quiet. They sit still, and we have found that one of the very few ways that we can find them is to actively seek them, and hence LFA. We are not going to be able to bring this forward if we do not get some help in this area right now, and we are severely restricted.

So we think we really need to provide comprehensive training. We are asking for your help to try and rebalance this. I thank you for your attention. I have a written statement that I have submitted for the record, and I stand by to answer your questions when we reconvene. Thank you, sir.

[The prepared statement of Admiral Fallon follows:]

PREPARED STATEMENT BY ADM. WILLIAM J. FALLON, USN

INTRODUCTION

Mr. Chairman and members of the subcommittee, thank you for this opportunity to share my views regarding the growing negative effects of encroachment on military readiness and training prior to sending American sailors into combat. I appreciate your attention to this vital and timely topic, which is of great importance to national security and the environment.

READINESS

I am pleased to report today that the readiness of the Navy is excellent, as evidenced by the large percentage of our fleet that is forward deployed in support of the global war on terrorism and defending our vital interests elsewhere in the world. Indeed, 208 of our 305 ships—representing fully 68 percent of our force—are underway, including 7 aircraft carrier battle groups, 10 amphibious ready groups,

and numerous other combat and supporting units, totaling over 76,000 sailors. Most of these units are preparing for possible combat operations in Iraq.

The high quality of training we provide to these sailors is largely unseen and often taken for granted, yet it is an essential element of their impressive level of combat readiness. Clearly, before this Nation sends its most precious asset—its young men and women—into harm's way, we must be uncompromising in our obligation to prepare them to fight, survive, and win. This, in turn, demands the most realistic and comprehensive training we can provide.

Realistic, demanding training has proven key to survival in combat time and again. For example, data from World Wars I and II indicates that aviators who survive their first five combat engagements are likely to survive the war. Similarly, realistic training greatly increases our combat effectiveness. The ratio of enemy aircraft shot down by U.S. aircraft in Vietnam improved to 13-to-1 from less than 1-to-1 after the Navy established its Fighter Weapons School, popularly known as TOPGUN. More recent data shows aircrews who receive realistic training in the delivery of precision-guided munitions have twice the hit-to-miss ratio as those who do not receive such training.

Similar training demands also exist at sea. New ultra-quiet diesel-electric submarines armed with deadly torpedoes and cruise missiles are proliferating widely. New technologies such as these could significantly threaten our fleet as we deploy around the world to assure access for joint forces, project power from the sea, and maintain open sea-lanes for trade. To successfully defend against such threats, our sailors must train realistically with the latest technology, including next-generation passive and active sonars.

We rely on full use of our ranges, facilities, and advanced technology to ensure our forces have a decisive advantage in conflict. As we prepare for possible conflict today and look to the future, I am increasingly concerned about the growing challenges in our ability to ensure our forces receive the necessary training with the weapon and sensor systems they will employ in combat. Training and testing on our ranges is increasingly constrained by encroachment that reduces the number of training days, detracts from training realism, causes temporary or permanent loss of range access, decreases scheduling flexibility, and drives up costs.

Encroachment issues have increased significantly over the past three decades. Training areas that were originally located in isolated areas are today surrounded by recreational facilities, urban and suburban sprawl, and constrained by state and Federal environmental laws and regulations and cumbersome permitting processes which negatively impact our ability to train.

NAVY'S ENVIRONMENTAL STEWARDSHIP

Meanwhile, the Navy continues its commitment to good stewardship of the environment. Indeed, our culture reflects this, as the men and women manning our fleet grew up in a generation with a keen awareness of environmental issues. The Navy environmental budget request for fiscal year 2004 totals $1.0 billion. This funding supports environmental compliance and conservation, pollution prevention, environmental research, the development of new technologies, and environmental cleanup at Active and Reserve bases. It is precisely as a result of that stewardship, as opposed to commercial exploitation of private land—particularly along the Nation's coasts—that military lands present favorable habitats for plants and wildlife, including many protected species. Ironically, our own successful stewardship programs have helped increase the number of protected species on our ranges, which has resulted in less training flexibility.

- San Clemente Island, CA: Navy spends $2.5 million per year on habitat preservation and a captive breeding program that increased the number of endangered Loggerhead Shrike 12 fold.
- Navy spent $400 million to develop, install, and maintain plastic waste processors on all surface ships to avoid discharging plastics overboard.
- American Bird Conservancy recently hailed DOD and Navy's participation in the Partners in Flight initiative, praising its efforts to "defend the stepping stones of bird migration."
- Navy is spending $7 million annually pursuing various multi-year marine mammal research projects that include efforts to detect, classify, and monitor behaviors, habitat, and migration routes of marine mammal populations using underwater sound propagation.

BALANCING MILITARY READINESS AND THE ENVIRONMENT

Sustaining military readiness today has become increasingly difficult because, over time, a number of factors, including urban sprawl, regulations, litigation, and

our own accommodations to demands from courts, regulatory agencies and special interest groups have cumulatively diminished the Navy's ability to effectively train and test systems. Among the greatest threats to proper military training are laws that include ambiguous provisions and cumbersome process requirements that result in unintended negative consequences, which inhibit realistic, timely and comprehensive training. These laws, and the court decisions which have interpreted and expanded them, have resulted in Federal courts and regulatory agencies curtailing essential training and weapons systems testing, notwithstanding the "best available science" supportive of the Navy's ability to train without harm to the environment. As a result, military readiness requirements and environmental protection are out of balance.

The Department of Defense's RRPI proposes modest amendments to several environmental laws which will help restore the balance, meeting our national security needs and maintaining good stewardship of the environment. I ask for your help to address the challenges of most concern to the Navy in the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA).

MARINE MAMMAL PROTECTION ACT

Last year before the Senate Environment and Public Works Committee I testified that the definition of the term "harassment" of marine mammals in the MMPA was a source of confusion because the definition is tied to vague and ambiguous terms such as "annoyance" and "potential to disturb." These terms arguably apply to even the slightest changes in marine mammal behavior and subject Navy training and testing at sea to the scrutiny and control of courts, regulatory agencies and special interests groups, even in the absence of evidence of adverse impacts on the marine mammals. The severity of the impact on Navy training and testing is strikingly more apparent now.

In November 2002, a Federal district judge in San Francisco presiding over a case brought by environmental groups alleging violation of the MMPA, National Environmental Policy Act (NEPA), and the ESA issued a court order that strictly limits employment of the Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) sonar system. This advanced system is designed to detect and track the growing number of quiet diesel submarines possessed by nations which could threaten our vital national security. After highlighting what the court viewed as flaws in regulatory agency implementation of the MMPA and ESA, and despite the Navy's unprecedented efforts to comply with NEPA, the court issued a preliminary injunction restricting Navy's deployment of SURTASS LFA to a small area in the western Pacific. As a result of the inherent structural flaws in the laws themselves as applied to world-wide military readiness activities, the Navy now finds the deployment and operation of one of our most important national security assets constrained by a Federal court as a result of litigation brought by environmental groups that is specifically designed to deny the Navy use of the system. Future testing and employment of SURTASS LFA (and potentially other Navy training and testing programs) are in jeopardy because the MMPA was originally enacted to protect whales from commercial exploitation and to prevent dolphins and other marine mammals from accidental death or injury during commercial fishing operations and did not address military readiness concerns.

The Navy has immediate need for SURTASS LFA. The Chief of Naval Operations has stated that Anti-Submarine Warfare (ASW) is essential to sea control and maritime dominance. Many nations are capable of employing submarines to deny access or significantly delay execution of joint and coalition operations in support of our vital interests. The submarine threat today is real and in some ways has become more challenging than during the Cold War. Of the approximately 500 non-U.S. submarines in the world, almost half that number are operated by non-allied nations. Of greatest concern are the new ultra-quiet diesel-electric submarines armed with deadly torpedoes and cruise missiles being produced or acquired by the People's Republic of China, Iran, and North Korea.

SURTASS LFA Scientific Research Effort

- Evaluated affects of low frequency sound on marine species
- Marine mammal research involved world-renowned experts and representatives from Cornell University, University of Washington, University of California Santa Cruz, Hubbs Sea World Research Institute, Marine Acoustics, Inc., National Marine Fisheries Service, Marine Mammal Commission, Harvard Medical School, Bodega Marine Laboratory, Woods Hole Oceanographic Institution, Scripps Institution of Oceanography, Raytheon, Office of Naval Research, Naval Facilities Engineering Service Center

- Scientific Research Project alone, which involved 3 phases over 2 years, cost $10 million
- *Scientific effort concluded that LFA could be operated safely*

These diesel submarines are very difficult to detect outside the range at which they can launch attacks against U.S. and allied ships using passive sonar systems. Active systems like SURTASS LFA, when used in conjunction with other anti-submarine sensor and weapons systems, are necessary to detect, locate and destroy or avoid hostile submarines before they close within range of our forces. To ensure our sailors are properly prepared to counter this growing submarine threat, we must make certain they train with the best systems available.

In meeting its obligations under current environmental laws for deploying SURTASS LFA, the Navy undertook the most comprehensive and exhaustive environmental planning and associated scientific research effort ever conducted to support a major seagoing combat system. Working cooperatively with the National Marine Fisheries Service (NMFS)—the Federal regulatory agency tasked with protection and preservation of marine mammals—the Navy completed an Environmental Impact Statement (EIS), developed mitigation measures for protecting the environment, and obtained all required permits pursuant to the MMPA and ESA. The scientific research and EIS involved extensive participation by independent scientists from a large number of laboratories and academic organizations. The Navy also undertook a wide-ranging effort to involve the public in the EIS process through an unprecedented program of public meetings and outreach for the Navy. Based on this monumental effort, NMFS concluded that the planned SURTASS LFA operations would have negligible impacts on marine mammals.

Despite this extraordinary effort in terms of time, money, and resources to comply with existing environmental laws, Navy now finds itself with a Federal court order defining the limits of operation of a key system needed to address a clear, present and growing national security threat. Notably, there is no evidence of any negative impact on marine mammals in the one area in which we are currently operating.

EIS Outreach

- Notice of Intent published in 1996
- 3 public scoping meetings
- 8 public outreach meetings
- 3 public hearings on the Draft EIS (DEIS)
- DEIS distributed to Federal, State, and local government agencies, citizen groups, and organizations, and 17 public libraries
- Over 1,000 public comments received on DEIS
- Record of Decision signed in June 2002

While recognizing the national security need for SURTASS LFA, the court nevertheless felt constrained by the broad language of a law which was not drafted with application to military readiness activities in mind. Notwithstanding the plaintiffs' failure to produce scientific evidence contradicting the independent scientific research sponsored by the Navy in coordination with numerous outside experts that the system could be operated with negligible harm to marine mammals, the court opined that Navy training must be restricted. In reaching this conclusion, the court noted that under the definition of harassment, the phrase "potential to disturb" hinged on the word "potential" and extended to individual animals. Quoting from the opinion, the judge said, "In fact, by focusing on potential harassment, the statute appears to consider all the animals in a population to be harassed if there is the potential for the act to disturb the behavior patterns of the most sensitive individual in the group." (Emphasis added.) Interpreting the law this broadly would require authorization (permits) for harassment of potentially hundreds, if not thousands, of marine mammals based on the benign behavioral responses of one or two of the most sensitive animals.

Highlighting how difficult it would be to apply the MMPA to world-wide military readiness activities under such a broad interpretation of harassment, the court pointed out that a separate structural flaw in the MMPA limits permits for harassment to no more than a "small number" of marine mammals. Overturning the regulatory agency's decades-old interpretation of the MMPA, the court also said that the "small number" of animals affected cannot be defined in terms of whether there would be negligible impact on the species, but rather is an absolute number that must be determined to be "small." The court's far-reaching opinion underscores shortcomings in the MMPA which apply to any world-wide military readiness activity, or any grouping of military training activities that might be submitted for an overall review of impact on the environment.

In addition to the decision to restrict deployment of the SURTASS LFA system, two other recent decisions by different Federal district courts have stopped scientific

research due to concerns about acoustic impacts to marine mammals. In one case, the court enjoined seismic air gun research on geological fault lines conducted by the National Science Foundation off the coast of Mexico based on the court's concern that the research may be harming marine mammals in violation of the MMPA and NEPA. In another case, a court enjoined a Navy funded research project proposed by the Woods Hole Oceanographic Institute designed to study the effectiveness of a high frequency detection sonar (similar to a commercial fish finder) in detecting migrating Grey Whales off the coast of California. The court's order stopped research on the development of a promising mitigation measure to avoid harming marine mammals from acoustic sources.

To address these issues, I ask for your consideration of the narrowly focused amendments to the MMPA proposed in the National Defense Authorization Act for Fiscal Year 2004, which has now been transmitted by the President to Congress. Our proposal to clarify the definition of "harassment" and allow authorization of activities under the MMPA which would have a negligible impact on a stock or species follows recommendations of the National Research Council of the National Academy of Sciences, and would reinstate regulatory policies adopted prior to or during the Clinton administration. Our proposal to include a national security exception, similar to that in the Endangered Species Act, is directly responsive to numerous comments we received from environmental organizations commenting on national security exemptions in environmental laws.

ENDANGERED SPECIES ACT (ESA)

Negative impacts on military readiness activities have also resulted from the ESA. For example, the designation of land used for military training as critical habitat under the ESA can undermine the primary purpose for which these lands were set aside. Federal courts have held that critical habitat is intended not only as a safe haven for species survival, but as a cradle for species recovery—even if the species is not currently present on the land. Under the ESA, Federal agencies are required to ensure that their activities do not adversely modify designated habitats. Hence designation as critical habitat can drastically limit land uses by placing inflexible restrictions on land that has been dedicated by our Nation to maintain military readiness.

For example, in 1996, when 40 percent of the Chocolate Mountain Aerial Gunnery Range was designated as critical habitat, Navy SEAL training was negatively impacted. Before designation, Navy SEALs conducted realistic live-fire defense and attack training with multiple avenues of approach. Today, Navy SEALs training at this important range must restrict firing weapons to a narrow sector away from the critical habitat, undermining training realism. The ability to react to hostile forces coming from any direction is essential to a combat-effective SEAL and the range cannot provide that training under the critical habitat restrictions.

Due to environmental restrictions and encroachment from other sources (e.g., urban sprawl, State and Federal-designated recreation areas and access limitations) at Camp Pendleton, California where the Navy and Marine Corps jointly train, only 1,500 meters of the 17 miles of beach is available to practice amphibious landings and movement from the beach using the full range of Marine Corps combat vehicles. Rehearsal of standard line abreast (side-by-side) formations of landing craft—to prevent the enemy from being able to concentrate fire on a specific beach location—has been dropped to mitigate potential disruption to birds and their nests on the beach. Even within this 1,500-meter beach, all military vehicles are restricted to designated roads, and digging and earth moving is constrained to very limited areas.

Similar ESA-based restrictions have led to significant curtailment of Navy training at other important locations, such as the Naval Amphibious Base at Coronado, California, which has been home to Navy frogmen and SEALs since their inception in World War II. All of their basic training and many necessary skills (from diving to hydrographic reconnaissance) are taught on its beaches and in the bays surrounding the base. A substantial amount of the SEAL training conducted at this base has had to be relocated as a result of requirements to mark and avoid ESA-protected bird nests on the beach that have flourished under dedicated Navy stewardship. At Tinian in the Marianas Islands in the Pacific, ESA-based restrictions to protect sea turtles and bird nesting areas resulted in a decision this year to cancel use of air cushion landing craft during a major fleet exercise, although this is the best heavy lift capability the Navy has to support Marine landings.

In some cases, the challenge of critical habitat designation has become an issue even when the relevant endangered species are not currently present. Under litigation pressure brought by environmental groups in Federal court, the U.S. Fish and

Wildlife Service (USFWS) has proposed part of Guam as critical habitat for the Marianas Crow, Marianas Kingfisher, and Marianas Fruit Bat. The areas under consideration for designation are currently used as magazines for forward deployed ordnance storage, jungle training areas (special operations forces), and low-level aviation training areas by all military services. None of the animals for which the habitat would be designated currently live on the land. Just last month USFWS designated critical habitat for a species of grass at the Pacific Missile Range Facility (PMRF) in Hawaii. PMRF is a long, narrow strip of land on Kauai, critical to the testing and evaluation of weapons, and capable of supporting a broad range of training and testing, including amphibious landings and Missile Defense Agency efforts to rapidly achieve an operational ballistic missile defense capability. This designation, like those proposed on Guam, establishes critical habit for species which do not even exist there. While the Guam and Hawaii critical habitat designations are noteworthy current examples, the real challenge is that special interest groups will use litigation to force designation of more and more military land as critical habitat even as other training alternatives become more scarce due to commercial development and urban growth.

The administration has proposed a legislative solution to this challenge which would specify that INRMPs be used in lieu of designating critical habitat. DOD is already obligated under the Sikes Act to develop INRMPs for lands under military control. INRMPs address management of natural resources in the context of the missions for which the lands were placed under control of the military services. INRMPs are prepared in cooperation with the USFWS and State agencies, and these agencies recommend ways for DOD installations to better provide for species conservation and recovery.

INRMPs are an effective tool for protecting the environment. For example, at Naval Amphibious Base Coronado, the Navy is spending about $720,000 per year on conservation and management programs for the Western Snowy Plover and Least Tern, endangered birds that nest in that area. That effort has successfully increased the number of Least Tern nests from 187 to 825 (over 4 times as many in 9 years) and the number of Western Snowy Plover nests from 7 to 99 (nearly 14 times as many in 9 years). Similar good environmental stewardship by the Navy has been demonstrated at Vieques Island, Puerto Rico, where over 17,000 sea turtle eggs have been incubated and returned to the environment during a 10-year program. Vieques is only one part of a Navy-wide sea-turtle conservation effort in which we invest about $1 million a year.

Adopting the RRPI would better balance training needs with the protection of threatened or endangered species. Changing the law to clearly establish that an approved INRMP provides sufficient species protection—rather than designating more and more military land as critical habitats—would retain flexibility for the Services in places where training needs and endangered species protection must coexist.

LEGISLATIVE PROPOSALS

I would like to call your attention to several other important legislative proposals which would, if enacted, enable the Navy to meet both its legal obligations to provide ready forces under Title 10 and to conserve environmental resources.

The Readiness and Range Preservation Initiative is a top Department of Defense and Navy priority. It would provide legislative relief for military readiness activities under various environmental statutes without compromising environmental protection. Each of these provisions would provide a significant benefit to readiness at a negligible cost to the environment.

- Modifications to MMPA which would clarify the MMPA's definition of "harassment" as a biologically significant response and authorize permits under the MMPA when there is a negligible impact on the stock of marine mammals.
- Modifications to ESA so that an approved INRMP for management of all natural resources now required under the Sikes Act precludes designation of critical habitat on military lands.
- Clarifying and confirming the longstanding regulatory policy of EPA and the States that firing of munitions on an operational range does not constitute a "release" under the Superfund statute or the creation of solid waste under the RCRA—a commonsense policy now being challenged in court. If the challenges are successful, such an interpretation could inhibit or even preclude live-fire training on our existing operational ranges.
- Provide modest additional flexibility under the Clean Air Act to the activities and the States in accommodating new military readiness activities like beddown of new weapons systems.

SUMMARY

We face an enemy today which threatens our way of life. The President has directed us to "be ready" to face this challenge. To fulfill this directive, we must conduct comprehensive and realistic combat training—arming our sailors and other servicemen and women with experience necessary to safeguard their lives and our national interests. This requires full use of our ranges, operating areas, and weapon systems. The Navy has demonstrated its able stewardship of our natural resources, and we will continue to promote the health of lands entrusted to our care. We recognize our responsibility to the Nation in both of these areas and seek your assistance in balancing these two requirements.

I thank the subcommittee for your continued strong support of our Navy and I ask for your consideration of the RRPI legislation. Passage of RRPI will help the Services sustain military readiness today in this time of war and in the future. It will also support our on-going efforts at environmental conservation. Achieving the best balance of these national imperatives is in the interests of all Americans, and your Navy is committed to achieving these goals.

Senator ENSIGN. We will be back in a few minutes. [Recess.]

Next we will hear from General Nyland.

STATEMENT OF GEN. WILLIAM L. NYLAND, USMC, ASSISTANT COMMANDANT OF THE MARINE CORPS

General NYLAND. Thank you, Mr. Chairman. Chairman Ensign, members of the subcommittee, it is certainly my honor to appear before you today to provide the Marine Corps' position on encroachment and encourage Congress to pass the Department's Readiness and Range Preservation Initiative.

Environmental encroachment directly impacts the ability of our bases, stations, and ranges to support the readiness training of our servicemen and women. I greatly appreciate this subcommittee's willingness and commitment to address this truly national issue with the holistic view that only the Congress of our great Nation can provide. I thank you for your continuous support of our Nation's services, and most particularly for your Corps of Marines.

I look forward to answering any questions you may have.

[The prepared statement of General Nyland follows:]

PREPARED STATEMENT BY GEN. WILLIAM L. NYLAND, USMC

Chairman Ensign, Senator Akaka, and members of the subcommittee; thank you for the opportunity to speak with you concerning the impacts of encroachment on Marine Corps training ranges, and the Department's legislation known as the Readiness and Range Preservation Initiative. Your efforts on behalf of our men and women in uniform will ensure that the Nation's military remains ready and that our service members and their families enjoy the quality of life that they deserve. As General Mike Williams, the Assistant Commandant of the Marine Corps before me, accurately noted: good quality of life begins with realistic training because realistic training results in success on the battlefield and success on the battlefield is the only way your marines can return home safely to their families.

I welcome the opportunity to offer testimony as the subcommittee considers the implications of encroachment. The Readiness and Range Preservation Initiative is fundamentally important to the Nation because encroachment is on the rise. If left unchecked, encroachment will detrimentally impact the mission of our bases, stations, and ranges in the near term and threaten our future military readiness in the long term. At stake for your Marine Corps is the cost of success in combat. We must do all in our power to ensure that marines, members of our sister services, and service member families do not pay an unnecessarily high price for that success. Marines must train, as they will fight; to do that requires unencumbered access to sea, land, and airspace to properly conduct this essential training.

During the last 24 months, service witnesses have appeared before Congress to speak to encroachment issues at six different hearings: this subcommittee held a hearing on March 20, 2001; the House Committee on Government Reform held hearings on May 9, 2001 and May 16, 2002; the Subcommittee on Military Readiness

of the House Armed Services Committee held hearings on May 22, 2001 and March 8, 2002; and the Senate Environment and Public Works Committee held a hearing on July 9, 2002. The Readiness and Range Preservation Initiative was introduced and debated during the course of these hearings. Marine Corps' witnesses, among others, were afforded the opportunity to articulate in detail their position on the issue of encroachment.

As a result of these efforts, the 107th Congress enacted a provision to clarify Department of Defense responsibilities under the Migratory Bird Treaty Act. Litigation had called into question our responsibilities under this act, and threatened to halt military training necessary to be combat ready. Congress took action to remove this litigation threat, and I thank Congress for this effort. In accordance with last year's legislation, we will continue with our efforts to identify measures to monitor, minimize and mitigate—to the extent practicable, any adverse impacts to migratory birds that may be attributable to military readiness activities. Further, we will work with the Interior Department as they develop and prescribe the regulations Congress directed.

The 107th Congress also granted authority to the military departments to partner with non-governmental organizations, and State and local governments to acquire land adjacent/proximate to military installations to prevent incompatible development, and to convey surplus real property for natural resource conservation. I would like to take this opportunity to advise you as to what we have already done with this new authority. I believe our efforts demonstrate that we take the encroachment threat seriously.

The Marine Corps is actively pursuing use of the new authority provided by the 107th Congress; and in fact, Camp Lejeune has already utilized the authority. The installation is a member of the Onslow Bight Forum, a group dedicated to protecting the natural heritage of coastal North Carolina. Participants in the Onslow Bight include The Nature Conservancy and other non-governmental organizations, several North Carolina state agencies, the U.S. Fish and Wildlife Service and the U.S. Forest Service. Recently, 2,500 acres adjacent to the Camp Lejeune tank and rifle ranges became available for purchase, and was the subject of interest by a developer hoping to construct 3,000 housing units. The land was purchased by The Nature Conservancy (with partial funding provided by the Marine Corps) and will be transferred to the North Carolina Wildlife Resources Commission for inclusion into the State hunting lands system. The Marine Corps, in exchange for its funding contribution, received a restrictive use easement that will prohibit any land use or development of the parcel that is incompatible with Marine Corps training requirements. The Onslow Bight Forum is continuing to search for other parcels that further the mutual goals of its members.

Camp Pendleton, California is also actively engaged in a similar partnership effort. Camp Pendleton is participating in the South Coast Conservation Forum, a group whose goal is to acquire lands that will be set aside to protect as many of the 50 listed species in the area as possible. Members of this group include Orange, Riverside and San Diego counties, and non-governmental conservation organizations such as The Nature Conservancy, Trust for Public Land, Sierra Club and Wildlife Habitat League. There may be opportunities to purchase buffer areas adjacent to the north, east and south sides of Camp Pendleton in order to preserve watersheds, protect natural habitat and avoid urbanization.

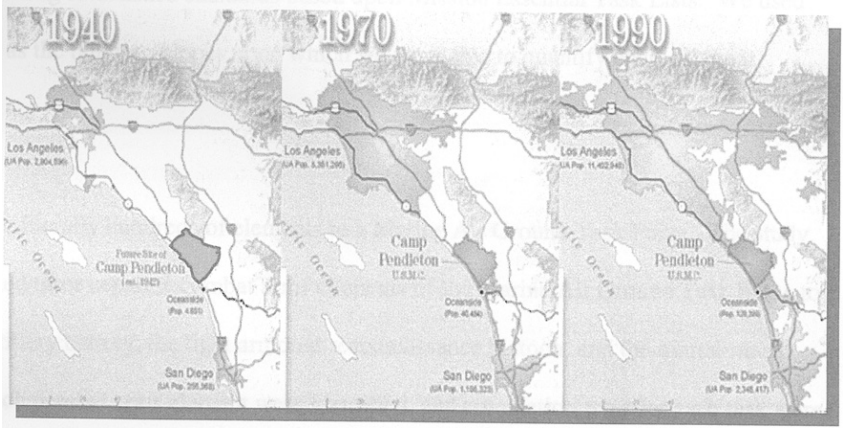
The efforts of the 107th Congress, and our subsequent initiatives within the Marine Corps, have been very beneficial. Much more, however, must still be done. We continue to face threats to our training capabilities focused on environmental media the 107th Congress did not address. This year, therefore, the administration is reintroducing legislative clarifications for five provisions not approved in last year's Readiness and Range Preservation Initiative. These clarifications will:

- provide for our integrated natural resource management plans to obviate the need for critical habitat designation under the Endangered Species Act;
- clarify the definition of "harassment" under the Marine Mammal Protection Act;
- provide needed flexibility in working with States regarding the conformity requirement of the Clean Air Act; and
- clarify the role of the Resource Conservation and Recovery Act and the Comprehensive Environmental Response, Compensation, and Liability Act to apply when a range closes to provide a clear demarcation for the application of these laws.

The challenge of encroachment is clear, as is the importance of this hearing and the proposed initiative. The Readiness and Range Preservation Initiative is narrowly tailored to protect military readiness activities, and does not purport to ad-

dress the entire scope of Department of Defense activities. The thrust of the Initiative is to clarify rather than to roll back existing regulation, and each of the Initiative's proposals would benefit each of the military services to varying degrees. For the Marine Corps, endangered species issues are at the forefront of our encroachment concerns. The Readiness and Range Preservation Initiative proposal that addresses critical habitat, therefore, is the provision that would provide the Marine Corps with the greatest training value. (I will address our endangered species issues in more detail shortly.) The absolute necessity of maintaining military readiness is beyond debate, and readiness depends upon quality training that realistically simulates combat conditions. The issue, then, is how to balance the demands of national security with environmental stewardship, which at times are competing but are often complementary.

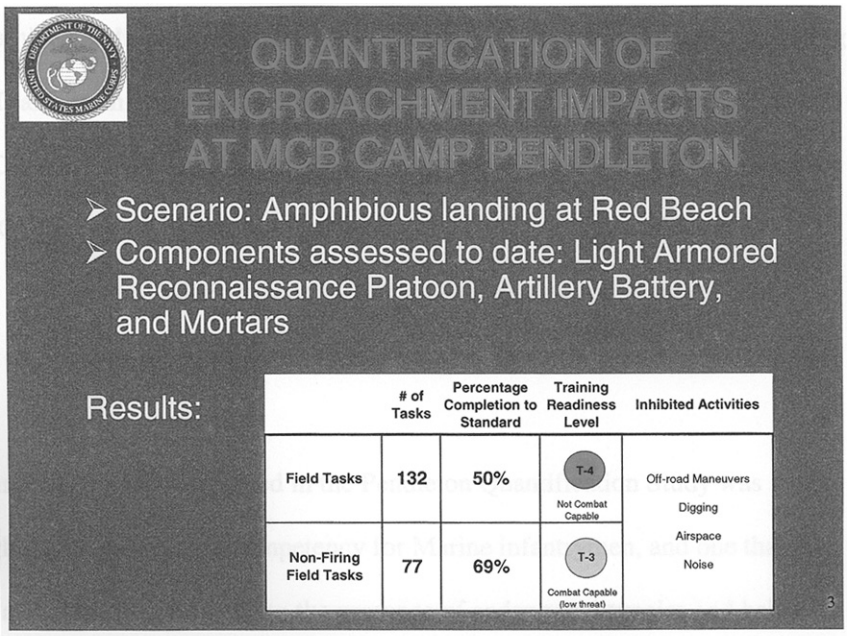
Most of the Marine Corps' bases and stations were established in remote areas prior to or during World War II. Since then significant urban development has occurred around many of these installations. At the same time, our warfighting doctrine, weapons platforms, and tactics have evolved to counter new threats. The Marine Corps now requires greater standoff distances and larger maneuver areas. Simultaneously, our access to training resources is becoming more constrained, primarily as a result of growing populations around our bases and stations. The dramatic urban development near many of our installations has had numerous unintended consequences. For example, wildlife (often threatened or endangered species) seek out our installations, as they are often the last remaining open spaces in areas otherwise overtaken by human habitation and use.



Previous testimony at the hearings referenced above provided compelling statements regarding encroachment. The Marine Corps recognized, however, that evidence of negative encroachment impacts, though persuasive, were largely anecdotal. Consequently, the Marine Corps set out to establish quantitative data regarding this issue. Selecting Marine Corps Base Camp Pendleton, California as the subject of the study, we examined encroachment impacts on a Marine Air Ground Task Force during the conduct of an amphibious landing. We relied upon established standards to measure the proficiency of marines based upon the Individual Training Standards of their military occupational specialties. The performance of Marine units was assessed against long established standards based upon Mission Essential Task Lists. We used these standards as the building blocks upon which we were able to quantify encroachment impacts.

There are literally hundreds of elements to a Marine Air Ground Task Force. The study, therefore, selected three separate combat arms elements of the Marine Air Ground Task Force to examine: the artillery battery; the light armored reconnaissance platoon; and the mortar man. The tasks for each combat arms element were identified, and completion rates for each task were evaluated. Given that safety during training is paramount, and therefore certain types of training can be limited for safety purposes, the study concentrated on non-firing tasks (defined as all tasks that did not involve the use of live ammunition or explosives). In doing so, we avoided any concern that the study would confuse safety with encroachment issues.

The initial results of the Camp Pendleton Quantification Study were surprising. The three combat arms elements were able to accomplish only 69 percent of established standards for non-firing field training. The combat engineer Military Occupational Specialty was also examined in the context of the scenario, as the engineers have important tasks in support of the three combat arms elements. They were able to accomplish 77 percent of established standards for non-firing field training. In the study, endangered species was the largest contributing encroachment factor. Endangered species and their habitat, for example, significantly constrain individual marines and Marine units from digging fighting positions, gun emplacements, vehicle defilade, and for combat engineers earthmoving and vehicle recovery activities. These findings reinforce my comment above that for the Marine Corps, endangered species issues are at the forefront of our encroachment debate.



SORTS Readiness Percentage Thresholds for each T-Level	
>= 85%	T-1
>= 70%	T-2
>= 55%	T-3
< 55%	T-4

Points	USMC Readiness Categories
10	Fully Combat Qualified
8.5-9.9	Combat Qualified (high threat)
7.0-8.4	Combat Ready (medium threat)
6.0-6.9	Combat Capable (low threat)
< 6	Not Combat Capable

A second phase of this study is on the verge of completion. A final report of some 650 tasks is due to the Commanding General, Marine Corps Base, Camp Pendleton later this month. The second phase examined additional elements of the Marine Air Ground Task Force, including a Battalion Landing Team, an Infantry Company, the Cobra Attack Helicopter, and an Assault Amphibian Vehicle Crewman. I can report that the second phase's initial findings are consistent with the first phase. On average, a 70 percent completion rate applies to these additional elements of a Marine Air Ground Task Force conducting an amphibious operation at Camp Pendleton.

One of the hundreds of tasks examined in the Pendleton Quantification Study was simple digging. Digging fighting holes is a core competency for Marine infantrymen, and one that is severely constrained at Camp Pendleton due to the presence of endangered species and habitat, cultural resources, or wetlands. To the layman, it may

sound strange to suggest that digging is a technique that must be practiced; however, digging must be second nature in combat.

An historical example will prove my point. During the Chosin Reservoir campaign of the Korean War, a Marine infantry company occupied a mountain pass for what was to have been a brief rest before advancing. Beginning that night, and for several days, they came under constant attack. Eventually, the entire 1st Marine Division fought back through that pass. Years later, the company commander recalled:

> I'll never forget how close we came to not digging in that first night. It seemed almost foolish at the time, because we expected to move off the position early the next morning. But something made me order them to break out those entrenching tools, even though it was growing dark and we were dead tired. If we hadn't, we would have been wiped out. We would not have survived that first night. [Martin Russ, Breakout: The Chosin Reservoir Campaign, page 316]

The "something" to which the company commander refers is realistic training, which was then—unlike now, unconstrained at Camp Pendleton. His marines had been trained to dig their fighting holes as an automatic response in combat conditions. That response came as a result of repetition and reinforcement in a training environment; repetition and reinforcement that is not fully available today.

Returning to the Pendleton Quantification Study for 1 minute, I would like to note that the study is not meant to identify the combat readiness of any particular Marine unit. Instead, the study is a report card on Camp Pendleton's ability to provide the training environment necessary for marines to complete their missions to task or standard. Marines who cannot get their training at Camp Pendleton must go elsewhere to train. Naturally, there are associated costs here, not only in terms of money but also in quality of life.

Evidence of negative encroachment impacts is not limited to the Camp Pendleton Quantification Study. Perhaps the most sweeping example within the Marine Corps is a proposal—made in calendar year 2000, to designate critical habitat on 57 percent of the 125,000-acre Camp Pendleton and 65 percent of the 23,000-acre Marine Corps Air Station Miramar. The Marine Corps worked with the USFWS to develop a scientifically and legally based policy that precluded the need to designate critical habitat on Miramar, and precluded the designation of critical habitat on the vast majority of Camp Pendleton. This policy recognized that Marine Corps Integrated Natural Resource Management Plans, developed in coordination with the USFWS, can provide the special management necessary for endangered species, and can preclude the need to designate critical habitat. Special interest groups have now challenged the USFWS's final rule in court. With the consent of the court, the USFWS withdrew their final rule. The USFWS is currently reconsidering critical habitat designation, and is required to issue a new draft rule in April 2003.

Meanwhile, the USFWS has been applying their policy to other Federal agencies with acceptable natural resource management plans. The USFWS applied the policy, for example, to a Forest Service management plan on lands that are habitat for the Mexican Spotted Owl. In January 2003, a Federal district court in Arizona held that the USFWS's policy, as it was applied to the Forest Service management plan, was "knowingly unlawful." The Readiness and Range Preservation Initiative has within it a provision that would codify current USFWS practice. Given recent judicial opinions, codification is necessary to confirm for the courts that the USFWS's policy is lawful. Absent the passage of this specific provision, environmental litigation may still cause over 65 percent of Marine Corps Air Station Miramar and 57 percent of Camp Pendleton to be designated critical habitat.

As the legislative response to the Pendleton/Miramar critical habitat proposals demonstrate, clarification of existing law in accordance with administration policy is the purpose of the Readiness and Range Preservation Initiative. The intent of the Initiative is not to roll back the environmental stewardship responsibilities of the Armed Forces. Rather, by clarifying relevant environmental statutes, the Initiative will enhance the ability of the Armed Forces to train properly for combat.

There are those who note that the military services already have limited legislative exemptions available in some of the environmental statutes; they note that these exemptions are seldom used, and suggest that they are the appropriate venue under which the military should address encroachment impacts. We disagree. A national security exemption, such as the one available under the Endangered Species Act, is like the tool-box in your car. Exemptions, like the automobile tool-box, are necessary for emergency situations; they should not, however, be necessary every day for the daily commute to work. We seek legislative clarification for the day-to-day functioning of our military installations. National security exemptions are not the appropriate method to deal with daily operations.

While we seek legislative clarification for the day-to-day functioning of our military installations, our effort does not address every function of our military installations. A military installation can be viewed as a "tale of two cities." On the one hand, our installations are comparable to many medium-sized cities, complete with populations of 50,000 residents, schools, wastewater treatment facilities, power plants, and a hospital. There are environmental responsibilities associated with each of these amenities, and we seek no relief from any of these responsibilities. A military installation, however, is also a military combat test and training center. The primary purpose of the military installation is to promote military readiness. No civilian city has a similar purpose. It is within the venue of military readiness that we seek to address the impact of encroachment on combat readiness activities. Our goal is to establish the appropriate balance between our Title X responsibility to be combat ready at all times, and our additional environmental compliance and stewardship responsibilities. The Initiative's provisions are focused solely on readiness activities. Marine Corps activities unrelated to combat remain unchanged.

Encroachment has grown over time, and while each issue taken individually may not seem detrimental to our training mission, it is their cumulative effect, and the predictable increase in these encroachment pressures that has lead the Department of Defense to seek the clarifications of existing statutes.

The provisions contained in the Readiness and Range Preservation Initiative are primarily designed to maintain the status quo so that our training can continue at its current pace. For example, the critical habitat provision codifies current USFWS practice. This practice holds that Integrated Natural Resource Management Plans prepared pursuant to the Sikes Act provide the special management considerations necessary under the Endangered Species Act. Critical habitat designation on military installations is, therefore, unnecessary. Similarly, the Readiness and Range Preservation Initiative provision addressing marine mammals provides a definition of harassment that is consistent with guidance of the National Research Council to maintain adequate protection of marine mammals. The Clean Air Act compliance provision provides limited flexibility—a 3-year period, within which the military services would be required to demonstrate conformity with applicable State Implementation Plans. Finally, the military munitions provisions are designed to codify current administration policy regarding when military munitions are solid and hazardous wastes.

The Marine Corps is a good steward of the resources entrusted to it. Even those who question our need for legislative relief acknowledge that fact. Our responsibility to the American people is to maintain a high state of readiness while preserving and protecting the environment of the Nation. Unlike commercial developers, the military needs a natural environment for realistic field training. As a result, our environmental management efforts have produced increasing populations of endangered species on our lands.

The Readiness and Range Preservation Initiative is essential to ensure a proper balance between two national imperatives: military readiness and environmental conservation. The Initiative is key to future readiness. It is an appropriate response to the encroachment threat, and I encourage your full support for this balanced approach toward both the requirement to maintain military readiness and the requirement to protect the environmental resources of the Nation. Thank you for your interest in this national issue.

Senator ENSIGN. General Foglesong.

STATEMENT OF GEN. ROBERT H. FOGLESONG, USAF, VICE CHIEF OF THE AIR FORCE

General FOGLESONG. Thank you, Mr. Chairman, Senators. Thanks very much for the opportunity to come over. I am honored to be here with you today. This is a critical and important topic for all of our Services. Let me start off by saying I think we have been good stewards of our environment. We are primarily interested in the land around our bases and the air space around our bases. I will comment on that a little later, but we also have this balancing act, as you all know better than anybody, of trying to be good stewards of readiness for our sons and daughters. I think we have also done a pretty good job of that lately, and I am proud of that.

I do not see those two things as incompatible, by the way, being a good steward of our environment and being a good steward of our sons' and daughters' readiness.

I will say that our ranges are absolutely fundamental, in fact, even critical to our successes. I will also give an anecdotal story, if I can. I was recently visiting over in the Persian Gulf and had the opportunity to talk to one of our fighter pilots who had just returned from a mission and had just dropped a 500-pound bomb on a gun emplacement that had been shooting at him. As it turns out, this is not an uncommon event, and of course they are pretty pumped up when they come back.

So my question was, "well, how did this go?" and the answer I got back was, "General, this is not my first rodeo," that he had had the opportunity to drop 500-pound bombs before and had trained up to do this. While the adrenaline was flowing a little more when somebody is shooting back at you, the procedures that he used and the techniques, the training that he had achieved on our ranges, were incredibly useful for him. So it helped me focus once again on why our range spaces are absolutely critical to us.

Let me finish by saying that while, as I said earlier, our focus is primarily on the land around our bases and the air space around our bases, I am here also in full support of the Army, the Navy, and the Marine Corps. Because when their ability to train is impacted, it critically impacts our ability to train with them, so for the Army and the Marines, when they are impacted, the air power that is provided by the sea services and the Air Force also is critically impacted.

I, too, have a statement I would like to turn in for the record if I could, and I would be happy to take your questions, sir.

[The prepared statement of General Foglesong follows:]

PREPARED STATEMENT BY GEN. ROBERT H. FOGLESONG, USAF

INTRODUCTION

Mr. Chairman, members of the subcommittee, I am delighted to have this opportunity to address you today on the growing challenges that encroachment poses to force readiness. As the Air Force's Vice Chief of Staff, I want to thank you for your continued focus on the resource challenges facing our airmen today. The Air Force is dedicated to maintaining a ready force while protecting our natural resources. We are committed environmental stewards and do not believe that military readiness and environmental stewardship are mutually exclusive—in fact, they can go hand in hand.

Our installations, ranges, and training airspace are critical national assets that allow the Air Force to test equipment, develop new tactics, and train our forces to be combat-ready. Access to these resources is increasingly threatened by urban and commercial growth and is often restricted or limited by regulations or local laws designed to conserve resources and manage economic development. At a time when increased OPTEMPO, aging equipment, and personnel challenges are threatening our readiness, it is critical that we protect these valuable resources we need to train our airmen and to develop new weapon systems.

The loss or restricted use of combat training ranges and operating areas forces us to find workarounds or to delay and reschedule needed training. These constraints inhibit our ability to "train as we fight," degrade our combat readiness, and will eventually limit combat forces to fight only as they have trained. In the past, the Air Force dealt with encroachment issues by modifying operations, financing mitigation, or both. As pressures continue to grow, managing the operational and financial risks without compromising our mission becomes increasingly difficult and costly. Without action, we expect to see a continuing erosion of the training environment.

The Air Force, with all the Services, is committed to addressing these challenges. We are confident in our ability to provide the necessary balance between operational needs and environmental protection. We have a strong record of doing so. Our leadership in environmental management has ensured resources entrusted to the Air Force are sustained and restored to the condition needed for future generations. Our lands offer excellent wildlife habitat; our environs attract development and competition for clean water and clear air.

The Air Force has made it a priority to identify and quantify the resources needed to support mission requirements, and to measure and communicate the impacts of encroachment on mission readiness. The RRPI will provide needed clarification to specific environmental statutes and protect access to our training resources while continuing to protect the environmental resources so valuable to us and the Nation. Last year, Congress adopted three of the original eight RRPI provisions providing us with additional options to address land development near our installations, new opportunities to transfer surplus land, and relief from Migratory Bird Treaty Act liability for take of birds incidental to readiness activities for 1 year while we work with the Department of the Interior on a longer lasting regulatory fix. We need the remaining provisions to ensure our continued preparedness.

ENCROACHMENT

Encroachment is the result of any and all outside influences that inhibit necessary training and testing. There are myriad causes. Competition for airspace in and around military installations from commercial and general aviation can limit test and training activities. Conservation of natural resources such as cultural resources, restrictions on noise levels, caps on air emissions, and efforts to protect endangered or threatened species can be restrictive. Potential new critical habitat designations could restrict installation or range use and development. For example, without clarification, we are facing acreage restrictions on portions of Beale AFB, F.E. Warren AFB, and Andersen AFB. A critical habitat designation would restrict all of Travis AFB. We are also experiencing increasing competition with commercial users for radio frequency spectrum, interfering with our command, control, communications, computer, intelligence, surveillance, and reconnaissance (C^4ISR) and possibly impacting the next generation of weapon systems that depend on that data.

We remain concerned about the future impacts of encroachment on our ability to test and train. New systems, like our standoff weapons and next generation aircraft, require more airspace and greater range access. Unfortunately, we cannot simply train somewhere else. Our existing ranges support a significant infrastructure of testing and training areas, targets, instrumentation, and other investments—the costs involved in relocating would be enormous. Maintaining existing ranges with adequate room to maneuver and the ability to drop live-fire ordnance is essential to maintaining our combat edge.

The Air Force has a comprehensive strategy to address these encroachment issues. We identify and quantify the resource base required to perform the Air Force mission and then quantify the readiness impairments resulting from any limitations on the resource base. We work with other Federal resource management agencies to develop regulatory or administrative improvements, and we dialogue with State, tribal, and local governments and other interested organizations. If necessary, we seek statutory modifications to prevent these unintended impacts to military readiness.

RRPI seeks to do just that. For the most part, we are seeking definitional clarifications, application of environmental requirements in more appropriate balance with readiness requirements, and, in some cases, time extensions to fulfill our requirements. Narrowly defined, RRPI seeks to address only those regulations that specifically impact readiness training.

For example, the Air Force's access to and management of our valuable resources is often controlled or limited by courts and other governmental agencies that apply existing laws, statutes, and regulations in ways that limit military readiness. In some cases, there are laws that, depending on the manner in which they are interpreted, may contradict one another. Case in point, the Sikes Act states that military needs are the primary land use consideration, while the Endangered Species Act (ESA) requires agencies to utilize their authorities to conserve listed species and their habitat. As a result, there are currently several legal challenges that threaten to overturn the Department of the Interior (DOI) policy of using the Sikes Act planning process to substitute for critical habitat on some military lands. The Air Force would like to use Integrated Natural Resource Management Plans in place of critical habitat designation under the ESA.

Cases like this demonstrate the needed clarification the RRPI provides. There are more. We need time extensions to comply with State Implementation Plans in the Clean Air Act. Further clarification of the circumstances in which explosives, unexploded ordnance, munitions and their fragments, are included in the definition of "solid waste" when used on operational ranges is needed. Similarly, additional clarification is needed with respect to those items and the definition of "release" under the Comprehensive Environmental Response, Compensation, and Liability Act. These and other reasonable steps will ensure that military training and readiness are not compromised as we carry out our environmental protection responsibilities. The relief will allow us to direct our budget and priorities towards sustaining environmental resources and to spend less of our limited environmental funding on litigation, administration, support, studies, and investigations.

The following is illustrative of our environmental commitment and the associated operational challenges in the areas of species and habit protection, unexploded ordnance removal, air quality, and spectrum allocation.

SPECIES AND HABITAT PROTECTION

Currently, 78 Federally listed threatened and endangered species live on approximately 9 million acres of Air Force property for which the Air Force provides measures of habitat and species protection. As an example, we track the movement of Sonoran Pronghorn on the Barry M. Goldwater Range (BMGR) in Arizona. The DOD flies about 70,000 sorties yearly on the BMGR, and our biologists monitor the BMGR target areas for Pronghorn movements. If any are spotted within a 2-hour period prior to bombing, the live missions projected for that area are diverted or canceled. Working hand-in-hand with the USFWS and the Arizona Department of Game and Fish, we strive to ensure the survival of this endangered subspecies of Pronghorn.

At the Nevada Test and Training Range (NTTR), operated by Nellis Air Force Base, the Air Force supports the Bureau of Land Management's wild horse program on over 390,000 acres of the NTTR. In the southern portion of the range we have fenced target areas to ensure the endangered Desert Tortoise population is not affected by our operations. Additionally, in Nevada and Arizona we work with local communities and Tribal Governments to ensure the protection of cultural resources. We can do all of this and still meet our training requirements.

At Tyndall Air Force Base in Florida, we monitor the nests of about 100 threatened Loggerhead and endangered Green Sea Turtles daily, physically protecting their homes with wire mesh. We do this to ensure compliance with the ESA.

At Eglin Air Force Base in Florida, we electronically tag and track endangered Gulf Sturgeon to ensure they are not impacted by our operations. The water impact/detonation area is monitored for sturgeon prior to training. If sturgeon are detected in the area, detonation is moved or delayed. Eglin also serves as a home to the endangered Red-Cockaded Woodpecker. By working closely with the FWS, we have been able to nearly double their population. Additionally, our biologists are doing everything possible to aid the threatened Flatwoods Salamander and the threatened Eastern Indigo Snake.

We do these initiatives to support the ESA and serve as good stewards of our Nation's resources while at the same time, maintain our commitment to combat readiness. However, good stewardship incurs significant costs. For example, the Air Force spends $300,000 annually to track Pronghorn movements at BMGR and is preparing a 10-year, $35 million study of endangered bird species in New Mexico, Texas and Arizona.

In some cases, our installations and ranges are the only large, undeveloped, and relatively undisturbed areas remaining in growing urban areas. This can result in Air Force lands becoming the sole area in the region that can support endangered species. Biological Opinions resulting from our obligations under the ESA have imposed range and airspace restrictions mainly associated with aircraft noise and munitions use. We operate with altitude restrictions because of the noise and its possible effects on endangered species in states such as Arizona, Idaho, New Mexico, and Texas.

The potential designation of installation or range areas as a critical habitat or marine sanctuary may seriously limit our ability to perform training and test missions. For example, a critical habitat designation for six species, including three species of shrimp and two grasses, on Travis AFB could restrict 100 percent of the installation and impede/stop plans to beddown C–17 aircraft. At Andersen AFB on Guam a critical habitat designation for the Guam Rail, Micronesian Kingfisher, Guam Fruit Bat, and Mariana Fruit Bat could restrict 67 percent of the installation.

UNEXPLODED ORDNANCE (UXO)

We have extensively examined our practices and policies for the disposal of UXO and associated residue material (primarily scrap metal) on operational ranges. UXO and range residue (used targets, inert ordnance, etc.) physically occupy only a small part of any air-to-ground range, but their presence is an increasingly expensive problem. The costs associated with cleaning up closed ranges have led us to the conclusion that we need to plan and manage for the entire life-cycle of a range.

The Air Force first started clearing ordnance from active ranges in the late 1940s. Today, active range clearance provides for safe target area operations, while clearing live-drop operational ranges provides airfield-recovery training for our Explosive Ordnance Disposal technicians. Air Force policy requires that active air-to-ground ranges be cleared on a quarterly, annual, and 5-year basis at varying distances from each target. Our currently scheduled UXO and residue removal program, along with modifications to our range-clearing practices, will ensure long-term range sustainability and the safety of personnel on the range. Our ultimate goal is to manage our ranges effectively and efficiently throughout the life-cycle process providing for sustainable operations, safe and effective UXO management and long-term environmental stewardship.

The Air Force understands its responsibility to manage material from our ordinance if it travels off-range, and supports the RRPI legislation that helps to clarify our obligation to respond to potential off-site impacts from our munitions training.

AIR QUALITY

Many of our largest and most important installations are located in areas that are experiencing rapid growth and the attendant pressures resulting from air quality standards. A number of our installations are currently located in "non-attainment" areas, which are places that failed to meet EPA standards for air pollution, and more bases are in areas that are trending toward non-attainment. Air quality pressures generally affect operations at our installations more than on our ranges, but they potentially limit our basing options for force realignments and weapon system beddowns. If any beddown action is found not to conform to the state implementation plan for Clean Air Act compliance, the Air Force must either obtain air quality credits or reduce other emissions at the base to counterbalance the impact.

The Air Force supports the RRPI legislative provision that allows for conformity with each State's air quality implementation plan, including emissions limits, over a 3-year period so that mission critical readiness activities can still take place while the steps necessary to achieve conformity are completed. We continue to work with State regulators and local communities to ensure we have the flexibility to base aircraft at our installations which have huge investments in infrastructure not only on the installation itself, but also in the ranges used by its aircraft.

SPECTRUM REALLOCATION

The RF frequencies below about 5000 MHz are the most valuable part of the spectrum for the kinds of highly mobile functions carried out at our test ranges. Over the past decade, the Federal Government has lost access to over 235 MHz of bandwidth in this part of the spectrum—due primarily to international and congressionally-mandated reallocations. For example, until 1992, the DOD and private sector aerospace industry were authorized to use 80 MHz of designated spectrum in "Upper-S Band" to transmit real-time telemetry data from flight tests of manned aircraft. This spectrum bandwidth was needed to support increasing telemetry bandwidths requirements for future fighters and bombers. In 1992, the World Radio Conference (WRC) reallocated the lower 50 MHz of this frequency band to provide spectrum for broadcasting high quality audio from geostationary satellites. In 1997, under the requirements of the Balanced Budget Act of 1997, we were forced to transfer an additional portion of this frequency band, leaving us with only a 25 MHz increment for flight test telemetry in this spectrum. Although the recent National Telecommunications and Information Administration (NTIA) Advanced Mobile Wireless Viability Study agreement between the NTIA and Federal Communications Commission will restore a limited portion of this bandwidth, further loss of this spectrum could impact our flight-test programs, increase test costs, and threaten our future telemetry needs.

CONCLUSION

I thank the subcommittee for this opportunity to address our concerns and to outline workable solutions that will guarantee continued readiness while preserving our natural resources. The Air Force understands its obligation to identify compet-

ing defense and environmental needs and to establish a compatible use of resources. At the same time, we are committed to giving our airmen both the resources and the training they need to succeed in combat. We owe them no less. This requires a realistic training environment that approximates the combat environment. It requires cutting-edge weaponry that will overwhelm our enemy's capabilities. Let me be clear, when opportunities to test and train are reduced, our readiness and effectiveness are reduced. Without appropriate relief from encroachment, the Air Force will be unduly constrained over time, and we will not be the ready fighting force this country needs and demands.

We are confident the multi-billion dollar effort in Defense programs to conserve, protect, and restore the environment will continue to achieve lasting successes in all areas of protecting human health and the environment. The Air Force appreciates the subcommittee's continued support so that we can maintain our stewardship of the environment and still prepare our men and women for the daunting challenges of combat.

Senator ENSIGN. I thank all of you, and I want to start, first of all, General Keane, when we visited a few weeks ago in my office I was greatly impacted that day. I really appreciated the fact that you brought out how many of our soldiers are there still on the ground, still fighting, still engaging. Afghanistan does not make a lot of news these days, unless we are on the trail of enemy number 1. But people are in harm's way and they are getting wounded.

The acts of heroism that you talked about there I thought were incredible. The whole battle, and you mentioned it today, where our troops were so outnumbered, and I think it really pointed out in a real life situation the importance of training and readiness. They talk about balance. To me, there is no balance when it comes to readiness. I mean, we want to be superior, far superior to our enemies, and balance between training and taking care of the environment. But not where we are ever putting our troops at a disadvantage when they are coming up against the enemy.

Senator Akaka in his opening statement today referenced the current state of readiness, and I have heard from all of you that you feel very good about our state of readiness, especially as we prepare for a possible war against Iraq. The question, I think is more important, because a lot of these lawsuits are pending, or they have, as with the Navy and your LFA, we are talking about future things that are in the development stages.

What would the answer be, and I would like each one of you to respond as best you can, I realize some of this is hypothetical, but as best you can—if these lawsuits are going to shut down, for instance, what is happening in Alaska, which could have a ripple effect, as we know, at many other training ranges? What happens if we ask this question 5 years from now of the Vice Chiefs? What will be the answer on readiness 5 years from now if the environmental groups are able to use the current laws and the courts to block what you are doing today? In other words, if you do not get legislative relief, what will be the answer to that question 5 years from now?

General KEANE. Thank you, sir. For example, the tragedy of the Arizona lawsuit, which is overruling essentially a U.S. Fish and Wildlife Service policy, that uses a management policy to deal with critical habitat, and avoids the critical habitat designation. The tragedy of the Arizona lawsuit is, on the six installations we have applied the wildlife management policy in the United States Army, we have made enormous progress. We are still protecting the criti-

cal habitat. Although not designated as such, it is growing and flourishing.

In all of the surrounding areas to those military installations, that critical habitat has been destroyed by commercial development and urbanization, in complete violation of the environmental laws. So what we have proven is that we can work with the U.S. Fish and Wildlife Service to adjudicate the problem and protect the endangered species. Now comes a lawsuit, and that effectively will shut us back to where we were, essentially 7, 8 years ago and the situation I described to you at Fort Bragg in that chart will get progressively worse. That is point 1.

A much greater threat to the Army is the CERCLA and RCRA application of the lawsuit that is pending in Alaska. If we lose that lawsuit, it will effectively shut that range down, but it jeopardizes the other 400 that we have, and so 5 years from now, we are not able to train and to conduct live-fire operations on any of our impact areas, which is the essence of what we do in our training.

So I think it is a legitimate question to ask us—we are the best military in the world, and we are highly trained, and we are highly skilled, and you seem to be doing all of this despite some of the environmental challenges that are out there—what is the problem? Well, the problem is, it is getting progressively more difficult to do that training, and our people are working around it. It is frustrating them considerably to get this thing done, and we are asking, frankly, just too much of them to do that kind of training in such an unrealistic environment, and each year it gets worse.

Then with the pending lawsuits, I think what I am trying to tell you, as well as my colleagues are, is a train wreck is coming. We see it coming. Let us get out in front of it. Let us not have the train wreck and then all have to rush in here and on an emergency basis change these laws. Let us be reasonable about this thing.

We are good stewards of the environment. We were polluters 20 years ago and as the consciousness of America was raised in the environmental area, so was ours. We changed rather dramatically. We had to change. We changed behavior and attitude of our leaders to be supporters of the environment, and as my colleagues have said, you can come to any of our military installations and find verification of that.

So in my judgment, it is a train wreck that is coming. We see it, and we should stop it from happening.

Senator ENSIGN. Admiral.

Admiral FALLON. Senator, it is tough to predict the future, but if I could just recap, the U.S. Navy around the world in just the last year alone, you are all intimately familiar with the recent couple of years' activities in and around Vieques. The end result there is that we are finished training in that location.

In the far Pacific, last year we had a court that enjoined us from doing training at a small rock islet, Farallon de Medinilla (FDM) we call it for short. It is out in the Marianas. It is really the only place for live fire for the Seventh Fleet that are forward-based in Japan, and we were shut down, totally, because of a ruling having to do with the Migratory Bird Treaty Act.

The act of Congress last year in response to the Office of the Secretary of Defense (OSD) initiative, the one area in which we got re-

lief, was dramatically effective for us. We were able to send, just in the last 6 months, two of our carrier battle groups down there to train en route to their stationing in the Middle East. We have another ship, *Nimitz,* that is on the way across the Pacific now that we hope to use there too. Without this relief from Congress in the nick of time, we would have been shut out of there.

I mentioned earlier the problem out at PMRF, and this is the future. This facility is going to be critical to our ability to conduct testing for missile defense and for our other activities, including submarines, the low frequency active sonar challenges, we just see an ever-increasing number of these things.

As General Keane indicated, the amount of time that people spend doing this instead of preparing our troops, our sailors, airmen, and marines for their readiness mission is growing day by day, and this is not what we believe they ought to be engaged in, but the realities of life are, it is just an increasing burden that we desperately need some relief from.

Thank you, sir.

Senator ENSIGN. General Nyland.

General NYLAND. Yes, sir. I would certainly echo the comments of my two colleagues, since we maneuver on the ground and fire, as does the Army, and operate from the sea, as we do with the Navy. I would say that clearly it would be a train wreck for the Marine Corps. Each of our major installations today has critical species, and also has an integrated resource management plan that we have worked together with the U.S. Fish and Wildlife Service to create.

We have shown that we are good stewards, and personally, as a zoology major, I understand the great value of the animals of the Nation, but I have worn this uniform for 35 years, and I also understand the great value of trying to ensure that our soldiers, sailors, airmen, and marines, when they go forward, can do so successfully.

I think what we really seek here is a balance. We can do both, but what we cannot do is continue to watch the litigation, as General Keane articulated, keep mounting that continues to threaten it, and should one be upheld, then set the precedent that would create the downfall for all the rest.

Senator ENSIGN. General Foglesong.

General FOGLESONG. Two points, sir, that come to mind to me about the future here, and I do not want to sound trite about this, but I have a son and a daughter-in-law both in the military right now, and it occurs to me that in the future we never want them to go into a fair fight. We always want the odds stacked in their favor.

The second point is, we are in this delightful dilemma now in the Air Force of trying to ensure they are in an unfair fight. We do this by developing new weapons and new weapons systems that have more precision, more stand-off capability, more force protection, if you will. However, this requires that we have the right range space and the right training and test space available to go out and ensure that when and if they are called to war, that they are able to employ in a way that will be as effective and efficient as can be, yet bring them back home.

So it is hard to predict 5 years. I agree with what was said earlier, but what I know is that our range, our air space in particular is under scrutiny every day. It is death by a thousand cuts to a degree, unless we have some clarification in the current status of the laws right now. Our concern is that we will shrink and shrink and shrink when we actually need what we have now, possibly even more because of the ranges that are involved with some of our newer weapons systems.

Senator ENSIGN. I thank each of you for that answer. Just a yes or no, if possible: will it seriously hurt readiness if these things go forward in 5 years?

General KEANE. Very much, so.

Admiral FALLON. Yes, sir.

General NYLAND. Yes, sir.

General FOGLESONG. Yes, sir.

Senator ENSIGN. All of them were affirmative.

Senator Akaka.

Senator AKAKA. Thank you very much, Mr. Chairman.

Admiral Fallon, I was a bit surprised to hear your testimony that just last week the U.S. Fish and Wildlife Service designated critical habitat for a species of grass at the missile range. So this is news for me.

Admiral FALLON. I did not know it until last evening when I was back in the office and I was going over my notes, and one of my aides said, here is a little thing you probably need to know about.

Senator AKAKA. It spurs my interest to the point that I want to see what the grass looks like.

Admiral FALLON. I cannot pronounce it, by the way. It is a Latin name. I am kind of rusty.

Senator AKAKA. My understanding was that for at least the last 4 years of the Clinton administration, the military services were able to avoid new designations of critical habitat on military lands by gaining approval of the INRMP on a case-by-case basis as an alternative to critical habitat designations, and my question then would be, why did it not work in this case? Is there an INRMP in place for this facility and, if so, do you know yet why the U.S. Fish and Wildlife Service did not follow its own rules on the consideration of the INRMPs?

Admiral FALLON. Senator, I will tell you what I know. When I found out about this last night I was given a copy of the Federal Register that had a couple of facts in there, and the issue was, first of all, there is an INRMP in place for this facility, an approved INRMP. Evidently, there have been some negotiations for sometime.

There are apparently several species of grass, or some kind of vegetation that were in discussion. Evidently there had been an exchange of documents between the naval service and Department of Interior or their agents in this thing, and at our last knowledge of this, there was a discussion in which the last document that we received, I have not seen it myself, but apparently it states that the Department of Interior was okay with several of these particular types of vegetation, but that this particular one had not been addressed in the interim.

I will go out on a limb and say it probably was because it was not known, because it did not exist on our lands at the time. At any rate, there was a reply sent, and this is the next iteration, that we find out that this has actually been enacted.

I do not know exactly what went on. I know there was, in fact, a dialogue in progress, but what is really significant about this, and I did not get to it in my opening statement, and it is very difficult—I know you cannot see from up there, but on this chart, this particular area, the critical habitat stretches from virtually one end of this facility to the other, and it occupies the vast majority of the coastal front, and so it will obviously have a significant impact.

Now, just how this managed to occur, I do not know. We will go to find out, but this is unfortunately the way things are done today.

Senator AKAKA. Thank you for that explanation.

Admiral Fallon and General Nyland, in my State of Hawaii, I have worked with the military to try to address issues raised in the community about the impact of training on cultural and historical sites and endangered species, fire damage, and other issues. I have always felt that the best way to avoid situations, as I said in my statement, like the ones on Vieques, and to assure continued military training, is to work within a community on this kind of case-by-case basis.

Late last year, the Secretary of the Navy sent a memorandum to the Chief of Naval Operations and the Commandant of the Marine Corps directing that all Endangered Species Act (ESA) issues be addressed in the Pentagon, rather than at a local level. The memorandum states, ". . . the purpose of the attached policy guideline is to bring back into the building final decision regarding any deviations from ESA. While I am a strong proponent of decentralization, it is important that our well-intentioned personnel in the field not make local accommodations to introduce new species, habitats, and so on, on our bases outside or beyond the requirements of ESA. My concern is that while individual concessions appear insignificant, over time we die from a thousand cuts. Additionally, some concessions could run counter to the legislative relief that we are continuing to pursue with Congress."

I am concerned that this statement makes it appear that the Department of the Navy does not trust its installation commanders to know what is in the best interests of their installations, and you want to avoid entering local agreements that would protect both Navy training and endangered species in the hopes that Congress will give you a better deal. How do you explain this memorandum?

Admiral FALLON. I will take the first start. I would not presume to speak for the former Secretary of the Navy on the issue. Just an observation that quite frankly, as we get deeper and deeper into these issues, and occupying a greater percentage of the time of many of us in the chain of command, what we are finding is that there are significant disconnects among our installation commanders in our facilities around the world. I believe in trying to deal with things at the lowest possible level, which is exactly what we want them to do.

In fact, we found in some cases opposing activities. I believe that this was intended to try at least to bring to some collective central level some idea of what is going on before people pursue their indi-

vidual activities. I have not had any discourse with the Secretary on that particular issue, but I suspect it is really just trying to get us aligned so that we are consistent in what we do. It has been my experience that, in fact, we were all over the place on these issues, and I believe that is really what it was intended to do.

General NYLAND. Sir, I would echo Admiral Fallon's comments. I am not familiar with the Secretary's stance on that, but I, like you, believe that these begin only at the local level where we start to organize them.

My take on that would have been simply that to ensure consistency across the Department, that they would like them to be reviewed here at the headquarters to ensure that they were in line with our position on other INRMPs on other endangered species.

Senator ENSIGN. Senator Inhofe.

Senator INHOFE. Thank you, Mr. Chairman.

Admiral Fallon, quite often I have heard people take statements maybe a little out of context. I want to make sure that that does not happen in this case. You had made a statement that—I think it might have been a response to—I think it was in your prepared statement. You said, we have the best-trained and most ready forces right now that we have ever had. People, if they took that alone, might think, well, wait a minute, there must not be a problem here if that is the case.

Would you take a moment and outline the different elements of readiness, and show how that statement could be an accurate statement?

Admiral FALLON. Sure, Senator. The readiness equation, which we use for shorthand, many components today, as I look at our forces and I know what condition we were in 3 or 4 years ago, it is pretty clear to me that the single most significant factor is the personnel piece. The fact that we have the appropriate numbers of people, and that they are distributed and trained at their individual skill sets throughout the Navy, has made a huge difference.

I believe the next most important thing is the fact that through the resourcing of Congress and the dedicated efforts of the CNO, the people have been given the resources to actually get proficient in their endeavors, for example, the appropriate number of flying hours and steaming hours and the research allocations, particularly to spare parts, which have made available the components that we need to be able to do the work that we do.

If you were to look at our readiness statistics pretty much across the Navy, you will see there is a direct response from the investments in these accounts to the status they enjoy today, notwithstanding the fact that none of this comes together without training in the field. That is a critical element, but I believe that the biggest factors today—or in the last year or so that have gone into this have been those other things, but without realistic training none of this is——

Senator INHOFE. Well, I chaired this subcommittee for a number of years, and I knew those elements were there. I knew there was a serious problem then, and I am glad that we are correcting that now, but this one is still here.

Now, let me ask you the question, what happens if you lose this capability in the Barking Sands Range? Where will you provide the training that you are doing now if you are not able to use that?

Admiral FALLON. This facility, I believe, is one that is earmarked for much greater future use than today in response to some other activities, realities. We are basically shut down on the east coast, in Vieques, to do long range testing for missile systems, and our ship-based radars.

On the west coast of the United States, Point Magoo and the immediate adjacent water and land areas, or water and air space on the west coast, is under increasing encroachment pressures from population growth, as is the east coast. The west coast is about the only United States territory that enjoys a large water and air space adjacent to it, and I see increasingly the type of future training and testing that we require migrating there.

The fact of life is our systems are much longer range today than they were just a few years ago. We are going to need this extra air and water space beyond the Hawaiian Islands out to the northwest of this territory. There is real growth in this area. Just this year alone, I believe there were four tests by the Missile Defense Agency conducted at the Pacific Missile Range Facility, Kanai, Hawaii, but this is a very small facility, a very limited number of facilities.

I am probably leading the rabbit here, but I think there will be growth in this area, a desire to do more testing and training. We had been able to do some of this training closer to the west coast. As the pressures increase over there, I believe we will see our battle groups coming out here and doing more of certain kinds of trainings, so this is really a future issue, but we are now being severely impacted before we get out of the blocks.

Senator INHOFE. In your statement, do you make any reference to Guam in your prepared statement?

Admiral FALLON. I just made reference—in the prepared statement, there is. I think in the oral statement, just that the FDM range north of Guam was the site of a shutdown last year. That has just been temporarily reopened.

Senator INHOFE. Okay, but I understand now in looking at a number of endangered species, or listed species, there are three that could create another problem after it is already opened up that could cause it to—I have always asked the same question, what you would do without it?

Then third, I am probably the only one up here who has read the entire Pace-Fallon report on what you do if you lose the unified training, which we lost at Vieques, and General Nyland, I could ask you, or Admiral Fallon, either one. If you wanted to continue to do unified training, live-fire, is there any place else now that you could go to do that type of training?

I understand they are trying to respond to the problem by changing and doing more other types of training, but if you wanted to do that, which I believe we still need to do, is there any place else where you could get that type of unified training?

Admiral FALLON. Senator, on the west coast we are doing it as we were before, off the west coast, in several areas. On the east coast, I believe you are aware the Commander of the Atlantic Fleet

has a training resource strategy (TRS) which he is attempting to implement our work-around solution to the closure of Vieques.

Senator INHOFE. Work-around. Work-around is a very interesting term. Do you want to define that for us?

Admiral FALLON. If we have a course of action that we desire to pursue, but for whatever reason we are inhibited, then we have to come up with another solution to it to get to where we are going.

Senator INHOFE. Now, quite often, people in talking about the Endangered Species Act, and I could ask you and General Keane or any of you, they say there is really no problem because there is a national security exemption, for any agency action if the Secretary of Defense finds that such an exemption is necessary for reasons of national security. Tell us if there is a problem with that. Why does that not solve all your problems?

General KEANE. Yes, sir. The national security exemptions were never intended as permanent solutions to recurring requirements. Generally, they are reserved for approval at the presidential area. They apply to only specific activities at individual sites, and they remain in effect for only 1 year.

It is in our judgment—and I do not want to speak for all my colleagues, but I think we agree on this. It is unrealistic to expect the military to request exemptions for training that must occur on a regular basis. It is just too much to ask of us to use that procedure to solve such a significant problem that we are facing here.

Senator INHOFE. In other words, you think maybe the President and the Secretary of Defense have something better to do.

General KEANE. I do not want to speak for them, sir. [Laughter.]

Senator INHOFE. As a normal procedure, though, you are saying this is something that would require going back and getting this exemption with regularity. This is the point I want to get into the record.

Thank you, Mr. Chairman.

Admiral FALLON. Senator, there is another factor here. Under the existing regulation—I believe it is 10 U.S.C. 2014—there is a 5-day period in which to effect this relief. This is pretty impractical for the kinds of things for which we would seek help. We are talking about recurring, regular, routine training evolutions, and I believe that to merit the kind of instantaneous reaction up the chain of command to the President for these kinds of things is not at all what was intended here, and not particularly appropriate to the remedy we seek.

Senator INHOFE. Thank you, Admiral. On the next round I want to pursue this, the problem you talked about in your opening statement on the sonar.

Senator ENSIGN. Senator Clinton.

Senator CLINTON. Thank you, Mr. Chairman, and I thank you for holding this important hearing, and I thank all of the Vice Chiefs for being here.

I think we can all agree, or maybe we can even stipulate that we intend to do everything possible to ensure the best available and successful training for our men and women in uniform, regardless of the mission that they are assigned. I think what we are searching for is a way to provide that without interfering with, or unnecessarily burdening, the military to become enforcers of the

environmental laws that mean a great deal to our Nation. Just as we owe the very best possible training to our men and women in uniform, we also owe them and their dependents and the communities around our bases the security of knowing that we are protecting the environment and their health.

That is why many of us are concerned about the Department's desire to make significant changes to many of the very laws that are designed to protect human health and the environment, particularly the Clean Air Act, the Superfund law, the Nation's solid waste law, known as RCRA, and others that are there not simply to protect endangered species or critters, but to protect the rest of us. Part of my assessment of this is to determine the health impact on our men and women in uniform and the surrounding communities for wholesale changes in the environmental laws of our Nation.

I was very impressed by the comments recently made by the chairman of this full committee, Senator Warner, who serves with me on the Environment and Public Works Committee, a few weeks ago, when he said we need to figure out how to keep our military ranges operational 24 hours a day, 365 days a year without having to sacrifice our Nation's environmental laws. I could not agree more, and I think that has to be our objective. I also believe that Senator Levin is correct in saying that these proposals belong in the committee of jurisdiction, namely the Environment and Public Works Committee.

But putting aside procedural issues, I think it is imperative that we look at where we want to end up. If, indeed, it is necessary, and I am certainly convinced from the expert testimony of the vice chiefs and others that some added flexibility is required in order not just to ensure military readiness today, but for all the tomorrows ahead, and to avoid the train wreck that General Keane referred to. Then of course we have to take that into account and figure out ways to adjust laws and their implementation in order to protect against any eventuality and to assure that readiness is the primary obligation of the military. But, I do believe that we have to hear many different perspectives, because the adjustments have to be made taking into account the potential impact on environment and health.

For example, earlier today there was testimony before the Environment and Public Works Committee from the Environmental Protection Agency (EPA) about the impact on the clean air laws of certain necessary training exercises, the impact on both those who are in the immediate vicinity and those further away. I have looked closely at the 30 States Attorneys General who have expressed opposition to the Department's proposals. These are people throughout our country who are required to not only implement existing environmental statutes in their own States, but often have obligations to enforce national statutes such as Clean Air, RCRA, and CERCLA. If there is a way we can work together on this and take into account the overriding necessity for readiness and the legitimate concerns raised by Attorneys General and others about existing environmental statutes, then I think it is certainly an important exercise for us to undertake in the committee of jurisdiction.

But let me ask, have any of the Services responded to the concerns of the Attorneys General about the DOD proposal that you are aware of?

General KEANE. I am not aware of it, Senator.

Admiral FALLON. I have not seen it presented, Senator.

Senator CLINTON. Mr. Chairman, I think that as I said in the beginning the stipulation that we want to be as ready as we possibly can is one that cuts across every committee and every concern in the Senate. But, I do believe it would be more productive to have some kind of ongoing task force, or maybe even joint committee effort to begin to really dig into this so that we know exactly what we are undertaking.

I am reminded, because of Admiral Fallon's presence here, of when I went to Fallon, Nevada with my friend Senator Ensign. We were there because of these unexplained childhood leukemias, this cluster of cancers. We have no idea what has caused them, but I think that there is a long list of reasons, and on that list has to be the presence of the naval base there. We do not know if it is a contributing factor. Also on the list is the use of a lot of pesticides for the agricultural produce that is farmed there. There are a lot of issues.

Until we know more about what the relationship between the environment and the health of people happens to be, then some of these acts, which are aimed not at animals or plant life, but at human life and health, have to be factored into anything that we do. Certainly those of us who are concerned about the health of our troops in the Gulf remember what happened the last time, when healthy young people went over there, and many came back and we had no idea what caused the problems that they were encountering. Many of us concluded something that we are just not quite aware of in combination impacted their health.

So this is an area that has broad ramifications for the health and readiness of our men and women in uniform and the dependents, the civilian employees, and the surrounding communities. I think we should go at it with that sense of complexity and concern moving forward.

Senator ENSIGN. Senator Clinton, if I may, is Ben Cohen, Deputy General Counsel for Environment and Installations at the Department of Defense in the room? Would you like to address or just respond to the Attorneys General letter of opposition? Is there anything you would like to say? That is what the staff had advised me up here.

Mr. COHEN. Sure thing, Mr. Chairman.

Senator ENSIGN. Maybe come to the microphone so they can get it down on the record. I just thought it might be appropriate.

By the way, Senator Clinton, we are going to have a second hearing on this issue in this subcommittee as well. Senator Akaka had some issues, some various other witnesses that he wanted to call forward.

Mr. COHEN. Thank you, Mr. Chairman. I am Ben Cohen. I am the Deputy General Counsel for Environment and Installations at DOD. I would just say we have been engaged since last year on a fairly vigorous interaction and dialogue with a variety of State regulators, the Attorneys General, the solid waste regulators, and oth-

ers, and we think that has been very productive. We think it has helped us improve the legislation that we introduced this year, which actually includes some changes designed to respond to their concerns. We intend to continue that dialogue and have high hopes that we will be able to reach a broad measure of agreement with them on all the statutes that they are concerned about.

Senator CLINTON. Thank you, and Mr. Chairman, perhaps we could add a representative of the Attorneys General to a future panel as well.

Senator ENSIGN. That is one of the things we are looking at.

Senator Pryor.

Senator PRYOR. Thank you, Mr. Chairman. One thing I need to disclose on the front end is, I am new to this committee, and I am trying to get a handle on just how widespread the problem is. Certainly I have talked to some of you individually and privately about this issue, and I have talked to a few Senators individually and privately about this issue, and you have brought in the example of Fort Bragg. The question I have for you with regard to Fort Bragg is, are you telling the subcommittee that Fort Bragg is representative of the problem? In other words, do all of your forts like that and all of your installations like that have these environmental problems or these concerns?

General KEANE. Fort Bragg is an interesting illustration and that is why I brought it forward, because it is representative of how much management has to take place on 130,000 acres of land to manage an endangered species which is there, in the case of the animal, which is the Red-Cockaded Woodpecker, and the five endangered plants that they have.

But the flip side of that is, it is also an area where for the last 6 or 7 years, using the U.S. Fish and Wildlife Service management policy, or INRMP, which is what Senator Akaka referred to, that we have been able to mitigate a lot of those challenges as well. So what Fort Bragg represents is the scale and magnitude of the problem and also an attempt on the part of the U.S. Fish and Wildlife Service to work with us to mitigate those challenges.

Now, what has thrown a wedge into that is this lawsuit in Arizona, which would put us back to ground zero in a sense. It would force Fort Bragg to be declared a critical habitat, and no longer managed using INRMP, which would mean a less restrictive policy. That is the concern that we have, because the current law does not protect us from that assault that was just made and the judicial finding that occurred, so that is our challenge.

There are other places where we have a critical habitat designated and there is no management policy for the U.S. Fish and Wildlife Service that we are able to use as an effective tool, and when we have something like that we have huge restrictions. For example, the Pohakuloa training area in Hawaii, we have a critical habitat that was declared there for a plant. We built a $25 million range that we have yet to use because it was set aside for a critical habitat for the plant that is there. Given the prevalence of the plant, we are not able to use the range and also maintain the plant, and so there is a $25 million range going unused.

The U.S. Fish and Wildlife Service is proposing in Hawaii 147 different plant life that they want to designate as critical habitats.

If that is designated as a critical habitat, and we are not able to manage it under the INRMP, which Senator Akaka referred to, that is going to shut us down. It will shut us down.

So those are the challenges that we are facing as it relates to endangered species. The lawsuit that just took place jeopardizes the flexible approach the U.S. Fish and Wildlife Service used in working with us for the last 6 or 7 years.

Senator PRYOR. I apologize that I am unfamiliar with the details of the lawsuit, but I will definitely educate myself on that, but it sounds like that is at the Federal district court level. Do you know, Mr. Chairman, is that right? Has that been appealed to the circuit court level yet?

Senator ENSIGN. We do not believe so.

Senator PRYOR. Okay. All right. I can find out about that and educate myself on that.

I will say this, that I have heard some Senators discuss privately, without revealing their names, a concern that your request for exemption may be just a little too broad. That it may have the unintended consequences of just being too broad and causing some long-term damage to the environment. I think Senator Clinton really alluded to that without saying it exactly that way, that we are trying to find that balance here.

We certainly understand the needs of the military. We also want to take into consideration the desire to have the best possible environment here in the United States, and we just need to try to continue to work on that. I know that is what you are here doing, presenting your case to the subcommittee today.

Let me ask just one last question with all that in mind. Would you all object to, say, a pilot project at Fort Bragg, or you can pick whatever location you want, allow you to have the exemption that you are requesting just for the one facility. Let that run for a couple of years and then come back in, we can evaluate it, and we can determine lessons learned from that and possibly extend that to other locations, or would you like the more global exemptions?

General KEANE. My reaction to that as it pertains to the Endangered Species, the fact that the U.S. Fish and Wildlife Service entered into an agreement with us that permitted flexibility and relaxation of some of the critical habitat designation rules, that has already been in effect for 6 or 7 years. What our concern is, is that because of this lawsuit, we will lose that flexibility. So that already exists at least at the six Army installations, and I think we would be more than happy to show the subcommittee the details of what that flexibility allowed us to do.

The other threat that we feel is with this lawsuit at Eagle River Flats up in Alaska. Right now, obviously, we are shooting our live ammunition on 400 impact areas around the United States and overseas. If this lawsuit is won, obviously, that ammunition would be declared a solid waste or hazardous waste and would have to be managed as such, which would effectively shut us down.

So yes, in a sense we want to codify that that ammunition that we are going to shoot in a designated impact area that the Congress of the United States has provided to us, we want an exemption that that is not, in fact, solid waste or hazardous waste. But, that does not mean for a minute that we would not be liable to be

examined in terms of munitions that would harm an aquifer below it or any water supply of the American people.

There is nobody here, or any representative of the Department of Defense that would stand for the water supply of Americans being endangered. We are not going to put up with that, and we would make dramatic changes to make certain that does not happen. The exemption that we are seeking would not preclude us from that oversight, or if the munitions were a runoff of the reservation itself, which could possibly happen, and may be part of the concern at Eagle River Flats. We would still have oversight of that function as well, and if we shut down a range of our own accord, it would not be in the exemption status any more.

So I think what I am saying to you is that, yes, there is a lot to work with here in terms of the Department of Defense and our attitude toward this, and our desire to work with the subcommittee to find a way here to keep both of these entities going the way they should, the national defense and protecting the environment. We think we can make it work.

Senator PRYOR. Mr. Chairman, that is all I have and I look forward to working with you as we try to resolve this.

Senator ENSIGN. Thank you, Senator Pryor. We appreciate having you on the committee, and your participation on this subcommittee.

We have a vote at 3:45. If we keep it to about 5 minutes each, we could probably each get another round of questioning, so I will start.

Admiral Fallon, I want to explore in a little more detail about the LFA and this term, harassment. Can you give me the Navy's take on just the whole issue, just describe the issue, how it is affecting the LFA, but also anything else as far as the Navy is dealing with?

Admiral FALLON. Yes, sir, Senator. This legislation has been on the books for quite a few years, not initially intended, to the best of my knowledge, to have anything to do with the Navy. But, over the years it has become the stuckee for this with environmental groups around the world. The issue we have with this thing is pretty simple, and that is that there is one word in that legislation, the term "harassment," that appears, that comes up time and time again as the focal point for all the attraction of regulators, environmental groups, and the courts, and what we are seeking, quite simply, is a better definition of this term.

Now, we have sat down and met with scientists and the regulators and we have informally agreed to a number of solution sets to this issue.

Senator ENSIGN. Also, just in your discussion, could you—because we are going to hear from other sides of this—is there argument that some of these sonars are hurting breeding? Are they hurting development? How exactly are they harming the animals?

Admiral FALLON. The issue is, first of all it is much more than sonars. It is all kinds of activity, every kind of activity. Examples—what is harassment? What constitutes harassment? Is it a change to the places where the animals live, or migrate, or breed? Is it an acknowledgement of some activity?

Senator ENSIGN. No, that is what I am trying to get to.

Admiral FALLON. That is the question.

Senator ENSIGN. Right, I know you want this defined as well, and so what I am saying is, what are their arguments? What are the environmental groups' arguments? Is this, "harassment"—you know, there is probably some that is significant, and that is what you want, significant harm or whatever put in language. But, are some of these other things, are they pointing to significant biological effects to some of these marine species?

Admiral FALLON. Well, that term, significant biological effect, is one that the scientists, I understand, like to use. That would be one that if we could agree on what constitutes those effects, we think we would be pretty happy campers, but left as it is, subject to anyone's interpretation, the most, least significant—it is tough to put this in appropriate language, but anything that would cause some kind of recognition or acknowledgement by the creature of some event could constitute harassment under the interpretation of some courts, and it is that very wide range of options that we would seek to limit so that we could come up with some reasonable approach.

Again, we have reached agreement in the past with the regulatory agencies and with many prominent scientists in this area to come up with an alternative. But, absent some forcing function, and in this case, we believe legislative relief here, it is just left to individual people to interpret, and that is the key issue.

There are some other things that have come out of this LFA lawsuit, and by the way, this is not just typically somebody against the Navy. This usually is a triangle, because the regulatory agencies with which we have to work, and are happy to work in accordance with the law, are often the people that bear the heat here. So without specifically identifying one, they are viewed, I believe, by the public as representing the protection, for example, of wildlife, or the protection of sea creatures, and so the attacks will usually come against them and say, "hey, you, agency, are not representing the American people because you are not going after these guys, because the Navy is obviously doing something to harass these things."

This is one of the ways this is played, but they end up bringing the regulatory agencies into court and it ends up in a three-way battle. At the end of the day, it is pretty simple. We just need a little bit of relief. We are not looking for a broad-based solution, just a little specificity, and we think most of these problems will go away.

This one issue, which is worldwide, that is why Senator Pryor wanted to know if we could do a trial somewhere. I do not know how you do a trial. The oceans are worldwide, and we really need some help on this one.

Senator ENSIGN. Just something maybe each of you could address as briefly as possible. I know it is a complex question, but the administration has proposed a provision that would make the application of the Clean Air Act conformity requirements more cooperative and less prohibitory when a Department of Defense activity is proposed that would exceed air quality thresholds under a State implementation plan. Can each of you describe why there is a need for this proposal, and what would be the impact if this proposal were not enacted?

General FOGLESONG. I will take that, sir, if I could, because we are in the clean air business here in the Air Force. What we are really asking for is just a little relief on the requirement to conform fully with the Clean Air Act before any movement can be made. So if we want to move force structure, for instance, from one base to another base, we have to have studies done that take months, sometimes years before we can, in fact, move that force structure there for training reasons, for actual employment reasons or whatever.

What we are asking for there is just a period of time of 3 years so that we can comply with the State requirements and buy ourselves a little flexibility and we do not have to wait this extended period of time, which all the Services face right now.

Senator ENSIGN. How would you answer to the people who say you are just trying to get around the clean air laws?

General FOGLESONG. Sir, my answer to that would be, we intend to comply with the clean air laws. All we are asking for is the flexibility to take a little longer to get to the solution that is going to be legislated to us.

Senator ENSIGN. Great. Let me go to Senator Inhofe, because we are trying to keep this under the time, or excuse me, Senator Akaka.

Senator AKAKA. Thank you very much, Mr. Chairman.

General Keane, 2 years ago General Van Antwerp, the Army's Assistant Chief of Staff for Installation Management, testified before this subcommittee that, and I am quoting, "installation management, the environmental compliance programs on the ranges and training land at Fort Hood, Texas are an example of how such programs have restricted training capabilities."

General Van Antwerp referenced erosion control practices designed for compliance with the Clean Water Act, the designation of core and non-core habitat for the Golden-cheeked Warbler and the Black-capped Vireo, as well as restrictions imposed to comply with the Clean Air Act and to protect archaeologically and culturally significant sites. He concluded that, "while some of these restrictions overlap on the same training areas, only about 17 percent of Fort Hood training lands are available for training without restrictions."

Last December, on a bipartisan visit to Fort Hood, the committee staff was presented with the same map of Fort Hood we had seen a year and a half earlier, showing encumbrances on 83 percent of the base, only this time the Army restamped the map in big red capital letters, "misleading." The briefers explained that the Army had procedures in place that allow it to do the training it needs, "virtually everywhere on the base with a high level of realism."

My conclusion, General, is that the Army has had to work hard to get the training that it needs at Fort Hood, but it has been able to do so, to get that training. Would you agree or disagree with that?

General KEANE. I would agree, and it is an example of what we are talking about in terms of the flexibility we have been able to establish with the U.S. Fish and Wildlife Service, and we are not seeking an exemption from any endangered species law. What we are seeking is to use the management practices that the U.S. Fish

and Wildlife Service has permitted us to do over the last 5 or 6 years which gets the result that you are speaking of.

Going back to belabor the point a little bit, is that the Arizona lawsuit is jeopardizing the very acts that those leaders were able to do with the U.S. Fish and Wildlife Service to mitigate some of those restrictions, and it will put us back to where we were 6 or 7 years ago, that is the problem we have, so I would agree with your statement, sir.

Senator AKAKA. Admiral Fallon, you have just discussed the definition of harassment, but there are a number of other elements of the administration's legislative proposal on marine mammals. I believe that the cumulative impact of the prepared changes has raised some real concerns. How would you prioritize these three legislative initiatives and, in particular, if, at the end of the day we were able to enact just the first change, the modified definition of harassment, do you think this would give the Navy the flexibility to do what it needs to do?

Admiral FALLON. Senator, based on our experience in the last several years, there is little doubt that the single issue and the single term that has had the most negative impact on us is this term, harassment. The fact is that as a result of this recent lawsuit with the LFA, some other issues have come to the fore, particularly the issue of small numbers, the definition of small numbers.

We had not had, to the best of my knowledge, any kind of an issue with this, or go-around prior to this event in the courts, but now we have one. I believe that the intent of the DOD legislation was to do something to address that particular issue, because if it has come up once, it is probably going to come up again. But, specifically, for the Navy the harassment definition fix would be most welcome.

We certainly need some help in other areas, but that is clearly our top priority, sir.

Senator AKAKA. Thank you, Mr. Chairman.

Senator ENSIGN. Senator Inhofe.

Senator INHOFE. I will not take the full 5 minutes, because I think we will have our vote coming up. You made the comment on a couple of occasions now, and so did someone at a previous hearing, that if the decision is made the way it could turn out at Richardson it would affect 400 ranges, is that correct?

General KEANE. If the judicial decision went against the Government and were applied to other areas and live-fire munitions were, in fact, declared solid or hazardous waste, it would shut down our ranges.

Senator INHOFE. Okay, now, would it not also shut down the other Services? Would you like to each one comment?

General FOGLESONG. Yes, sir. We are equally concerned about that. We have 41 major ranges, and the precedent that is being set that General Keane talks about has us equally concerned.

General NYLAND. Also for us, sir. Certainly we share all the ranges with my fellow members as well as our own ranges. The interesting thing to me is that under the EPA the military munition rule, which is an accommodation similar to the INRMP, we are all in agreement. We have worked that with that agency, yet now we have the case if the Eagle River Flats legislation is approved, we

would have a precedent that would potentially overturn all that, and then lose the ability to use our ranges.

Senator INHOFE. Yes, that is what I wanted to get into the record, that it is not just the Army ranges.

Let us get back to the LFA again. Now, it is my understanding that as far as the national security exemption, that does not apply to the Marine Mammal Protection Act, is that correct?

Admiral FALLON. Senator, I believe that the Department of Defense initiative this year, in fact, does request an exemption.

Senator INHOFE. No, I am talking about as it is today.

Admiral FALLON. No, sir.

Senator INHOFE. Even in times of war, because we have been talking about training.

Admiral FALLON. To the best of my knowledge there has never been an exemption clause as part of this, because again, when this legislation was initially enacted, it was not concerning our activities. It had to do with others.

Senator INHOFE. All right, would you real quickly run over what you started out with when you told us about the circumstances under which you would have to shut down and not use this particular type of sonar?

Admiral FALLON. This is a new system, a prototype system. It operates in an area in which we had not used previous systems to detect submarines. We believe it is of great importance to our future because of the, as I said earlier, challenge worldwide of these quiet new submarines.

Senator INHOFE. New, quiet, some diesels, otherwise there is no way of making that detection?

Admiral FALLON. Yes, sir. The reality today is that after the end of the Cold War and the demise of the Soviet Union, we have a different threat than we faced then. In those days, they were nuclear submarines, large numbers in a blue water environment, and typically they would be moving somewhere. We would expect them to move somewhere, and we would be going to counter them.

In today's reality, we are working in the littorals. We are not in the blue water, primarily, and we are working against a threat that is designed to prevent our accessing the near shore area so that we can project power ashore and do whatever we have to do to carry out the mission.

Senator INHOFE. But there are some circumstances under which this sonar is the only way of detecting?

Admiral FALLON. The likelihood of detecting submarines without this in many circumstances we think is pretty low.

Senator INHOFE. In an actual situation, then, not training, if you had to shut down, what is the exposure?

Admiral FALLON. We are not going to be able to get it online, and we will be forced to use what we have, which we do not think is adequate to meet this emerging threat.

Senator INHOFE. So this is a life and death situation, it could be, for your sailors.

Admiral FALLON. If we end up in a position where we are asked to execute a mission with that kind of a threat, and we cannot detect that threat, then our forces are at risk.

Senator INHOFE. Thank you very much.

Thank you, Mr. Chairman.

Senator ENSIGN. Senator Pryor.

Senator PRYOR. Thank you, Mr. Chairman. Really, I only have one question, and that is for General Nyland. I know that some of your written comments related to the Endangered Species Act, and I know that is a real challenge for your branch to try to work around and work through all those issues, and it sounds like you and the DOD have just gone above and beyond in many cases to try to accommodate and work with that.

As I understand it, and again I am new to this committee, but as I understand it, there has been a three-factor test that you have used with regard to endangered species. It may be slightly or somewhat cumbersome, but it has seemed to work fairly well, I am sure with a few bumps in the road. There always seem to be, but would codifying that three-factor test—it seems like that would give you certainty. It would give you some familiarity with the process, and it would allow you all to function and accomplish your mission. Is that something that you could support?

General NYLAND. Yes, sir. In fact, the second phase of that quantification study at Camp Pendleton, which is designed to show the ability of the installation to support training, will end within the next 30 days, or 6 weeks.

We have every intent over the next 2 years to take what we have learned from that and add it to a new range management system that we have instituted down at Quantico to be able to not only identify how our training goes against our individual skills and our metals, but also to quantify the impact due to any kind of encroachment. So we certainly hope we will be able to have that data collected by the end of April and then start towards probably a 2-year period to implement this, and then have that available to us at all times.

Senator PRYOR. Thank you.

Senator ENSIGN. Thank all of you for your wonderful testimony. Obviously, we have some difficult challenges ahead. This subcommittee looks forward to working with you and the other committees of jurisdiction on these very important issues, and you are excused. This hearing is concluded.

[Questions for the record with answers supplied follow:]

QUESTIONS SUBMITTED BY SENATOR JOHN ENSIGN

RANGE PRESERVATION

1. Senator ENSIGN. General Keane, Admiral Fallon, General Nyland, and General Foglesong, the Readiness and Range Preservation Initiative submitted to Congress this year reflects changes when compared to the proposal submitted last year. What are the differences between the two versions?

General KEANE. The Army believes that the Office of the Secretary of Defense (OSD) is best equipped to address the detail regarding specific changes in the Readiness and Range Preservation Initiative legislative language requested by this question.

However, the Army does feel it important to highlight the following key general points. Last year, Congress enacted three of eight Readiness and Range Preservation Initiative proposals submitted by OSD: Reform of the Migratory Bird Treaty Act and two provisions strengthening OSD's ability to encourage buffer zones around military installations. This fiscal year's Readiness and Range Preservation Initiative proposals include the five remaining elements from last year, with clarifications and modifications of these five elements to more sharply define their scope. The Army believes that these clarifications highlight the modest and necessary na-

ture of the proposals. We strongly encourage the subcommittee to fully review and then adopt all five of these Readiness and Range Preservation Initiatives as part of the National Defense Authorization Act for Fiscal Year 2004.

Admiral FALLON. Last year, DOD submitted an eight-provision legislative package, three of which Congress enacted in some form. Two of the provisions allow DOD to cooperate more effectively with third parties on land transfers for conservation purposes, and a third provides a temporary exemption from the Migratory Bird Treaty Act for the unintentional taking of migratory birds during military readiness activities.

The five remaining provisions resubmitted this year reaffirm the principle that military lands, marine areas, and airspace exist to ensure military preparedness, while also ensuring DOD remains fully committed to environmental stewardship of the lands under its care.

As the result of discussions with State and Federal agencies, natural resource trustees, and non-Government organizations over the past year, the RCRA and CERCLA provisions of this year's legislative package have been revised to narrow their focus to military readiness activities on operational ranges. These provisions state that they do not apply to closed ranges or ranges that close in the future. None of the provisions apply to the routine operation of installation support functions or the operation of industrial activities, for which DOD is, and will remain, subject to the same regulatory requirements as the private sector.

The Marine Mammal Protection Act (MMPA) provision differs substantively from last year's provision, which sought only to clarify the "harassment" definition. This year's provision seeks the same clarification to the "harassment" definition for military readiness activities only, corrects structural deficiencies in application of the MMPA's permitting provisions to military readiness activities, and includes a national defense exemption. The structural deficiencies include elimination of the "small numbers," "specified geographic region," and "specific activity" requirements of the MMPA permitting process for military readiness activities. The corrections of the permitting process resulted from the ruling of the Federal court in the SURTASS FLA litigation, which occurred subsequent to last year's Readiness and Range Preservation Initiative submission.

There are no changes to the Clean Air Act provision.

General NYLAND. Both Readiness and Range Preservation Initiative submissions retain the goal to prevent further encroachment restrictions and mitigate others, which restrict access to, and sustainment of, training and test ranges. The legislative proposal submitted to the 107th Congress in April 2002 contained eight provisions. The following three provisions were reflected in the National Defense Authorization Act for Fiscal Year 2003 of 13 November 2002: (1) Land Conservation Partnerships, (2) Surplus Property Conveyance, and (3) Migratory Bird Treaty Act (accepted in revised form). The following five provisions not accepted last year, were resubmitted before the 108th Congress on 3 March 2003 and are as follows:

1. Endangered Species Act: We propose that Integrated Natural Resources Management Plans under the Sikes Act provide the special management considerations or protection required under the Endangered Species Act and would obviate the requirement for designation of critical habitat on military lands for which such plans have been completed.

2. Marine Mammal Protection Act (MMPA): This proposal clarifies the definition of "harassment" for purposes of military readiness activities under the MMPA (i.e. any military readiness activity must injure or have the significant potential to injure a marine mammal; disturb or likely disturb a marine mammal, causing a disruption of behavioral patterns to the point of abandonment or significant alternation; or be directed toward a specific individual, group, or stock of marine mammals, causing a disruption of natural behavioral patterns).

3. Clean Air Act (CAA): Our proposal will maintain DOD's commitment to CAA standards while providing flexibility to meet State air quality policies by providing DOD and State regulators up to 3 years to ensure compliance with State Implementation Plans. Under the requirements of current law, it is becoming increasingly difficult to base military aircraft near developed areas.

4 and 5. RCRA and CERCLA: Our proposed amendments to RCRA and CERCLA have been slightly revised to make it absolutely unambiguous that they do not affect our cleanup obligations on closed ranges. We included new language in both the legislation and the accompanying sectional analysis to clarify that our proposals have no affect whatsoever on our legal obligations with respect to cleanup of closed bases, or of bases that close in the future.

In addition, we made a technical revision in a provision in last year's bill designed to ensure that our proposal did not alter EPA's existing protective authority in section 106 of the Superfund law. As a result, this year's version is even clearer that

notwithstanding anything in our proposal, EPA retains the authority to take any action necessary to prevent endangerment of public health or the environment in the event such risk arose as a result of use of munitions on an operational range.

General FOGLESONG. Last year Congress enacted three of the eight proposals submitted by the Defense Department—reform of the Migratory Bird Treaty Act and two provisions strengthening DOD's ability to encourage buffer zones around military installations. This year's proposal includes the remaining five elements, with some clarifications and modifications based on events in the previous year.

RCRA and CERCLA. Our proposed amendments to RCRA and CERCLA have been slightly revised to make it absolutely unambiguous that they do not affect our cleanup obligations on closed ranges. We included new language in both the legislation and the accompanying sectional analysis to clarify that our proposals have no effect whatsoever on our legal obligations with respect to cleanup of closed bases, or of bases that close in the future.

In addition, we made a technical revision in a provision in last year's bill designed to ensure that our proposal did not alter Environmental Protection Agency's (EPA) existing protective authority in section 106 of the Superfund law. As a result, this year's version is even clearer that notwithstanding anything in our proposal, EPA retains the authority to take any action necessary to prevent endangerment of public health or the environment in the event such risk arose as a result of use of munitions on an operational range.

Marine Mammal Protection Act. This year's proposal adds three new elements to our Marine Mammal Protection Act (MMPA) proposal, all as a result of events in the last year. As you may know, the Navy and National Oceanic and Atmospheric Administration (NOAA) lost an important case last year regarding a vital anti-submarine warfare sensor—Surveillance Towed Array Sensor System (SURTASS) Low Frequency Active (LFA), a towed array of sensors emitting low-frequency sonar that is critical in detecting ultra-quiet diesel-electric submarines while they are still at a safe distance from our vessels.

The Court's ruling highlighted a number of structural deficiencies in application of the MMPA to military readiness activities that require legislative change. First, the Court found fault with NOAA's regulatory interpretation of the definition of "harassment," clearly substantiating the need to change the statutory definition of harassment that we identified in our legislative package last year. Second, the Court struck down NOAA's longstanding application of the MMPA's "small numbers" requirement. The National Research Council has recommended that this provision be deleted as not scientifically based. Elimination of this requirement, which Congress has previously acknowledged is "incapable of quantification," would instead appropriately focus impact determinations on the scientifically based "negligible impacts" standard. Third, the litigation highlighted the difficulty in identifying a "specific geographical region" for permits applied to military readiness activities. Given the migratory nature of marine mammals, varying biological and bathymetric features in the environment they occupy, and the worldwide nature of naval operations, this requirement is extremely difficult to define as a legal matter. Our proposal would have no effect on NOAA's responsibility to satisfy itself that our activities would have "negligible impacts"—a finding that necessarily entails full consideration of the location and timing of our readiness activities. It would, however, prevent critical readiness activities that have been validated by such scientific review from being impeded by technical legal issues of defining "regions."

The last change we are proposing, a national security exemption process, also derives from feedback the Defense Department received from environmental advocates last year after we submitted our proposal. With virtual unanimity, these groups argued that DOD should use emergency exemptions rather than the alternative forms of regulation that we proposed to Congress. The comments we received last year highlighted the fact that the MMPA does not currently contain such emergency authority, so this year's submission does include a waiver mechanism. Like the Endangered Species Act, our proposal would allow the Secretary of Defense, after conferring with the Secretary of Commerce or Secretary of Interior, as appropriate, to waive MMPA provisions for actions or categories of actions when required by national security.

2. Senator ENSIGN. General Keane, Admiral Fallon, General Nyland, and General Foglesong, the Marine Corps has gone above and beyond to work with the regulators on the Endangered Species Act and has developed a three-factor test to address endangered species on Marine Corps installations. Should the three-factor test be codified to provide predictability?

General KEANE. The Army believes that the Marine Corps and OSD are best equipped to answer this specific question. The Marine Corps has specific experience

with the benefits and limitations of the three-factor test, and OSD has a broad view of the potential limitations and liabilities from generalizing this three-factor test. The Army has not done the detailed analysis necessary to provide a formal opinion in these areas.

Having noted the above, the Army believes that the proposed fiscal year 2004 OSD Readiness and Range Preservation Initiative legislation with respect to the Endangered Species Act does provide the necessary legislative codification of procedures that will protect endangered wildlife without resorting to the designation of a "critical habitat"—a designation that can severely curtail vital military training. The Readiness and Range Preservation Initiative would provide a basis in law for procedures that are now working well between the U.S. Fish and Wildlife Service and the military services to protect endangered wildlife by generation of an Integrated Natural Resources Management Plan, "pursuant to the Sikes Act." This legislative initiative—the Sikes Improvement Act—would provide that Integrated Natural Resource Management Plans must be prepared by the military services in cooperation with and reflect the "mutual agreement" of the U.S. Fish and Wildlife Service (and the head of each appropriate State fish and wildlife agency where the installation is located). Once completed, these management plans would obviate any need for designation of a "critical habitat" [16 U.S.C. § 670a(a)(2)]. The Army believes that this comprehensive approach to clarifying the Endangered Species Act is necessary as the first step toward a sustainable balance between military readiness and protection of endangered species. We strongly encourage the subcommittee to adopt this OSD legislative initiative as part of the National Defense Authorization Act for Fiscal Year 2004.

Admiral FALLON. No. The three-factor test would require that INRMPs used in lieu of designating critical habitat provide (a) a conservation benefit to the species; (b) certainty that the management plan will be implemented; and (c) certainty that the conservation benefit will be effective. The RRPI provision anticipates these factors and provides greater flexibility for the protection of military readiness activities and the stewardship of species by requiring "mutual agreement" between the Navy and the U.S. Fish and Wildlife Service regarding the contents of an INRMP. This flexibility is necessary to ensure that there is a balance achieved to protect species and to ensure that the military can execute necessary national security missions. Finally, and most importantly, inclusion of the three factors would generate considerable litigation risk as environmental groups attacked the findings and conclusions of the U.S. Fish and Wildlife Service regarding the INRMP's compliance with the three factors.

General NYLAND. It is not necessary and may not be appropriate to codify the three-factor test currently employed by the U.S. Fish and Wildlife Service when reviewing military service Integrated Natural Resource Management Plans. While the three-factor test currently employed by the U.S. Fish and Wildlife Service may be sufficient for purposes of many listed species, situations could arise where different or additional conditions may be warranted. In other words, species-specific issues may dictate a change to the three-factor test. The Readiness and Range Preservation Initiative provision anticipates the potential need for such changes by requiring approval of Integrated Natural Resource Management Plans in accordance with the mutual agreement provision of the Sikes Act Improvement Act. Consequently, compliance with the three-factor test, or other appropriate species-specific considerations believed to be necessary by the Secretary of the Interior, is required under the current language of the Readiness and Range Preservation Initiative.

All of the military services have worked closely with the U.S. Fish and Wildlife Service to address the management of threatened and endangered species habitat extant on military installations. Recent efforts were energized, however, by U.S. Fish and Wildlife Service proposals to designate 57 percent of Marine Corps Base Camp Pendleton and 65 percent of Marine Corps Air Station Miramar as critical habitat. The Marine Corps offered that Integrated Natural Resource Management Plans, prepared pursuant to the Sikes Act Improvement Act, 16 U.S.C. § 670a, provide comprehensive, multi-species management strategies sufficient to address the conservation needs of listed species so that the designation of critical habitat is neither necessary nor required. The U.S. Fish and Wildlife Service accepted this analysis, and developed a policy wherein critical habitat designation is not required on military lands subject to a completed Integrated Natural Resource Management Plan. This policy requires the Integrated Natural Resource Management Plans provide: (a) a conservation benefit to the species; (b) certainty that the management plan will be implemented; and (c) certainty that the conservation benefit will be effective. (The policy includes more extensive definitions for each of these three conditions.) Since October 2000, the U.S. Fish and Wildlife Service has employed this policy to obviate the need to designate critical habitat at several military installations.

The Readiness and Range Preservation Initiative requires the completion of Integrated Natural Resources Management Plans pursuant to the Sikes Act. The Sikes Act Improvement Act provides that Integrated Natural Resource Management Plans must be prepared in cooperation with and reflect the "mutual agreement" of the U.S. Fish and Wildlife Service (and the head of each appropriate State fish and wildlife agency where the installation is located). 16 U.S.C. §670a(a)(2). This mutual agreement provision ensures that conditions required by the U.S. Fish and Wildlife Service (and State fish and wildlife agencies) for the benefit of listed species will be embedded in the completed Integrated Natural Resource Management Plan. It is appropriate to ensure that regulatory agencies can require conditions necessary to benefit the listed species (via the mutual agreement requirement), but it is not necessary to codify the exact conditions.

General FOGLESONG. It is not necessary—and may not be appropriate to codify the "three-factor test" currently employed by the U.S. Fish and Wildlife Service when reviewing military service Integrated Natural Resource Management Plans. While the "three-factor test" currently employed by the U.S. Fish and Wildlife Service may be sufficient for purposes of many listed species, situations could arise where different or additional conditions may be warranted. In other words, species-specific issues may dictate a change to the "three-factor test." The Readiness and Range Preservation Initiative provision anticipates the potential need for such changes by requiring approval of Integrated Natural Resource Management Plans in accordance with the "mutual agreement" provision of the Sikes Act Improvement Act. Consequently, compliance with the "three-factor test," or other appropriate species-specific considerations believed to be necessary by the Secretary of the Interior, is required under the current language of the Readiness and Range Preservation Initiative.

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3. Senator ENSIGN. General Keane, Fort Hood, Texas, has been confronted with challenges related to the Endangered Species Act. There are indications that there may have been "misleading" information provided on the training restrictions at Fort Hood. Can you explain this?

General KEANE. There are many constraints on the use of the training areas at Fort Hood. Some are based on external legal or regulatory requirements. Others are self-imposed policies implemented to respond to concerns from neighboring communities or based on a variety of internal land management objectives. The information the Army has used to articulate the training constraints at Fort Hood, primarily maps developed by Fort Hood staff from the installation's geographic information system (GIS), was accurate. In total, approximately 154,000 acres (77 per-

cent) of the training area at Fort Hood are subject to some type of training restriction. About 66,000 acres (33 percent) of the training area are restricted due to management of endangered species and their habitat. These facts could be misleading without further explanation. The command group at Fort Hood has done a tremendous job of getting every bit of training value they can from the land. They find creative ways of working around the environmental constraints and training their soldiers to standard. The readiness of the Army's III Corps reflects that. However, training on Fort Hood is constrained and the realism of the training at Fort Hood is negatively affected by these constraints.

Even relatively minor constraints on the use of training land, such as restricting the use of camouflage netting or digging foxholes, incrementally diminishes the realism of training events. When several minor restrictions apply to a training event, the cumulative impact can and has significantly degraded training realism. At a minimum, these restrictions tend to concentrate training in less constrained areas of the installation. Repeated use of a relatively small number of training areas concentrates training damage on those areas, driving up land maintenance costs and creating additional issues (e.g., erosion). More importantly, repetitive use of training areas by units reduces realistic assessment and consideration of terrain when making tactical decisions and encourages habitual occupation of the same terrain and defensive positions. It causes unrealistic scenarios, and soldier unfamiliarity with the most likely military courses of action, the most challenging forms of enemy positioning, and the most dangerous types of enemy ambush points. Each of these shortfalls places at risk the type of high-quality training necessary to sustain force readiness and our warfighting edge.

4. Senator ENSIGN. General Keane, what is the Army's position on the training restrictions at Fort Hood?

General KEANE. Training on Fort Hood is constrained and the realism of the training at Fort Hood is negatively affected by these constraints. The command group at Fort Hood has done a tremendous job getting every bit of training value they can from the land. They find creative ways of working around the constraints and training their soldiers to standard. The readiness of the Army's III Corps reflects that. However, these "work-arounds" do not come without cost. For example, concentrating maneuver training to only certain parts of Fort Hood in order to preserve "core habitat" has contributed to significant erosion problems in the maneuver area that are not only expensive to manage, but detrimental to the environment. The quality and quantity of our unit training—and associated force readiness—at Fort Hood will continue to decline if steps are not taken now to reverse these trends.

QUESTIONS SUBMITTED BY SENATOR DANIEL K. AKAKA

RANGE PRESERVATION

5. Senator AKAKA. General Keane, Admiral Fallon, General Nyland, and General Foglesong, earlier this year, EPA Administrator Christine Todd Whitman testified before the Senate Environment and Public Works Committee, "I don't believe there is a training mission anywhere in the country that is being held up or not taking place because of environmental protection regulation." I am aware of a number of cases in which training and readiness activities have been impeded by the Endangered Species Act and the Marine Mammal Protection Act (neither of which is implemented by EPA), so I would like to focus on the other aspects of the administration's legislative proposal. Are any of you aware of any case in which a military training mission anywhere in the country is being held up or not taking place as a result of hazardous waste statutes?

General KEANE. I am aware of no Army range or training area where the application of the Federal hazardous waste statute, the RCRA, prohibits training. However, RCRA is one of the laws cited by plaintiffs in a lawsuit against the Army at Fort Richardson, Alaska. Also cited in the case are the Comprehensive Environmental Response Compensation and Liability Act (CERCLA or Superfund) and the Clean Water Act. Plaintiffs claim that firing munitions during training violates all of these laws. Plaintiffs are seeking to halt live-fire training and require remediation of the Eagle River Flats impact area. This would dramatically impact the training of the 172nd Infantry Brigade, the largest infantry brigade in the U.S. Army. If the suit is successful, it would set a precedent that could subject live-fire training and testing at every Army operational range (400+) to permitting and remediation actions under these laws.

It is interesting to note that the expanded application of environmental laws to military ranges is not coming from regulatory agencies, but from citizens' suits seeking novel interpretations of these laws. In fact, DOD's legislative proposals in the areas of RCRA and CERCLA seek to codify the longstanding EPA policy, established by former President Clinton's administration, that firing ammunition on an operational range is not a trigger for cleanup requirements. DOD has developed these legislative proposals in close coordination with EPA.

Admiral FALLON. Navy is not aware of any instances in which training has been lost due to the administration of the hazardous waste statutes. However, administration of hazardous waste statutes is usually under the authority of State regulatory officials, who vary in their interpretation of Federal hazardous waste laws and who have the ability to enforce stricter standards than existing Federal hazardous waste laws. Thus, there is the potential for negative impacts to military readiness activities. More importantly, hazardous waste laws have been used in litigation by environmental groups seeking to halt military training. The Readiness and Range Preservation Initiative proposed legislative clarification for the Resource Conservation and Recovery Act. It comports with the existing EPA Military Munitions Rule while providing a statutory definition for "solid waste" that standardized application of hazardous waste laws and ensures continued access to our operational ranges now and into the future.

General NYLAND. Administrator Whitman's oversight role does not include natural resources. The Marine Corps needs solutions as outlined in the RRPI, embedded in law, that requires consideration, accommodation, and protection of lands used for military training and operations. RRPI passage, including the provision that addresses critical habitat designation, has direct national security implications, and is a Marine Corps priority.

Regarding your question on hazardous waste, I am aware of the U.S. Army's involvement in a citizen's suit involving Fort Richardson, Alaska. The coalition of plaintiffs is challenging the Army's live-fire operations at Eagle River Flats. The suit alleges that munitions are:

Solid/hazardous waste subject to the RCRA;
Release of a hazardous substance subject to the CERCLA; and
Pollutant discharge subject to the Clean Water Act (CWA).

If successful, plaintiffs could force remediation of the Eagle River Flats impact area, precluding live-fire training at the only mortar and artillery impact area at Fort Richardson and dramatically degrading readiness of the 172nd Infantry Brigade, the largest infantry brigade in the Army. The Fort Richardson litigation could set a precedent fundamentally affecting military training and testing at virtually every test and training range.

RCRA and CERCLA are Federal laws designed to regulate the cleanup of solid hazardous wastes on land. RRPI intends to clarify the application of RCRA and CERCLA to operational ranges. This clarification is in accordance with the EPA's Military Munitions Rule. Explosives, munitions, munitions fragments, or constituents thereof would be excluded from the definition of "solid waste" under RCRA when military services "deposit" the items on an operational military range incident to normal use, and the items remain thereon. If the operational range ceases to be operational (is closed), CERCLA would then apply to the cleanup. Similarly, under CERCLA, explosives and munitions deposited on operational ranges during normal use would not qualify as a "release"—otherwise, under CERCLA, a "release" would require a cleanup. The provision explicitly preserves the President's and DOD's authority to address an imminent and substantial endangerment to the public health, welfare, or the environment.

Fort Richardson is a prime example of Federal agencies (DOD and EPA) working together to arrive at an environmentally acceptable solution, only to be sued by private party plaintiffs who interpret the law differently. This legislative clarification/codification of EPA's Military Munitions Rule is intended to forestall litigation such as what the Army is currently facing at Fort Richardson, Alaska.

General FOGLESONG. Although I am not aware of any case in which a military mission is currently being held up or not taking place as a result of restoration statutes, environmental plaintiffs have filed suit at Fort Richardson, Alaska, alleging violations of the CERCLA and Alaska anti-pollution law applicable under the RCRA. If successful, they could potentially force remediation of the Eagle River Flats impact area and prevent all future live-fire training at the only mortar and artillery impact area at Fort Richardson, thereby dramatically degrading readiness of the 172nd Infantry Brigade, the largest infantry brigade in the Army. It could also set a precedent fundamentally affecting military training and testing at virtually every test and training range.

In only one instance has the U.S. Environmental Protection Agency (EPA) taken an enforcement action resulting in the cessation of live-fire training at a military base, the Massachusetts Military Reservation (MMR) on Cape Cod, Massachusetts. As John Peter Suarez, Assistant Administrator, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, testified before the Subcommittee on Readiness and Management Support of the Senate Armed Services Committee on April 1, 2003:

> "We note, for the record, that in its history, EPA has in only one instance taken an enforcement action that resulted in the cessation of live-fire training at a military base—namely, at the MMR on Cape Cod, Massachusetts. There, EPA took action under the Safe Drinking Water Act only after determining that the groundwater aquifer underlying MMR, the sole source of drinking water for hundreds of thousands of Cape Cod residents, was threatened with contamination—and only after efforts to support voluntary action failed to stop the spread of contamination. Today at MMR, EPA is overseeing cleanup work to ensure that Cape Cod residents have an adequate supply of drinking water now and in the future. The Defense Department shifted some of this training to another facility and has continued to conduct training at MMR using small arms, as well as other training without using explosives, propellants, and pyrotechnics."

6. Senator AKAKA. General Keane, Admiral Fallon, General Nyland, and General Foglesong, setting aside smoke and dust restrictions, which I understand are not addressed in the administration's legislative proposal, are any of you aware of any case in which a military training mission anywhere in the country is being held up or not taking place as a result of the Clean Air Act?

General KEANE. Restrictions on training with smoke or other obscurants and restrictions on mechanized maneuver that generates airborne dust are addressed by the administration's legislative package. Like any other air emission, new or modified training activities would have 3 years to demonstrate conformity with State Implementation Plans Under the Clean Air Act. The legislation would provide more flexibility for the Defense Department in ensuring that emissions from its military training and testing are consistent with State Implementation Plans under the Clean Air Act by allowing DOD and the State a slightly longer period to accommodate or offset emissions from military readiness activities.

At Fort Leonard Wood, Missouri, the home of the Army's Chemical School, Military Police School, and Engineer School, there are four training areas designed for training soldiers in the generation of obscurants (fog oil). Due to constraints contained in the installation's air permit, the Army is restricted to using only one of these training areas. Meteorological conditions are seldom favorable enough to allow use of the other three. These restrictions severely limit the areas where soldiers can conduct smoke field training exercises. Because only one training area is available on a regular basis, students tend to see the same targets and terrain over and over again in training. The realism of the training is diminished, and the capability of our soldiers in this critical area of military operations is reduced.

Admiral FALLON. No. The Navy has not suffered any training losses associated with the conformity provisions of the Clean Air Act. However, there have been several near misses that threatened delay in introduction of new weapons systems or the movement of aircraft and ships. The Readiness and Range Preservation Initiative to extend the deadline for conformity is meant to alleviate the future impacts associated conformity requirements for the basing of ships and aircraft, and the introduction of new weapons systems. Navy homeports a large number of our ships and aircraft in areas of the country designated as non-attainment or maintenance areas under the Clean Air Act.

General NYLAND. It is likely that the fielding of future weapons systems and the conduct of contingency operations will be negatively impacted by Clean Air Act requirements. Our proposal will maintain DOD's commitment to CAA standards while providing flexibility to meet State air quality policies by providing DOD and State regulators up to 3 years to ensure full compliance with State implementation plans. If RRPI were passed, the CAA provision would allow limited flexibility when complying with the conformity requirement. The CAA's "general conformity" requirement, applicable only to Federal agencies, threatens deployment of new weapons systems and base closure/realignment despite the fact that relatively minor levels of emissions are involved. For example, the realignment of F/A–18 C/Ds from Cecil Field, Florida to Naval Air Station (NAS) Oceana in Virginia was made possible only by the fortuity that Virginia was in the midst of revising its implementation plan and was able to accommodate the new emissions. Under the existing requirement, there is limited flexibility to accommodate readiness needs, and DOD is

barred from even beginning to take readiness actions until the requirement is satisfied. The legislation would provide more flexibility for the DOD in ensuring that emissions from its military training and testing are consistent with State implementation plans under the Clean Air Act by allowing DOD and the State a 3-year period to accommodate or offset emissions from military readiness activities.

Federal facilities located in non-attainment areas must comply with the Clean Air Act General Conformity regulations, which prohibit Federal agencies from supporting or taking any action that does not conform with the State's plan to bring air quality into compliance. This can have significant impacts on the military's ability to change operations or field new weapon systems. We believe DOD actions should conform with State Implementation Plans; in recognition of the national security implications, however, military readiness activities should be given a 3-year window to demonstrate conformity.

Future Weapons Systems: Across the board all new weapons systems (JSF, F–22, F/A–18E/F, V–22, and AAAV) will emit more nitrogen oxides (NOx) than the legacy systems they are replacing. Basic combustion processes mean that the more efficient higher power engines burn hotter, emitting more NOx. For areas designated non-attainment for ozone (including most of Southern California—the location of multiple military installations) NOx is a pollutant of concern. Historically, the military services have been able to work with States to demonstrate conformity—these good relations will continue. The immediate nature of the conformity requirement, however, is burdensome. A 3-year window to demonstrate conformity would maintain the conformity requirement, and allow for smoother transitions to new weapons systems.

Contingency Operations: Conformity is triggered whenever there is a major Federal action. Major increases or a change in the type of operations in a non-attainment area can trigger conformity requirements. For example, homeland security activities, especially the round-the-clock air surveillance of the major cities, can—depending upon flight tempo level, constitute a new mission for some airfields and thereby raise conformity issues. A 3-year window to demonstrate conformity would maintain the requirement, and allow for immediate ramp-up of military operations in support of unanticipated contingencies.

General FOGLESONG. There are currently no places where Air Force training missions are being held up or are not taking place as a result of the Clean Air Act. The Air Force does regularly relocate forces among installations throughout the U.S. and the world, in order to best position them for potential use and to optimize training opportunities. However, the Clean Air Act's "general conformity" requirement applicable to Federal agencies restricts the Air Force's ability to immediately deploy personnel or relocate weapons systems, despite the fact that only minor levels of emissions may be involved. The proposed Readiness and Range Preservation Initiative would provide more flexibility for the Air Force in ensuring emissions from its military training are consistent with State Implementation Plans under the Clean Air Act by allowing the Air Force and the States a 3-year period to accommodate or offset emissions from military readiness activities. This would greatly facilitate the movement of military units among installations in order to best position them for potential use.

ENCROACHMENT ISSUES

7. Senator AKAKA. General Foglesong, earlier this week, the Under Secretary of Defense for Personnel and Readiness testified before another subcommittee that military faces a number of encroachment issues. He specifically listed "Urban sprawl, loss of frequency spectrum, restrictions on air space, and endangered species-related restrictions on training lands." Yet the administration's legislative proposal focuses exclusively on encroachment issues arising out of environmental law and regulation. In the case of the Air Force, how would you rank the impact of the encroachment issues we have been discussing in this hearing against the impact of encroachment issues we have not focused on, such as airspace management, the availability of spectrum, and noise restrictions?

General FOGLESONG. Frequency spectrum, urban sprawl, noise concerns, and the utilization of the national airspace system pose just as significant concerns to the Air Force as the encroachment issues based on environmental provisions. Each of these types of encroachment is being addressed but do not require changes to specific statutes at this time.

The authority to guide civilian growth and development of land rests exclusively with State and local governments. The Air Force has been proactive in this arena for over 25 years by participating in the local land use planning process. Provisions

in last year's passage of some elements of the RRPI provide another tool for use by the Air Force to address urban sprawl around our ranges and installations, and we thank Congress for this needed relief.

Noise concerns are primarily local issues and our military professionals are actively interacting with their local communities to address noise concerns, educate populations, and provide public record documents giving future property owners disclosure on the military noise in their region. Additionally, the Services are working to develop better noise modeling programs to ensure the best possible data is available to military planners and the public.

Likewise, the shared use of our National Airspace System is very important to the Air Force and we are actively working, through the DOD Executive Director of the Policy Board on Federal Aviation, to ensure all civil and military needs for airspace are accommodated in the future.

Frequency spectrum encroachment occur when the Air Force loses spectrum as greater demands are placed on spectrum for commercial and international uses. The Air Force is actively developing methods to more efficiently use the spectrum we currently have, and to work within the National Telecommunications and Information Administration, Federal Communications Commission, and the International Telecommunications Union processes to protect or provide for Air Force frequency spectrum needs.

8. Senator AKAKA. General Foglesong, can you explain why the administration has chosen to offer legislation that focuses exclusively on the environmental laws, and neglects to address other encroachment issues identified by the military services?

General FOGLESONG. The Department of Defense's efforts to address encroachment are broadly focused, encompassing a wide range of issues and actions. As your question recognizes, not all encroachment issues are "environmental" issues per se. Urban growth and development at the fence line, commercial competition for vital radio spectrum, airspace restrictions, increasing pressure for recreation or commercial uses on military land, and other such factors come into play. DOD is actively addressing these problems on many fronts. Legislation is only one possible solution, and has been sparingly employed. We are working to resolve many of these concerns by working with the regulatory agencies and other parties to mitigate existing or potential encroachments. If and when appropriate, we will consider legislative clarification on non-environmental encroachment concerns, but we do not believe that is necessary at this time.

However, while encroachment is broad-based, a large number of our most pressing encroachment issues are associated with the readiness impacts of environmental legislation or regulation. Each of the five legislative proposals offered this year is the result of lengthy deliberation within the Department and the administration, to include Office of Management and Budget and the Federal agencies. DOD has taken a very conservative approach in deciding which specific encroachment concerns justify a request for legislative clarification. No legislation is proposed that has not met three basic tests:

- Is the proposed legislation the only realistic option to address the readiness issue? In other words, can the problem be solved through regulatory or administrative means, or by internal DOD action short of legislative clarification? In these five cases, we have concluded that other options are not available, for the most part due to lawsuits and court decisions that have removed other recourse. Legislative action is the only reasonable alternative.
- Will the legislation produce significant readiness benefits? Of the many potential encroachment issues we face, the five we are seeking to address in our RRPI provision are truly potential showstoppers. Our range commanders have told us, and have repeatedly testified before Congress, that their management flexibility and the realism of their testing and training are being severely constrained due to these precise issues. DOD believes these are the most important issues to address, and that the resolutions we have proposed are the best way to resolve the concern.
- Will the legislation have neutral or positive environment effects? DOD is fully committed to superior natural resource stewardship. None of our five legislative proposals would significantly affect the quality of the environment on or around our ranges, except perhaps in a positive manner. For example, the use of INRMP holistically protects not just individual endangered species, but their ecosystems, in ways critical habitat designations cannot.

In summary, the Department hopes to resolve many of our encroachment issues through broad-based, long-term range sustainment efforts, without resorting to legislative action. We are pursuing a number of policy, organizational, programmatic, regulatory/administrative, and stakeholder involvement solutions to the broad range of encroachment issues we face. It is only where other solutions are unavailable that legislation is being pursued, and even then, only when such clarifications will truly improve our ability to fulfill both our readiness and stewardship missions.

QUESTIONS SUBMITTED BY SENATOR BILL NELSON

TRAINING IMPACT OF ENVIRONMENTAL REGULATIONS

9. Senator BILL NELSON. General Keane, Admiral Fallon, General Nyland, and General Foglesong, in a report released in June 2002, the General Accounting Office (GAO) reported that the military services have demonstrated no significant reduction in readiness as a result of encroachment (the term encroachment refers to the impairment of training capabilities due to the growth of civilian populations near military installations and involve regulatory compliance with environmental regulations). Data for this report was gathered by surveying military installations and conduction interviews with base commanders. What are your reactions to the GAO's conclusions?

General KEANE. The Army believes that this reading of the GAO report misses the key finding of the report: as a result of encroachment, the Services have incrementally lost training capabilities at each of the installations the GAO reviewed. In this finding, the GAO reinforced our position that encroachment diminishes training realism and restricts the types, locations, and times of training events.

We acknowledge that the GAO study also found that DOD has not documented the overall impact of encroachment on training. The Army recognizes that our readiness reports have not reflected encroachment impacts. We are taking steps to address the issue. However, the readiness reporting steps we are taking in no way offset the fact that a negative and growing impact from environmental encroachment exists, and that the GAO was able to document this impact upon Army training in its June 2002 report.

The impacts of training strategy deviations resulting from environmental requirements at Army installations are difficult to identify and measure. These environmental training constraints result in incremental reductions in training capabilities that have long-term cumulative impacts on unit readiness. Individual commanders may not recognize these cumulative adverse effects during their command tours. The current Army Unit Status Report system has not been sensitive enough to identify these cumulative effects as significant contributors to training status. One aspect of the Army culture is to find a way to make things work while avoiding complaint. Therefore, training constraints are often charitably characterized as necessary "control measures" to avoid environmental violations. As a result, commanders routinely implement training work-arounds. Over time, these work-arounds are accepted as "business as usual."

The Army is improving the tools with which garrison and mission commanders evaluate the cumulative impacts on live training resulting from incrementally more stringent environmental management requirements. The Army has modified its Installation Status Report (ISR) to better quantify encroachment and training restrictions. These measures will be directly incorporated into the Strategic Readiness System and should more accurately reflect the impacts of encroachment. We anticipate compiling a first year of encroachment data from the ISR by the summer of 2003.

Admiral FALLON. The GAO report expressly concluded that DOD and the military services have lost training range capabilities and can be expected to experience increased losses in the future absent efforts to mitigate encroachment. The GAO report further concluded that encroachment had limited the extent to which training ranges are available or the types of training that can be conducted. Additionally, the GAO report indicated that constraints on the availability and type of training affected the ability of units to train as they would expect to fight or required workarounds—or adjustments in training events—that can create bad habits and affect performance in combat or, in some instances prevent training from being accomplished.

The impacts of encroachment on training and testing are sometimes readily apparent, such as the loss of training areas due to the impacts of training and testing on endangered species that are present in the area. More often than not, the impacts are incremental. A slow but steady increase in encroachment problems has constrained the use of training and testing facilities and forced the Services to work

around the constraints by modifying the timing, tempo, and location of training and testing, as well as the equipment used. These workarounds are becoming increasingly difficult and costly and compromise the realism of training and testing. Constraints on training and testing, as well as the compromise of realism, threaten military readiness and the development of new weapon systems. These in turn increasingly put U.S. forces at risk when called upon to conduct combat operations.

The GAO report noted that there are limitations in the DOD readiness reporting system. These limitations include the fact that the readiness reporting system does not differentiate between minimum skills necessary to perform military operations and the higher-level skills necessary to conduct those military operations in combat conditions. Thus, although military readiness reporting has generally not noted impacts from encroachment, this failure to note impacts from encroachment does not mean that the impacts of encroachment are not affecting combat capability, the ultimate form of readiness. Likewise, this failure to note deficiencies does not imply that workarounds are not affecting combat capability. More importantly, the GAO report acknowledged that a mechanism for determining the impacts of encroachment on training capabilities and readiness is only being developed. Since the methodology does not exist, it would be difficult to report deficiencies on readiness reports. However, anecdotal evidence of the impacts of encroachment on readiness does exist and can be documented.

Since the impacts of encroachment are slowly eroding the combat capability of the military services, steps must be taken now to arrest the erosion and to ensure that U.S. military forces are fully prepared for combat. Failure to do so will result in an increased probability of casualties in combat situations as inadequately trained military forces struggle to learn lessons for the first time under hostile fire.

General NYLAND. GAO–02–614, "Military Training: DOD Lacks a Comprehensive Plan to Manage Encroachment on Training Ranges" (GAO review code 350075), had three findings:

> That encroachment has diminished military service training range capabilities;
>
> That the impact of encroachment on readiness and training costs is not well-reflected in DOD's reported data; and
>
> That a comprehensive plan for addressing encroachment has not been finalized.

The first finding is significant: encroachment has diminished our military service training range capabilities. Second, the Pendleton Quantification Study is a direct response to the criticism that we cannot quantify the impacts of encroachment. Moreover, we are working to quantify encroachment impacts nationwide. At Headquarters Marine Corps, a Range Management System (RMS) has been funded including monies programmed through fiscal year 2004, to build an institutional-wide ability to relate training standards to ranges using the Pendleton study as a proof of principle, if not an exact model. Intent is to have the RMS in place within the next 18 months.

We are taking a multi-layered approach towards the problem; the legislative package is one very important step in this approach that will include administrative and regulatory proposals in the near future. Where we can take action that reduces the known impact of encroachment at no (or at least very little) cost, we would be remiss in not taking that action immediately.

General FOGLESONG. The GAO report confirmed encroachment is a recognized problem for military readiness activities. However, the report did note quantification of this problem must be better. The Air Force substantially concurs with the report's conclusions. The Air Force has recognized the need for better supporting data to substantiate our request for encroachment relief. To accomplish this, the Air Force is developing and testing the Resource Capability Model. It will capture the qualitative and quantitative information on the availability of air, land, water, and spectrum resources required to support operations at our installations and ranges. It is designed to define what resource requirements are associated with a defined unit of operation, whether these resources are adequate to support the requirements (quantify), what kinds of encroachment are denying or degrading resource availability or capability, and what are those impacts to operations. Overall, this model will provide information on what operations are curtailed or modified due to resource denial or restraint.

10. Senator BILL NELSON. General Keane, Admiral Fallon, General Nyland, and General Foglesong, does the military agree with the data gathered for the study?

General KEANE. We strongly agree with the GAO finding that the military services have lost training range capabilities and can expect to experience increased

losses in the future. We also agree with the GAO finding that there is not adequate data to quantify the impacts of encroachment on our ability to train and the readiness of our units. However, the lack of quantification does not make the impacts on training any less real. To rectify the situation the Army has modified the ISR to better quantify encroachment and training restrictions. These measures will be directly incorporated into our Strategic Readiness System and should more accurately reflect the impacts of encroachment.

Admiral FALLON. Yes. The data was accurate, but the report did not take into account the impact of workarounds on tests and training, nor their overall impacts on readiness.

General NYLAND. Although the report credits the Marine Corps process of quantifying the impacts of encroachment on the capability of Marine Corps Base, Camp Pendleton to support unit operational readiness requirements for assigned marines and units, the study fails to reinforce the notion that prior to deployment, unit training readiness should be 100 percent. Attaining those levels requires alternative training venues at additional expense and operational time; for example, marines at Camp Pendleton, CA, are forced to train at Twentynine Palms, CA, to achieve their full readiness levels. Restrictions at Camp Pendleton caused by the presence of endangered species, recreational areas, and topographic and access limitations, prevent training to doctrinal standards (e.g., digging of fighting positions and vehicle off-road travel).

General FOGLESONG. Yes, with the understanding the General Accounting Office was only able to examine a small portion of military installations which face potential adverse impacts from encroachment. The Air Force substantially concurs with the contents of the report.

11. Senator BILL NELSON. General Keane, Admiral Fallon, General Nyland, and General Foglesong, has the military conducted its own study and how does it differ?

General KEANE. Recognizing the need to fully quantify readiness impacts from environmental encroachment (as stated in the June 2002 GAO report), and acknowledging the fact that contemporary Army readiness reports do not reflect encroachment impacts, the Army has modified its ISR to better quantify encroachment and training restrictions. These measures will be directly incorporated into the Strategic Readiness System and should more accurately reflect the impacts of encroachment. We anticipate compiling the first year of encroachment data from the ISR by the summer of 2003. In the 2003 National Defense Authorization Act, Congress directed DOD to develop a comprehensive plan to address training constraints caused by limitations on the use of ranges and training land. The Office of the Secretary of Defense (OSD) has, in turn, requested that the military services conduct extensive assessments of range requirements, range capabilities, and constraints on the use of ranges and training areas and provide a report by November 2003. The Army is compiling the necessary data and will provide the required report to OSD in November 2003.

Admiral FALLON. Navy's Federally Funded Research and Development Center, the Center for Naval Analyses (CNA) performed three studies to help us quantify encroachment impacts.

In the first study, CNA looked at encroachment impacts at the unit level. They found that on the Navy-wide level, SORTS scores (Status of Readiness and Training—the standard readiness measuring system used throughout the Department of Defense) do not have the fidelity to capture the effects of the occasional degradation in training due to encroachments. Simply put, in light of the myriad parameters and training events that go into Fleet SORTS scores, the occasional encroachment on a training event simply doesn't show up. However, when they looked at individual units performing training on installations faced with environmental restrictions, CNA found training readiness scores of these units were indeed significantly degraded in particular mission areas.

Following this look at unit-level impacts, CNA looked at effects of encroachments on Battle Group level exercises; specifically, the impacts of encroachment on the major Fleet exercises known as Fleetex and JTFEX. They found that encroachments on these exercises are somewhat insidious; that is, encroachment is not immediately apparent upon observing an exercise because the workaround for a specific restriction is built into the exercise during the planning process. By following a Fleet exercise from its early development stages through actual execution, they found several events altered or eliminated during the planning cycle as a result of environmental restrictions. CNA also found examples due to airspace restrictions along the U.S. east coast of weapons employment during the exercise not being consistent with how they have been employed in wartime.

In the third study, CNA, in conjunction with the Office of the Deputy Under Secretary of Defense (Readiness), approached the encroachment issue from the installation (range) perspective. That is, they focused on a particular training range and developed a methodology to characterize the physical assets. For example, they focused on the airspace and groundspace the range needs in order to fulfill its training mission; how we can objectively assess the degree to which these assets are restricted; the reasons for these restrictions; and their ultimate impact on the training of combat forces. We feel this is an important step in addressing the overall issue of range management, of which encroachment is one component. That is, there are many reasons, in addition to encroachment, for shortcomings in the training resources that our ranges are able to provide. The methodology developed helps us characterize encroachment in a general perspective, and shows how we can look at it in the context of other types of restrictions and focus our efforts accordingly.

General NYLAND. The Commanding General, Marine Corps Base, Camp Pendleton, California sponsored a study to establish quantitative data that examined encroachment impacts on the capability of the installation to support Marine Air Ground Task Force operational readiness requirements.

The first phase of study results revealed that an artillery battery, light armored reconnaissance platoon, and mortar man Military Occupational Specialty (MOS) were able to accomplish specified tasks to only 69 percent of established standards for non-firing field training while conducting an amphibious operation at Camp Pendleton. The Combat Engineer MOS was able to accomplish only 77 percent of established standards for non-firing field training.

The second phase of study examined a Battalion Landing Team, Infantry Company, Cobra Attack Helicopter Crewman MOS, and an Assault Amphibian Vehicle Crewman MOS.

The study examined 760 total tasks for both phases of the study. The final report's findings are consistent with those of the preliminary assessment. On average, the units assessed were able to complete their required tasks to just below 70 percent of the established standard while conducting an amphibious operation at Camp Pendleton.

In comparison to the GAO report, our study reflected the impacts of encroachment within a notional, realistic exercise scenario. The scenario included an amphibious landing at Red Beach; tactical displacement of the force 6 miles through a maneuver corridor from Red Beach to an objective in the vicinity of the live-fire impact areas; a deliberate assault of an objective; and sustainment of the force. One of the hundreds of tasks examined in the Pendleton Quantification Study was simple digging. Digging fighting holes is a core competency for Marine infantrymen, and one that is severely constrained at Camp Pendleton due to the presence of endangered species and habitat, cultural resources, or wetlands. To the layman, it may sound strange to suggest that digging is a technique that must be practiced; however, digging must be second nature in combat. The conduct of battle currently underway in Operation Iraqi Freedom is a testament to this necessity.

General FOGLESONG. The Air Force has extensive efforts underway to better characterize encroachment and its effect on our ability to meet current and future training requirements. We are currently developing the Air Force Resource Capability Model that captures qualitative and quantitative information on the availability of air, land, water, and spectrum resources required to support operations at an Air Force installation and associated training areas (e.g., range and airspace). Additionally, in satisfying the requirement of Section 366 of the National Defense Authorization Act for Fiscal Year 2003, the Air Force is preparing a comprehensive report that will address encroachment on our installations and ranges.

[Whereupon, at 3:54 p.m., the subcommittee adjourned.]

DEPARTMENT OF DEFENSE AUTHORIZATION FOR APPROPRIATIONS FOR FISCAL YEAR 2004

WEDNESDAY, MARCH 19, 2003

U.S. SENATE,
SUBCOMMITTEE ON READINESS
AND MANAGEMENT SUPPORT,
COMMITTEE ON ARMED SERVICES,
Washington, DC.

ACQUISITION POLICY AND OUTSOURCING ISSUES

The subcommittee met, pursuant to notice, at 9:33 a.m., in room SR–222, Russell Senate Office Building, Senator John Ensign (chairman of the subcommittee) presiding.

Committee members present: Senators McCain, Allard, Ensign, Chambliss, Levin, Akaka, E. Benjamin Nelson, Clinton, and Pryor.

Committee staff member present: Cindy Pearson, assistant chief clerk and security manager.

Majority staff members present: William C. Greenwalt, professional staff member; Gregory T. Kiley, professional staff member; and Ann M. Mittermeyer, counsel.

Minority staff members present: Richard D. DeBobes, Democratic staff director; Maren R. Leed, professional staff member; and Peter K. Levine, minority counsel.

Staff assistants present: Andrew W. Florell and Nicholas W. West.

Committee members' assistants present: Christopher J. Paul, assistant to Senator McCain; John A. Bonsell, assistant to Senator Inhofe; Arch Galloway II, assistant to Senator Sessions; D'Arcy Grisier, assistant to Senator Ensign; Clyde A. Taylor IV, assistant to Senator Chambliss; Davelyn Noelani Kalipi, assistant to Senator Akaka; William K. Sutey, assistant to Senator Bill Nelson; Eric Pierce, assistant to Senator Ben Nelson; Andrew Shapiro, assistant to Senator Clinton; and Terri Glaze, assistant to Senator Pryor.

OPENING STATEMENT OF SENATOR JOHN ENSIGN, CHAIRMAN

Senator ENSIGN. This morning, the Subcommittee on Readiness and Management Support meets to receive testimony on acquisition policy and outsourcing issues in review of the National Defense Authorization Request for Fiscal Year 2004.

I am pleased to welcome today's witnesses on the first panel, Under Secretary of Defense for Acquisition, Technology, and Logistics, Pete Aldridge; the Comptroller General of the United States

General Accounting Office, David Walker; and the Director of the Office of Federal Procurement Policy, Angela Styles.

This hearing will address a full range of acquisition related issues. I look forward to hearing from Secretary Aldridge on how the Department is transforming its acquisition process through the use of spiral development and other reforms.

The acquisition challenges facing the Department of Defense as it seeks to acquire weapons and other systems critical to its mission are potentially overwhelming. I am most interested in any observations on how the Department might improve its acquisition practices and how Congress can help in that endeavor.

The General Accounting Office has played a critical role in identifying for the committee various best practices in purchasing weapons systems, information technology and services. Many of these findings and recommendations are being implemented by the Department of Defense (DOD).

Mr. Walker, as Chairman of the Commercial Activities Panel (CAP), you took on another critical acquisition challenge, improving the process for public/private competitions. This subcommittee is particularly interested in your perspective on that panel's report findings and recommendations, as well as subsequent developments.

Ms. Styles, as the administration's senior procurement official, you have been tasked with the job of implementing many of the CAP's recommendations. I hope you will be able to share with the subcommittee where you are in the process of reforming the Office of Management and Budget's (OMB) Circular A–76 that governs public/private competitions.

A critical component of successful acquisition reform is DOD's acquisition workforce. This workforce, however, has been significantly downsized. Many in the workforce are eligible to retire in the next few years.

DOD's budget has risen significantly, and contracting actions have increased. While workload has increased, there are fewer acquisition personnel around to do the work. What is the impact of this situation? How can we strengthen this workforce?

Improving how the Department of Defense buys goods and services is critical to our national security. We need to ensure that the money spent on defense acquisition is spent wisely.

I look forward to hearing from our witnesses on DOD's efforts to address these challenges.

Senator Akaka.

STATEMENT OF SENATOR DANIEL K. AKAKA

Senator AKAKA. Thank you very much, Mr. Chairman. I thank you for calling this hearing today. This committee has a long tradition of holding an annual oversight hearing on acquisition policy. This morning we will focus on the significant changes in outsourcing policy currently under consideration in the Department of Defense and elsewhere in the executive branch.

Late last year, the administration proposed a revised version of OMB Circular A–76, to authorize a streamlined "best value" type of competition. The administration's legislative package contains a provision that would amend Title 10 to enable the Department of

Defense to fully implement this change. I believe that decisions to contract out government functions should be based on fair and objective competition. In my view, true competition must be cost-effective, fair, and must promote trust through transparency and public accountability.

I do not automatically rule out the use of best value competitions, which appear to have worked well in the acquisition of products and services from the private sector. However, the subjective quality of best value decisionmaking requires a great deal of trust in the impartiality of the decisionmaker. As the General Accounting Office (GAO) CAP noted in its final report, "Because the sourcing decision under Circular A–76 is based on a cost comparison, some view it as objective and therefore less open to an abuse of discretion by management. In the context of the distrust that often permeates the sourcing process, participants, particularly Federal employees, often prefer a cost-only basis for a decision, rather than one that permits the exercise of discretion based on subjective factors."

The GAO Commercial Activities Panel concluded that Federal employees' trust in a streamlined best value process would be measured, in part, on the extent to which the process provides the Federal workforce appropriate rights and protections.

I am concerned that the proposed revision to the A–76 public/private competition process falls short of providing those rights and protections in several important areas. For example, the proposal would not eliminate arbitrary numerical goals for conducting public/private competitions, as recommended by the GAO panel. The proposal would not give unions the same right to file bid protests to the private sector, which the private sector already has, as proposed by the GAO panel.

The proposal contains unrealistic timelines for conducting public/private competitions that appear designed to push work out the door to the private sector as fast as possible. The Comptroller General has stated that these timelines are "unrealistic."

The proposal would provide expanded authority to conduct direct conversions to private sector performance without any competition at all. The Comptroller General has noted that this approach "sends an unfortunate signal" to Federal employees. The proposal would unduly burden Federal managers, and we must ensure that they have the resources, training, and people needed to meet competition requirements.

Mr. Chairman, I believe that we can design outsourcing policies that achieve the best deal for the taxpayer without being unfair to our Federal workforce. The proposed revisions call for a pilot project that would allow for the use of a best value standard for information technology (IT) projects. I am open to a genuine pilot project to test the feasibility of best value competitions in the Department of Defense, but I hope that we will also be able to address some of the concerns that I have raised.

I look forward to working with you on these important issues, Mr. Chairman. Thank you very much.

Senator ENSIGN. Thank you, Senator Akaka.

Secretary Aldridge.

STATEMENT OF HON. EDWARD C. "PETE" ALDRIDGE, JR., UNDER SECRETARY OF DEFENSE FOR ACQUISITION, TECHNOLOGY, AND LOGISTICS

Secretary ALDRIDGE. Thank you, Mr. Chairman, for inviting me here——

Senator ENSIGN. All of your statements, by the way, will be made part of the record.

Secretary ALDRIDGE. Yes, sir. Mr. Chairman, Senator Akaka, members of the subcommittee, again I thank you for inviting me here today to talk about our acquisition policy and competitive sourcing as part of your review of the National Defense Authorization Request for Fiscal Year 2004.

We have made great progress in addressing barriers to efficient acquisition, and we thank the subcommittee for its assistance in the creation of a professional acquisition corps, as well as for its support for pilot programs and other transaction authorities to speed the fielding of the state-of-the-art technology and better equipment to our warfighters.

Our current national security situation once again reveals a truth often forgotten during these times of peace; that the most important duty of the government is the protection of its citizens. The support this subcommittee has demonstrated for our men and women in uniform honors that covenant.

The successes of my office in our ongoing quest for excellence in the defense acquisition are a measure of our attempts to honor the same covenant. For example, in the past year, we have been quite successful in pursuing the five goals I established at the beginning of this administration. These goals were directly derived from those established by Secretary Rumsfeld for the Department as a whole.

These goals are to improve the credibility and effectiveness of the acquisition and logistics support process; to revitalize the quality and morale of the Acquisition, Technology, and Logistics workforce; to improve the health of the defense industrial base; to rationalize the weapon systems and infrastructure with our defense strategy; and initiate high leverage technologies to create the warfighting capabilities and strategies of the future.

Toward these goals, I have restructured the Defense Acquisition Board, and designated evolutionary acquisition and spiral development as the preferred approach. The opposite side of that coin must be the proper pricing of programs, which I have insisted upon.

I have also approved a new process for the acquisition of services by the Department of Defense; mandated interoperability at program initiation; institutionalized the use of Technology Readiness Assessments; consolidated and improved our acquisition education; developed a comprehensive Future Logistics Enterprise; made changes to improve the health of the defense industrial base; instituted a new profit policy; increased progress payment schedules; developed a process for sharing of cost savings from excess facilities; eliminated inappropriate research and development (R&D) cost sharing; encouraged non-traditional commercial companies to do business with the Department of Defense; accelerated the close-out of over-aged contracts; and exploited the enormous potential of Advanced Concept Technology Demonstrations.

Of course, we have many things still to accomplish: we need to further eliminate inappropriate management functions and marginal activities; continue to devolve functions that can be better accomplished elsewhere; further reduce acquisition cycle times; continue to minimize program risks; enhance program stability; continue to stress keeping costs under control; and further establish a clear vision by which our logistics will better support our operational requirements. We must accelerate the flow of technology to the warfighter with a vibrant and robust research program.

I would now like to discuss the issues you identified as being of particular interest to the subcommittee. I believe that increased use of evolutionary acquisition and spiral development is the key to reducing the acquisition cycle time.

I have designated evolutionary acquisition and spiral development as our preferred strategy for fielding operationally useful and supportable military capabilities. They deliver advanced technology to the warfighter as rapidly as possible, with the explicit intent of delivering improved or updated capability in the future.

Evolutionary acquisition success depends on the consistent and continuous definition of requirements; the maturation of technologies that lead to disciplined development; and production of systems that provide increasing capability to the right materiel solution. Achieving the optimum benefit from evolutionary acquisition and spiral development requires early and frequent collaboration between the user, the tester, and the developer.

We have been implementing evolutionary acquisition and spiral development over the past years and have instituted it in some of our major programs. Several examples of our evolutionary programs that will transform the battlefield are the Joint Strike Fighter; the Navy's DD(X); unmanned aerial vehicles, such as Global Hawk; the new aircraft carrier, CVN–21; and the Army's Future Combat System.

Proper pricing of programs is the predicate required for successful evolutionary acquisition and spiral development. Without it, program managers tend to exhaust their funding, scavenge funding from other sources, and slip their schedules. Without the proper pricing of programs, the advantages conferred by evolutionary acquisition and spiral development are eliminated before they can be brought to bear.

The acquisition policy improvement initiatives we are pursuing internally will make a tremendous difference in the future. The first of these is the complete rewrite of the DOD 5000 series of documents. Over the last year, we have been taking a hard look at our acquisition policies, and we determined last fall that the old policies were much too prescriptive.

We concluded that they required revision to create an acquisition policy environment that fosters efficiency, flexibility, creativity, and innovation. Consequently, we cancelled those policies and issued interim guidance while we completed the final policies. I have also worked with the Joint Staff as they revised the policies concerning the requirements definition process.

The flexibility that we have built into these streamlined policies reflect the confidence that I have in our highly talented workforce

and in the dramatic improvements we have made to our acquisition education system.

I do not want to leave you with the impression that we are done. I will continue to aggressively pursue the development and implementation of new policies that will ease the burdens on our managers while producing stable, affordable, and well-managed programs that serve the needs of our warfighters.

The acquisition workforce initiatives must be focused, as President Bush stated in a speech to Government employees on July 10, 2002, "We must be able to get the right people in the right place at the right time with the right pay. We need to be able to reward excellence and ensure accountability for individual performance."

The Acquisition Workforce Demonstration also helps us get the right people at the right place at the right time, through its flexible personnel practices, but it also adds the element of "right pay" by linking pay to contribution to mission. In the National Defense Authorization Act for Fiscal Year 2003, you provided us an extension of the Acquisition Workforce Demonstration project until 2012. We appreciate that support.

I would emphasize one more element of the President's direction. We need to have the workforce with the right skills. The Defense Acquisition University (DAU) has been in the forefront of providing certification training for our acquisition, technology, and logistics (AT&L) workforce. But we have also recognized the need to move beyond certification training.

DAU has embraced a new performance learning model for training; upgrading their certification courses to include critical thinking and case studies; adding web-based continuous learning; providing onsite support to our workforce from regional campuses; and offering web-based practitioner sharing of best practices and lessons learned.

No discussion of the workforce would be complete without addressing workforce size. Since the mid-1990s, DOD has defined our AT&L workforce to include all people who are doing AT&L work, regardless of their organization. That workforce now numbers a little over 132,000 people, down from almost 146,000 people we counted in 1998.

Today, the workforce is managing over $1,700,000 per person in total acquisition dollars. That is up over 40 percent since 1998. That means the productivity of the workforce has increased by 40 percent in 4 years.

As we discussed, we are using human capital strategic planning and the acquisition workforce demonstration to get the right people at the right place at the right time with the right skills and the right pay. We are in direct competition with the private sector, seeking talent for many of the same skills in a shrinking demographic pool.

While we are continuing to use these to examine our workforce needs of the future, we believe that our workforce is where it should be today to manage our workload. We will continue to make adjustments as they become necessary, but adjustments should be left to the Department, not enshrined in statute.

This leads us to the last area you asked me to focus on: competitive sourcing. The Department must continue to do business better,

faster, and at a reduced cost to maintain our focus on readiness. In order to focus on what we do best, our core mission activities, we must become more efficient in our support, or non-core services. When subjected to competition, our workforce, as dedicated as they are, as well as other service providers, can and do provide support services not only at a lower cost, but with greater speed and efficiency.

The public/private competition process is not easy. In fact, it is often lengthy, complex, and frustrating for all involved. That very frustration is, in part, an outgrowth of the A–76 process, which has evolved over time to address the legitimate concerns for establishing a level playing field to protect the interests of all participants; Government employees, private sector competitors, Federal managers, and taxpayers.

But the old A–76 process has become too lengthy, adversarial, and distrusted by all participants. The Office of Management and Budget has now issued a revised, or a proposed revision to the OMB Circular 76 to address recommendations made by the Commercial Activities Panel. We believe the proposed mission—or proposed revision offers promising and overdue improvements to the A–76 process, especially with respect to aligning it more closely with procedures already used under the Federal Acquisition Regulations.

The proposed revisions were published in November for review, and we have supplied comments, as have all interested parties. We have continued our dialogue with OMB as they work to finalize the circular.

I have talked about some of the things we could do on our own to transform this department, to eliminate waste and duplication, and to demonstrate greater respect for the taxpayers' dollars. In the past several years, we have made significant progress. However, in some cases we need your help to make needed changes.

As the Secretary of Defense has said in his town hall meeting on March 6, "To truly bring the Department of Defense into the 21st century, we need legislative help. We are now working with Congress to fashion proposals that will help transform the Department, how we move money, how we manage people, how we buy weapons. Final decisions on this package of legislative authorities have not been made. We are currently in discussions with the Office of Management and Budget about them and we are still in a consultation process trying to make sure that we get it right."

Thank you, Mr. Chairman, for the opportunity to testify before the subcommittee. I would be happy to answer any questions from you or any members. Thank you.

Senator ENSIGN. Thank you, Secretary.

[The prepared statement of Secretary Aldridge follows:]

PREPARED STATEMENT BY HON. EDWARD C. "PETE" ALDRIDGE, JR.

Chairman Ensign, Senator Akaka, and members of the subcommittee: thank you for inviting me here today to talk with you about acquisition policy and competitive sourcing as part of your review of the National Defense Authorization Request for Fiscal Year 2004. We have made great progress in addressing barriers to efficient acquisition, and we thank the subcommittee for its assistance in the creation of a professional acquisition corps, as well as for its support for pilot programs and other transaction authorities to speed the fielding of state-of-the-art technology and better equipment to our warfighters.

Our current national security situation once again reveals a truth often forgotten during times of peace—that the most important duty of Government is the protection of its citizens. The support this subcommittee has demonstrated for our men and women in uniform honors that covenant. The successes of my office in our ongoing quest for excellence in defense acquisition are a measure of our attempts to honor the same covenant.

For example, in the past year, we have been quite successful in pursuing the five goals I established at the beginning of this administration. These goals were directly derived from those established by Secretary Rumsfeld for the Department as a whole. These goals are: improve the credibility and effectiveness of the acquisition and logistics support process; revitalize the quality and morale of the AT&L workforce, improve the health of the defense industrial base; rationalize the weapon systems and infrastructure with our defense strategy; and initiate high leverage technologies to create warfighting capabilities and strategies of the future.

Toward these goals, I've restructured the Defense Acquisition Board, and designated evolutionary acquisition and spiral development as the preferred approach. The opposite side of that coin must be the proper pricing of programs, which I have insisted upon. I have also approved a new process for the acquisition of services by DOD, mandated interoperability at program initiation, institutionalized the use of "Technology Readiness Assessments", consolidated and improved our acquisition education ("Electronic Distance Learning"), developed a comprehensive Future Logistics Enterprise, made changes to improve the health of the defense industrial base, instituted a new profit policy, increased progress payment schedules, developed a process for sharing of cost savings from excess facilities, eliminated inappropriate R&D cost sharing, encouraged non-traditional commercial companies to do business with DOD, accelerated the close-out of overaged contracts, and exploited the enormous potential of Advanced Concept Technology Demonstrations (ACTDs).

Of course, we still have many things to accomplish. We need to further eliminate inappropriate "management" functions and marginal activities, continue to devolve functions that can be better accomplished elsewhere, further reduce acquisition cycle times, continue to minimize program risks, enhance program stability, continue to stress keeping costs under control, further establish a clear vision by which our logistics will better support our operational requirements, and accelerate the flow of technology to the warfighter with a vibrant and robust research program.

I would now like to discuss in some detail the issues you identified as being of particular interest to you at this time.

I believe that increased use of evolutionary acquisition and spiral development is the key to reducing the acquisition cycle time. I have designated Evolutionary Acquisition and spiral development as our preferred strategy for fielding operationally useful and supportable military capabilities. They deliver advanced technology to the warfighter as rapidly as possible—with the explicit intent of delivering improved or updated capability in the future. Evolutionary Acquisition success depends on the consistent and continuous definition of requirements, and the maturation of technologies that lead to disciplined development and production of systems that provide increasing capability to the right materiel solution. Achieving the optimum benefit from Evolutionary Acquisition and spiral development requires early and frequent collaboration between the user, tester, and developer. We have been implementing evolutionary acquisition and spiral development over the past year and have instituted it in some of our major programs. Several examples of our evolutionary programs that will transform the battlefield are:

- The Joint Strike Fighter (JSF) program will develop a family of strike aircraft, capitalizing on commonality and modularity to maximize affordability while addressing the needs of the Air Force, Navy, Marine Corps, and United Kingdom Royal Navy and Royal Air Force, in addition to those of numerous other international partners.
- The DD(X) program will continue development of a suite of technologies to be applied to the whole family of 21st century surface combatants, including: littoral combat ship, DD(X) destroyer, CGX cruiser, and maritime pre-positioning ship;
- Unmanned Aerial Vehicles, such as Global Hawk, where we continue to add new and upgraded capabilities;
- The new aircraft carrier, CVN–21, whose evolutionary strategy and innovations include an enhanced flight deck, a new nuclear power plant, allowance for future technologies, and reduced manning; and
- The Future Combat System (a system-of-systems of aerial and ground, manned and unmanned combat vehicles linked via a command and control network).

Proper pricing of programs is the predicate required for successful evolutionary acquisition and spiral development. Without it, program managers tend to exhaust their funding, scavenge funding from other sources, and slip their schedules. Without the proper pricing of programs, the advantages conferred by evolutionary acquisition and spiral development are eliminated before they can be brought to bear.

On a similar note, more realistic funding and costing are important to establishing and maintaining the credibility of our acquisition process. The fiscal year 2004 budget request continues the process we began in fiscal year 2003 of funding many of our major programs to more realistic cost estimates. I generally require the Services to meet the Department's full-funding guidelines, and to budget to what I believe are realistic and executable cost estimates, based on a variety of inputs including the OSD Cost Analysis Improvement Group (CAIG) independent cost estimate. For example, on the F/A–22 program we have essentially capped the total program cost. Recent cost increases in the Engineering and Manufacturing Development (EMD) phase have been funded from within the total program budget through tradeoffs between the pace of modernization efforts, the procurement rate, and total quantity. We reduced production in fiscal year 2004 by five aircraft while increasing the budget by $89 million and adjusted the overall production profile consistent with a "buy to budget philosophy." These were hard decisions made necessary by escalating costs within the program.

The Acquisition Policy improvement initiatives we are pursuing internally will make a tremendous difference. The first of these is the complete rewrite of the DOD 5000 series of documents. Over the last year, we have been taking a hard look at our acquisition policies and we determined last fall that the old policies were much too prescriptive. We concluded that they required revision to create an acquisition policy environment that fosters efficiency, flexibility, creativity, and innovation. Consequently, we cancelled those policies and issued interim guidance while we completed the final policies. I have also worked with the Joint Staff as they revise the policies concerning the requirements definition process. Our goal is to harmonize these processes and reduce the friction associated with unrealistic requirements or processes previously geared to produce the "100 percent solution", when an 85 percent solution could be achieved much faster without significant risk to the customer—the warfighter.

The final policies will shortly be published. They will take a long step toward achieving my objective by giving our senior acquisition decisionmakers much greater authority to tailor program strategies to fit the needs of their program; by placing greater emphasis on evolutionary acquisition as the preferred strategy for rapidly acquiring advanced warfighting capability; and by giving program managers the flexibility to be creative and efficient in the way they apply policy to their programs.

The flexibility that we have built in to these streamlined policies reflects the confidence I have in our highly talented workforce and in the dramatic improvements we have made to our acquisition education system.

I don't want to leave you with the impression that we are done. For as long as I hold this office, I will continue to aggressively pursue the development and implementation of new policies that will ease the burdens on our managers while producing stabile, affordable, and well managed programs that serve the needs of our warfighters.

The Department recently started another major transformation initiative to improve the acquisition process by dramatically changing the Defense Federal Acquisition Regulation Supplement (DFARS) and the processes we use to create and maintain it. The DFARS is nearly 20 years old and is about 1,400 pages long. The last major review of this regulation was done in the late 1980s. We've already determined that about 60 percent of the DFARS is driven by internal policies and procedures and not by statute or Federal policies. Our regulatory processes have been in place since the early 1950s and take far too long to implement needed changes to policy and guidance. As part of the Department's overall transformation goals, we are taking a hard, new look at the purpose and content of the DFARS.

We chartered a task force under the direction of the Director of Defense Procurement and Acquisition Policy to identify changes to procurement policies, procedures, processes, and authorities and submit proposals to me by early May. The task force will also identify opportunities for legislative change for possible consideration by Congress in the fiscal year 2005 legislative cycle. We will remove or dramatically change parts of the regulation if we determined that doing so would improve and strengthen the efficiency and effectiveness of acquisition processes, reduce unnecessary costs and administrative burdens for Government and industry, and create an environment that fosters creative solutions to the unique challenges that face our acquisition workforce. Similarly we will retain those policies and processes that today, ensure adequate internal controls, implement our stewardship responsibil-

ities to the taxpayer or maintain fundamental principles of integrity and fairness in our business relationships with industry.

We are aggressively challenging the acquisition community, including industry and the general public, to participate by proposing opportunities for change. We have contacted a broad range of industry associations that are already considering how they can provide input to the task force efforts. There is significant potential benefit to reducing regulatory burdens. While many policies and procedures in the DFARS are sound, they may not always be the most effective approach for every situation and certainly do not require restrictive regulations in every case. Our main focus is to improve our processes and add value. However, we are on a clear path to reduce regulatory burdens under this initiative.

The Acquisition Workforce initiatives must be focused, as President Bush stated in a speech to Government employees on July 10, 2002:

> *"We must be able to get the right people, in the right place, at the right time, with the right pay. We need to be able to reward excellence and ensure accountability for individual performance."*

In order to get the right people in the right place at the right time, we have been conducting human capital strategic planning and are using the authorities in the Acquisition Workforce Demonstration.

We began the human capital strategic planning effort 2 years ago, concentrating on developing a process and methodology. We are beginning to see the Services embrace that process and use it. So, this year we are concentrating on two key functional components of our workforce—systems engineers and logisticians. We are working with the functional leads for those two career fields to describe a desired future end state. We are also working with the workforce managers in each Service and the key defense agencies to look at current manpower, projected into the future, and how to move from where we are today to where we need to be. We are also identifying the actions we need to close those gaps. Human capital strategic planning is hard work, and we won't be where we want to be for another few years, but we've begun that process and it will pay dividends for us.

The Acquisition Workforce Demonstration also helps us get the right people at the right place at the right time, through its flexible personnel practices, but it also adds the element of right pay by linking pay to contribution to mission. In the National Defense Authorization Act for Fiscal Year 2003, you provided us an extension of the Acquisition Workforce Demonstration project until 2012. We appreciate that support.

I would emphasize one more element of the President's direction. We need to have a workforce with the right skills. The Defense Acquisition University (DAU) has been in the forefront of providing certification training to our AT&L workforce. But, we have also recognized the need to move beyond certification training. DAU has embraced a new performance learning model for training, upgrading their certification courses to include critical thinking and case studies, adding web-based continuous learning, providing on site support to our workforce from regional campuses, and offering web-based practitioner sharing of best practices and lessons learned. DAU has done so well implementing their performance learning model that they have been accredited by the Council on Occupational Education and recognized by their peers by winning a Corporate University Best in Class (CUBIC) award for the Best Over All Corporate University in 2002. DAU is now turning their attention to developing rapid training for emerging policies as a result of requests from the front-line. You have been supporters of DAU, and we thank you for that.

No discussion of the workforce would be complete without addressing workforce size. Since the mid-1990s, DOD has defined our AT&L workforce to include all people who are doing AT&L work, regardless of their organization. That workforce now numbers a little over 132,000 people (as of September 30, 2002), down from the almost 146,000 people we counted in 1998. That workforce today is managing over $1,700,000 per person in total acquisition dollars, up over 40 percent from 1998. As we discussed, we are using human capital strategic planning and the acquisition workforce demonstration to get the right people at the right place at the right time with the right skills and the right pay. We are in direct competition with the private sector seeking talent for many of the same skills in a shrinking demographic pool. While we are continuing to use these to examine our workforce needs of the future, we believe that our workforce is where it should be today to manage our workload. We will continue to make adjustments as they become necessary, but adjustments should be left to the Department, not enshrined in statute. We can reduce the size of the support structure surrounding our AT&L workforce. We will do that by using the tools you have given us—BRAC and competitive sourcing. Providing relief from

our statutory reporting burden and flexibility in our personnel process will help with that effort.

This leads us to the last area you asked me to focus on: competitive sourcing. The Department must continue to do business better, faster, and at reduced cost to maintain our focus on readiness. In order to focus on what we do best—our core mission activities—we must become more efficient in our support, or non core, services. When subjected to competition, our workforce, as dedicated as they are, as well as other service providers, can and do provide support services at not only a lower cost, but with greater speed and efficiency.

The Department of Defense has, by far, the most experience in the Federal Government in competing its support services using the public-private competition process defined by OMB Circular A–76. During the fiscal years 2001 through 2002, we completed over 330 A–76 competitions with about 42,000 positions, and we are scheduled to complete A–76 competitions on an additional 15,000 positions by the end of fiscal year 2003. The 330 completed A–76 competitions have resulted in either a contract or in-house decision that will generate about $3.6 billion in savings (cost avoidance) over the life of the contracts, normally about 5 years. This demonstrates the power of competition. Our studies verify these savings are real and persist over the entire performance period.

The public-private competitive process is not easy. In fact, it is often lengthy, complex, and frustrating for all involved. That very frustration is, in part, an outgrowth of the A–76 process, which has evolved over time to address legitimate concerns for establishing a level playing field to protect the interests of all participants: Government employees, private sector competitors, Federal managers, and taxpayers. But the old A–76 process has become too lengthy, adversarial, and distrusted by all participants.

The OMB has now issued a proposed revision to OMB Circular A–76 to address recommendations made by the Commercial Activities Panel. We believe the proposed revision offers promising and overdue improvements to the A–76 process, especially with respect to aligning it more closely with procedures already used under the Federal Acquisition Regulations. The proposed revisions were published in November for review, and we have supplied comments as have all interested parties. We have continued our dialog with OMB as they work to finalize the circular.

The Department has long been the leader in the Federal Government in competing commercial functions with the private sector under OMB Circular A–76 and fully supports the President's management agenda for competitive sourcing. OMB identified for DOD a long-term competition goal for 226,000 positions (50 percent of the fiscal year 2000 Federal Activities Inventory Reform (FAIR) inventory of 452,000 positions). DOD is on track to meet our interim 15 percent goal of completing A–76 competitions on 67,800 positions by the end of fiscal year 2003. The remaining 35 percent will be met using both A–76 competitions and "Alternatives to A–76". While the Department continues to conduct A–76 competitions, we believe the Department and taxpayers are best served by employing a wide range of business tools designed to make our operations more efficient. The respective Military Departments are developing plans for submission with the fiscal year 2005 program to meet the President's long term management agenda targets.

I've talked about some of the things we could do on our own to transform this department—to eliminate waste and duplication and to demonstrate greater respect for the taxpayer's dollars. In the past several years, we have made significant progress. We've reduced management headquarters staffs in the department by about 11 percent. We have streamlined the acquisition process by getting rid of hundreds of pages of prescriptive rules and regulations, and allowing program managers—we hope—to be more innovative, flexible, and creative. We have eliminated onerous regulations that make it impossible or unattractive to do business with the Department of Defense, and to expand authority for competitive outsourcing so we can get military personnel out of non-military tasks and back into the field. There is really no reason, for example, that the Department of Defense should be in the business, as we are, of making eyeglasses. The private sector, I suspect, makes them better and faster and possibly even cheaper. These types of things need to change.

However, in some cases we need your help to make needed changes. This year we are proposing a series of changes to the acquisition statutes, some bolder than others. These proposals address several kinds of problems. Some address burdensome requirements, such as relief on contracting out expansion and contracting of support services for security and firefighting beyond that allowed in prior years. They also attempt to better clarify the Buy American definitions such that we don't cause excessive record keeping to gain diminimus compliance, or inadvertently benefit foreign suppliers. Finally, we're proposing several flexibility changes, starting with seeking management relief from moving funds within a program to provide

management margin where it is needed. We recognize the significance of some of the changes requested, but again seek a dialog to make the business of defense more efficient.

As the Secretary of Defense has said in his Town Hall meeting on March 6, *"To truly bring DOD into the 21st century we need legislative help. We are now working with Congress to fashion proposals that will help transform the department: how we move money, how we manage people, how we buy weapons. Final decisions on this package of legislative authorities have not been made. We are currently in discussions with the Office of Management and Budget about them and we are still in a consultation process trying to make sure that we get it right."*

Thank you, Mr. Chairman for the opportunity to testify before the subcommittee. I would be happy to answer any questions you and the members of the subcommittee may have.

Senator ENSIGN. Mr. Walker.

STATEMENT OF HON. DAVID M. WALKER, COMPTROLLER GENERAL OF THE UNITED STATES, UNITED STATES GENERAL ACCOUNTING OFFICE

Mr. WALKER. Thank you, Mr. Chairman, Senators. It is a pleasure to be here. Since my entire statement has been entered into the record, I will summarize the key points for you.

I would like to focus on two key aspects. The first is implementation of sound policies for making decisions, with emphasis on the Commercial Activities Panel, which I had the privilege to chair; and second, DOD's efforts to adopt best practices.

I would like to acknowledge at the outset, Mr. Chairman, that this subcommittee has been instrumental in sponsoring GAO's work dealing with commercial best practices and other best practices. They are making a difference at DOD and elsewhere throughout the government.

With regard to the Commercial Activities Panel, the National Defense Authorization Act for Fiscal Year 2001 mandated that the Comptroller General create a panel of experts where certain specific parties had to be represented and others at the discretion of the Comptroller General, in order to address the issue of competitive sourcing. Given the complexity and controversy associated with this topic, I decided to personally chair the panel, and to comprise it with a group of highly qualified and empowered representatives from various groups in order to maximize the chance for success.

The Commercial Activities Panel conducted a year-long study. We had 11 meetings and 3 public hearings, 2 of which were outside of Washington, DC, and therefore in the real world.

The panel's staff conducted an extensive amount of additional research, review, and analysis in order to supplement these public hearings and considered other information that each panel member brought to our combined deliberations.

It was clearly a very challenging, complex, and controversial assignment. As a result, we decided to adopt a super majority vote requirement in order for any findings or recommendations to be adopted by the panel. I am pleased to say that despite the significant differences in perspective and historical position with regard to competitive sourcing, the panel was able to unanimously agree on a set of 10 principles that should guide all sourcing decisions. These principles are outlined on page three of my testimony, and I will not repeat them at the present time.

Furthermore, a super majority of the panel agreed on a number of other supplemental recommendations, the chief among them being a movement to a supplemental alternative for conducting these public/private competitions that would be based on the Federal Acquisition Regulation (FAR). That is, at least initially, a supplement to, not a substitute for, the historical A–76 process.

While a minority of the panel did not support these supplemental recommendations, it is important to note, as our panel report makes clear, that they did support certain elements of the supplemental recommendations, but we voted on them as a package. Yet as I said, a super majority did support these supplemental recommendations. We made a good faith effort until the very end to try to seek consensus and to achieve as many votes as we could on the panel's report.

I would say, from my standpoint, since I was heavily involved in both face-to-face as well as telephonic conversations to the very end with the panel members, that in the final analysis, I think it is a minor miracle that we achieved unanimous agreement on the 10 principles. I think it is a big plus that we achieved a super majority recommendation for these additional recommendations, but I think it is important to note that the differences of opinion in the final analysis on these supplemental recommendations were really few in number and philosophical in nature. Namely, the two primary differences were whether and to what extent to allow the new FAR type process; and second, how many times that Congress should be required to act in connection therewith.

The minority felt Congress should authorize a specific pilot program before providing broad-based authority and, therefore, Congress would be required to act twice; whereas a super majority felt that it was important to design a program that could be implemented that would not require Congress to act twice. Obviously Congress reserves the right to act at any time if for some reason things are not going the way that it feels is appropriate.

With regard to the administration's proposed changes, Angela Styles has taken charge of trying to adopt these recommendations administratively. Some of the panel's recommendations would, however, require legislative action. She has, I think, done an excellent job over a very short period of time of trying to come up with a good faith effort to adopt the panel's recommendations administratively to the extent that that can be done.

In many ways, the administration's proposal is consistent with the panel's recommendations, but not in all ways. A couple of examples—I expressed concern as to the timeframes that are outlined in the proposed recommendations. They are very aggressive.

While clearly I totally agree with Secretary Aldridge that we need to do things a lot quicker than we have in the past, I think we have to be realistic as to what is attainable. In my opinion, the timeframes that were outlined in the initial proposal are not realistic. I believe that if we are going to expedite this, it is critically important that there be an adequate amount of financial and technical resources available to hit these expedited timeframes in order to maximize the chance for success.

Furthermore, we expressed concern that there was not sufficient guidance on calculating savings, and we also noted the fact that,

under the recommendation, one could make a business case to outsource up to 50 full-time equivalents (FTE) without going through a public/private competition, whereas the recommendation of the panel was to limit direct conversions to 10 FTEs.

But, again, I think it is a positive, good faith step. They are considering the comments that we and others made, and I am looking forward to seeing what their final recommendations are.

Last, just a few comments on the adoption of commercial best practices. As I mentioned, this subcommittee has been instrumental in requesting and sponsoring GAO's work dealing with commercial best practices. It is making a difference, not only within DOD, but also elsewhere throughout the Government.

Our work historically shows that DOD's implementation of these have been uneven. I will commend Secretary Aldridge for his personal commitment at the top, along with Secretary Rumsfeld, to changing how the Department of Defense does business. They are clearly committed. They are clearly providing persistent attention and leadership in this area.

I would also like to note for the record that there is no question that the Department has made great progress in adopting, in its policies, a vast majority of GAO's best practices recommendations. So in form, they have generally adopted commercial best practices.

However, as we all know, whether it be in the Government, the private sector, or the not-for-profit sector, sometimes there can be a difference between form and substance. In other words, the policy could say "X," but in practice, "Y" is done.

We believe that more needs to be done in order to assure that, in fact, people are conducting their activities in accordance with policy. I know that Secretary Aldridge is committed to this concept as well. We met as recently as last week for over an hour to discuss a variety of issues, including some of these issues.

The absence of following commercial best practices, especially with regard to the development of new technologies, results in extensive delays, higher costs, compromised performance, and a ripple effect, in that it affects our ability to improve readiness and to be able to fund other critical needs within the Department, whether they be acquisitions or otherwise.

I think it is important to note that one key aspect has to do with the people element, which Secretary Aldridge mentioned. I would like to turn over now, if I can, and refresh the Senators' memory of something that I covered last year; that is, the typical number of persons who are responsible for a weapons system during an 11-year cycle.

During 11 years, you typically will have four program managers, three presidents, seven secretaries of defense, five program executive officers, eight service acquisition executives—defense acquisition executives—and five chairmen of the Joint Chiefs of Staff. My point is: How can you assure effective responsibility and accountability for results with that type of turnover?

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Mismatch Between Cycle Times and Accountability of Leadership

Changes During an 11-year Program:

Program Managers	4
Program Executive Officers	5
Service Acquisition Executives	8
Defense Acquisition Executives	8
Chairmen of the Joint Chiefs	5
Secretary of Defense	7
Presidents	3

Source: DOD

Now, we know we are going to have turnover at the presidential level. We know we are going to have turnover at the secretarial level. That is part of our constitutional framework. But below that, where we are dealing with either uniformed or career officials, we need to provide more stability in order to assure that these individuals have both the responsibility and accountability for results over a reasonable period of time. This type of turnover is not going to be conducive towards trying to get the type of outcomes that we all desire. Obviously, additional training is going to be necessary as well.

So in summary, I was pleased to chair the Commercial Activities Panel. I was pleased to serve along with Secretary Aldridge and Director Styles on the panel. I think we made a meaningful contribution. But the panel is a beginning, not an end. OMB has to implement it administratively. In the different departments and agencies, including DOD, implementation is key. Congress will have to act in order for certain of our recommendations to become the law of the land.

Finally, I think that much progress has been made on adopting commercial best practices. I think more needs to be done, but I know that leadership at the Department is committed to doing everything that they can to try to make that happen.

Thank you.

Senator ENSIGN. Thank you.

[The prepared statement of Mr. Walker follows:]

PREPARED STATEMENT BY DAVID M. WALKER

Chairman Ensign, Ranking Member Akaka, and members of the subcommittee: I am pleased to be here today to participate in the subcommittee's hearing on the acquisition and sourcing practices of the Department of Defense (DOD). Today's

hearing occurs at a critical time—with DOD on the brink of operations in Iraq while seeking to respond to changes in security threats and still meeting the challenge of transforming the military.

DOD spends an average of $150 billion annually on acquisitions that support these and other missions. Moreover, this investment is expected to grow considerably in the future as DOD works to keep legacy systems while investing in future capabilities such as unmanned aircraft, satellite networks, and information and communications systems.

Such demands clearly require DOD to be as efficient and effective as possible in obtaining the systems, services, and equipment it needs to carry out its mission. But our reviews continue to show that DOD is not carrying out acquisitions cost-effectively and that the acquisitions themselves are not always achieving DOD's objectives. Pervasive problems persist regarding high-risk acquisition strategies and unrealistic cost, schedule, and performance estimates.

My testimony today will focus on two aspects fundamental to successful acquisitions in DOD.

- The first is the implementation of sound policies for making sourcing decisions. Last April, the congressionally chartered Commercial Activities Panel, which I chaired, and on which I was privileged to serve along with my fellow panelists here today, Angela Styles and Pete Aldridge, made a number of recommendations for improving the policies and procedures governing the competitive sourcing of commercial activities. I welcome this opportunity to discuss the work of the panel and the progress to date in implementing its recommendations. These recommendations should lay a good foundation for improving sourcing decisions within DOD.
- The second is the adoption of best practices. DOD itself recognizes the need to ensure that it can match its needs to its resources and to follow a knowledge-based acquisition process. It is seeking to adopt practices that have proven successful in the commercial sector in the procurement of both systems and services. It also recognizes the need to reshape its acquisition workforce to meet growing demands. Yet it still faces a considerable challenge in putting these practices to work and instituting the cultural changes needed for their success. I would like to recognize the subcommittee's leadership in sponsoring the work on the best practices used by leading commercial firms in acquiring services, information technology, and major systems, and in working to get them accepted within DOD.

Before I begin my testimony, I would like to note that the environment in which these changes must be made is a challenging one—not just for DOD, but for other agencies as well. It consists of new and changing security threats, the public's growing expectations for demonstrable results, demographic changes, rapidly evolving science and technology, and serious and growing fiscal constraints. All of these challenges demand that the Federal Government engage in a fundamental review of its mission and priorities and to consider the long-term impact of the decisions it makes today. The recommendations and practices I will be discussing today, however, should position DOD to meet these broader challenges since they focus on taking a more knowledge-based, and longer-term approach to acquisitions. They have proved successful in reducing costs.

IMPROVING SOURCING DECISIONS

Government agencies increasingly are relying on services to accomplish their missions. The DOD now spends more than half its contracting dollars acquiring services, about $77 billion in fiscal year 2001, the latest year for which complete data are available. In addition, the Department reports that it has over 400,000 employees performing commercial-type services. Determining whether to obtain required services using Federal employees or through contracts with the private sector is an important economic and strategic decision. In fact, competitive sourcing is a key component of the President's management agenda. But historically, the process for determining whether the public or the private sector should perform services needed by Federal agencies—set forth in Office of Management and Budget (OMB) Circular A–76—has been difficult to implement. The impact such decisions have on the Federal workforce has been profound, and there have been concerns in both the public and private sectors concerning the fairness of the process and the extent to which there is a "level playing field" for conducting public-private competitions.

Recommendations of the Commercial Activities Panel

It was against this backdrop that Congress enacted Section 832 of the National Defense Authorization Act for Fiscal Year 2001, which mandated that I establish

a panel of experts to study the process used by the Government to make sourcing decisions. Given the importance of this issue, I elected to chair this panel myself and ensured that it was comprised of highly qualified and empowered representatives from the groups specified in the act and other knowledgeable individuals.

The Commercial Activities Panel conducted a year long study, and heard repeatedly about the importance of competition and its central role in fostering economy, efficiency, and continuous performance improvement. The panel held 11 meetings, including 3 public hearings in Washington, DC; Indianapolis, Indiana; and San Antonio, Texas. In these hearings, panelists heard first-hand both about the current process, primarily the cost comparison process conducted under Circular A–76, as well as alternatives to that process. Panel staff conducted an extensive amount of additional research, review, and analysis in order to supplement and evaluate the public testimony. Recognizing that our mission was a challenging, complex, and controversial one, the panel agreed that a superiority of two-thirds of the panel members would have to vote for any finding or proposal in order for it to be adopted by the panel. Importantly, the panel unanimously agreed upon a set of principles to guide all sourcing decisions:

Guiding Principles for Sourcing Policy

The Panel believes that federal sourcing policy should:

1. Support agency missions, goals, and objectives.
2. Be consistent with human capital practices designed to attract, motivate, retain, and reward a high-performing federal workforce.
3. Recognize that inherently governmental and certain other functions should be performed by federal workers.
4. Create incentives and processes to foster high-performing, efficient, and effective organizations throughout the federal government.
5. Be based on a clear, transparent, and consistently applied process.
6. Avoid arbitrary full-time equivalent or other arbitrary numerical goals.
7. Establish a process that, for activities that may be performed by either the public or the private sector, would permit public and private sources to participate in competitions for work currently performed in-house, work currently contracted to the private sector, and new work, consistent with these guiding principles.
8. Ensure that, when competitions are held, they are conducted as fairly, effectively, and efficiently as possible.
9. Ensure that competitions involve a process that considers both quality and cost factors.
10. Provide for accountability in connection with all sourcing decisions.

In addition, a super majority of the panel agreed on a package of additional recommendations. Chief among these was a recommendation that public-private competitions be conducted using the framework of the Federal Acquisition Regulation (FAR). Although a minority of the panel did not support the package of additional recommendations, some of these panelists indicated that they supported one or more elements of the package, such as the recommendation to encourage high-performing organizations throughout the Government. Importantly, there was a good faith effort to maximize agreement and minimize differences among panelists. In fact, changes were made even when it was clear that some panelists seeking changes were highly unlikely to vote for the supplemental package of recommendations. As a result, on the basis of panel meetings and my personal discussions with panel members at the end of our deliberative process, the major differences among panelists were few in number and philosophical in nature. Specifically, disagreement centered primarily on: (1) the recommendation related to the role of cost in the new FAR-type process; and (2) the number of times Congress should be required to act on the new integrated process, including whether Congress should specifically authorize a pilot program that tests that process for a specific time period.

The Administration's Proposed Changes

As part of the administration's efforts to implement the recommendations of the Commercial Activities Panel, OMB published proposed changes to Circular A–76 for public comment in November 2002. The administration is now considering the comments received as it finalizes the revisions to the circular.

I provided comments on the proposal to the Director of OMB this past January. My assessment of the proposed revision concluded that in many ways it is consistent with the sourcing principles and recommendations adopted by the Commercial Activities Panel. In particular, the proposal stresses the use of competition in making sourcing decisions and, through reliance on procedures contained in the FAR, should result in a more transparent, expeditious, and consistently applied competitive process. The proposal should promote sourcing decisions that reflect the best overall value to the agencies, rather than just the lowest cost. Importantly, the proposed revision also should result in greater accountability for performance, regardless of the service provider selected. Of course, successful implementation will require that adequate resources and technical support be made available to Federal employees.

There are several areas, however, where the proposed revisions to the circular are not consistent with the principles or recommendations of the Commercial Activities Panel. Specifically, these include the absence of a link between sourcing policy and agency missions, unnecessarily complicated source selection procedures, certain unrealistic timeframes, and insufficient guidance on calculating savings. I am confident that the administration is carefully considering these and other comments on the proposal, and look forward to reviewing the final product.

One area of particular importance for all affected parties is how the Government's sourcing policies are implemented. In this regard, one of the panel's sourcing principles was that the Government should avoid arbitrary numerical or full-time equivalent (FTE) goals. This principle is based on the concept that the success of government programs should be measured by the results achieved in terms of providing value to the taxpayer, not the size of the in-house or contractor workforce. Although the proposed revision of the circular contains no numerical targets or goals for competitive sourcing, this has been a controversial area in the past. It has been our view that the administration needs to avoid arbitrary targets or quotas, or any goal that is not based on considered research and analysis. Congress recently put this principle into legislation; a provision in the recent consolidated appropriations legislation requires sourcing goals and targets to be based on considered research and sound analysis of past activities".[1]

DOD's Competitive Sourcing Agenda

DOD has been at the forefront of Federal agencies in using the A–76 process in recent years. After several years of limited use of Circular A–76, the Deputy Secretary of Defense gave renewed emphasis to the A–76 program in August 1995 when he directed the services to make outsourcing of support activities a priority in an effort to reduce operating costs and free up funds to meet other priority needs. This effort was subsequently incorporated as a major component of the Defense Reform Initiative, and the program became known as competitive sourcing—in recognition of the fact that either the public or the private sector could win the competitions.

Recently, DOD's A–76 study goals have increased because of the President's management agenda, which includes competitive sourcing as one of its five key government-wide initiatives.[2] Under that program, OMB directed agencies to directly convert or complete A–76 competitions on 15 percent of their 2000 Federal Activities Inventory Reform (FAIR) Act inventories by the end of fiscal year 2003, with the ultimate goal of competing 50 percent of the FAIR Act positions. However, we understand that this broader goal may be subject to negotiations between DOD and OMB. DOD's ongoing A–76 efforts should permit it to meet OMB's goal for 2003. However, a greater challenge remains for DOD to complete studies on an additional 158,000 positions in the outyears (fiscal year 2004 through fiscal year 2009). This is double what DOD has been able to accomplish in the past over a similar timeframe. For example, DOD completed studies on 71,000 positions between fiscal years 1997 and 2002, and found it increasingly difficult to identify study candidates over time. DOD hopes to be able to meet this larger goal through a combination of A–76 competitions and other alternatives.

DOD's experience with competitive sourcing since 1996 contains important lessons for civilian agencies as they implement their own sourcing initiatives. As we have tracked DOD's progress in implementing its A–76 program since the mid- to late-1990s, we have identified a number of challenges and concerns with the program. They include: (1) the time required to complete the studies, (2) the resources required to conduct and implement the studies, (3) selecting and grouping positions

[1] Consolidated Appropriations Resolution, 2003, P.L. 108–7.

[2] In addition to competitive sourcing, the other initiatives are strategic management of human capital, improved financial performance, expanded electronic government, and budget and performance integration.

to compete, and (4) developing and maintaining reliable estimates of projected savings expected from the competitions.

THE DEPARTMENT CAN BENEFIT FROM ADOPTING BEST PRACTICES

At the request of this subcommittee, GAO has conducted a number of engagements to identify best practices in the commercial sector for addressing the sourcing and acquisition challenges facing the Department. We believe the Department could significantly improve its performance in a number of areas by adopting some of the best practices we have identified.

Information Technology Outsourcing

For example, we reviewed the practices used by leading companies involved in outsourcing certain information technology (IT) functions. In November 2001, we issued a guide on outsourcing IT services that provides a generic framework of practices from leading commercial organizations that can improve purchasing decisions and manage the resulting government/provider relationship.[3]

At the further request of this subcommittee, we have been reviewing the extent to which selected DOD projects are using leading commercial practices laid out in our November 2001 guide. We have shared our draft report with this subcommittee, which is currently with DOD for comment. In brief, we found that the five projects in our review were generally implementing these practices. This is a positive sign because although implementing these practices does not guarantee the success of an outsourcing project, our November 2001 study reflected a consensus view that these practices were the most critical to success.[4] Accordingly, application of these practices increases the probability of a successful outsourcing project.

Acquiring Information Technology Systems

Since the 1990s, DOD has spent billions of dollars each year attempting to leverage the vast power of modern technology to replace outdated ways of doing business. However, the Department has had limited success in modernizing its information technology environment, and we have designated DOD's systems modernization as high risk since 1995.[5] A major reason for this designation is DOD's inconsistent use of best practices for acquiring IT systems.

We have categorized IT system acquisition practices into three groups and apply leading practices, as appropriate, in our evaluations of systems acquisitions within DOD. A brief description of the three categories and what we have found at DOD follows:

Aquisition of systems in accordance with mature processes. Our work shows that DOD's implementation of mature acquisition management processes is uneven, as are its proactive efforts to improve these processes. For example, our review of the Defense Logistics Agency's system acquisition processes showed that one major system was following mature processes, while another was not.[6] We made recommendations to correct these weaknesses, and DOD has generally concurred.

There are also published best practices for acquiring systems that are built from commercial components. Generally, these practices advocate an acquisition approach that is not driven primarily by system requirements, but rather an approach that proactively manages the tradeoff among various acquisition issues, such as the organization's system requirements and the commercially available system components. Accordingly, we have ongoing and planned work at a number of Federal agencies, including DOD, which includes determining whether these practices are being employed.

Use of an enterprise architecture to guide and constrain system acquisitions. Effectively managing a large and complex endeavor requires, among other things, a well-defined and enforced blueprint for operational and other technological change, commonly referred to as an enterprise architecture. In May 2001, we reported that DOD had neither an enterprise architecture for its financial and financial-related business operations, nor the management structure, processes, and controls in place to

[3] U.S. General Accounting Office, *Information Technology; Leading Commercial Practices for Outsourcing of Services,* GA0–02–214 (Washington, DC: Nov. 30, 2001).

[4] This consensus view was based on interviews with managers in leading commercial organizations, discussions with academic and professional authorities, and extensive research on IT acquisition practices.

[5] See U.S. General Accounting Office, *High-Risk Series: An Update* GAO–03–119 (Washington, DC: January 2003) for our most recent high-risk report.

[6] U.S. General Accounting Office, *Information Technology: Inconsistent Software Acquisition Processes at the Defense Logistics Agency Increase Project Risks* (GAO–O2–9, Jan. 10, 2002).

effectively develop and implement one.[7] In addition, the National Defense Authorization Act for Fiscal Year 2003 required DOD to develop such an architecture by May 1, 2003, along with a transition plan for its implementation. At the request of this subcommittee, we reported last month that DOD had taken a number of steps to address this issue, such as establishing a program office responsible for managing the enterprise architecture effort.[8] However, the Department had yet to implement some of the recommendations from our May 2001 report and commercial leading practices for developing and implementing architectures. Accordingly, we made additional recommendations related to DOD's architecture effort, with which DOD concurred.

Acquiring systems in a series of economically justified incremental builds. Both Federal law and guidance advocate the use of incremental investment management[9] when acquiring or developing large systems.[10] Using these system investment practices helps to prevent discovering too late that a given acquisition/development effort is not cost beneficial. We have previously reported that certain DOD system acquisitions were not utilizing incremental management best practices or were just beginning to do so. For example, in July 2001 we reported that although DOD had divided its multi-year, billion-dollar Standard Procurement System into a series of incremental releases, it had not treated each of these increments as a separate investment decision.[11]

Acquiring Services

With respect to services acquisitions generally, we found that the experiences of leading private-sector companies to reengineer their approach to acquiring services offer DOD both valuable insights and a general framework that could serve to guide DOD's efforts. In January 2002, we reported that our work at six leading companies found that each had reengineered its approach to acquiring services to stay competitive, reduce costs, and improve service levels. These changes generally began with a corporate decision to pursue a strategic approach to acquiring services. Taking a strategic approach involves a range of activities from developing a better picture of what a company was spending on services to taking an enterprise-wide approach to procuring services and developing new ways of doing business. Pursuing such an approach clearly paid off, as the companies found that they could save millions of dollars and improve the quality of services received.

DOD already has in place certain elements critical to taking a strategic approach, such as the commitment by senior DOD leadership to improve practices for acquiring services and to adopt best commercial practices. Moreover, the fiscal year 2002 national defense authorization legislation directs DOD to improve its management and oversight of services acquisitions. To implement these requirements, DOD issued new policy in May 2002 that was intended to elevate major purchases of services to the same level of importance as purchases of major defense systems. The Department still faces a long journey, however, as it begins to take on the more difficult tasks of developing a reliable and accurate picture of service spending across DOD.

Major Weapon Systems Acquisitions

DOD relies heavily on its major weapons acquisitions to modernize its forces and expects to spend on average about $150 billion annually over the next 5 years for the research, development, and procurement of weapon systems. However, its history of acquiring major weapon systems all too frequently has been characterized by poor cost, schedule, and performance outcomes that have delayed delivery of new capabilities to the warfighter and created significant opportunity costs that have slowed the Department's overall modernization efforts.

Because of the pressures in DOD's acquisition environment to get new acquisition programs approved and funded, many programs are initiated with requirements

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[7] U.S. General Accounting Office, *Information Technology: Architecture Needed to Guide Modernization of DOD's Financial Operations,* GAO–01–525 (Washington, DC: May 17, 2001).

[8] U.S. General Accounting Office, *DOD Business Systems Modernization: Improvements to Enterprise Architecture Development and Implementation Efforts Needed,* GAO–03–458 (Washington, DC: Feb. 28, 2003).

[9] Incremental management involves three fundamental components: (1) acquiring a large system in a series of smaller increments; (2) individually justifying investment in each separate increment on the basis of cost, benefits, and risks; and (3) monitoring actual benefits achieved and costs incurred on ongoing increments and applying lessons learned to future increments.

[10] Clinger-Cohen Act of 1996, P.L. 104–106, and Office of Management and Budget Circular A–130 (Nov. 30, 2000).

[11] U.S. General Accounting Office, *DOD Systems Modernization: Continued Investment in Standard Procurement System Has Not Been Justified;* GAO–01–682 (Washington, DC: July 31, 2001).

that make a proposed weapon system stand out from others. The systems engineering necessary to identify gaps between requirements and resources is often not accomplished until after the program is started. In these cases, performance requirements can outstrip the resources—technologies, funding, time, and expertise—available to meet them. This creates a need for immature, fledgling technologies that are difficult to develop and usually results in unstable and incomplete a product design for which there is insufficient time to mature before starting production. Sufficient time or effort may not be available during product development to understand the product's critical characteristics or to bring key manufacturing processes in control to meet cost, schedule, and quality targets. In addition, there is not enough emphasis on building in reliability and reducing total ownership cost.

Typically, the results of this process are weapons that have superior performance, but that create longer-term collateral consequences such as:

- Higher acquisition costs that reduce buying power and force tradeoffs in other acquisitions;
- Increased costs to operate and support weapon systems at required readiness rates;
- Significant delays in getting weapon systems to warfighters;
- Reduced quantities;
- Early obsolescence; and
- A diminishing supply base for critical parts and components.

DOD understands that it must get better outcomes from its acquisition process if it is to modernize its forces quickly within projected resources. To that end, it is currently revising acquisition policies to emphasize an evolutionary, knowledge-based process that incorporates best practices proven by successful companies in developing complex new products. We believe the policy changes, while not yet finalized, promise to be a good first step in changing DOD's acquisition outcomes. If implemented properly, programs would face less pressure to deliver all of the ultimate capabilities of a weapon system in one "big bang." The new policy has many positive features. For example, it:

- Separates technology development, which is unpredictable by nature, from product development, which requires major investments and is delivery-oriented;
- Articulates the concept of a knowledge-based approach, providing guidelines for achieving knowledge of technologies prior to beginning product development, stability of the system's design by about midway through product development, and control over critical manufacturing processes for building a weapon system prior to a production decision;
- Places a greater emphasis on evolutionary product development, which provides a more manageable environment for achieving knowledge; and
- Recognizes the benefits of best practices for product development from leading companies in capturing knowledge at critical junctures during product development.

While these policy changes represent tangible leadership action for getting better weapon system acquisition outcomes, unless the policies are implemented through decisions on individual programs, outcomes are not likely to change. Both form and substance are essential to getting desired outcomes. At a tactical level, we believe the policies could be made more explicit in several areas to facilitate such decisions. First, the regulations provide little or no controls at key decision points of an acquisition program that force a program manager to report progress against knowledge-based metrics. Second, the new regulations, once approved, may be too general and may no longer provide mandatory procedures. Third, the new regulations may not provide adequate accountability because they may not require knowledge-based deliverables containing evidence of knowledge at key decision points.

At a strategic level, some cultural changes will be necessary to translate policy into action. At the very top level, this means DOD leadership will have to take control of the investment dollars and to say "no" in some circumstances, if programs are inappropriately deviating from sound acquisition policy. In my opinion, programs should follow a knowledge-based acquisition policy—one that embraces best practices—unless there is a clear and compelling national security reason not to. Other cultural changes instrumental to implementing change include:

- Keeping key people in place long enough that they can affect decisions and be held accountable;
- Providing program offices with the skilled people needed to craft acquisition approaches that implement policy and to effectively oversee the execution of programs by contractors;

- Realigning responsibilities and funding between science and technology organizations and acquisition organizations to enable the separation of technology development from product development;
- Bringing discipline to the requirements-setting process by demanding a match between requirements and resources;
- Requiring readiness and operating cost as key performance parameters prior to beginning an acquisition; and
- Demanding reliability testing early in design.

Ultimately, the success of the new acquisition policy will be seen in individual program and resource decisions. Programs that are implementing knowledge-based policies in their acquisition approaches should be supported and resourced, assuming they are still critical to national needs. Conversely, if programs that repeat the approaches of the past are approved and funded, past policies—and their outcomes—will be reinforced.

Acquisition Workforce Challenges

To effectively implement best practices and properly manage the goods and services it purchases each year requires that DOD have the right skills and capabilities in its acquisition workforce. This is a challenge given decreased staffing levels, increased workloads, and the need for new skill sets. Procurement reforms and the ongoing technological revolution have placed unprecedented demands on the workforce, and contracting personnel are now expected to have a much greater knowledge of market conditions, industry trends, and technical details of the commodities and services they procure.

In response to these challenges, DOD has made progress in laying a foundation for reshaping its acquisition workforce. The agency has initiated a substantial long-term strategic planning effort to identify the competencies needed for the future and to address what reshaping of the workforce will be needed to achieve the desired mix. DOD is continuing with an effort to test various human capital innovations and has begun making significant changes to its acquisition workforce-training program. Part of this long-term effort will involve making a cultural shift as well as developing better data to manage risk by spotlighting areas for attention before crises develop and to identify opportunities for improving results.

CONCLUSION

The continuing war on terrorism, regional instability, demographic and technological changes, as well as the Federal Government's short- and long-term budget pressures have created a challenging environment for the Department of Defense. It faces a number of difficult missions that will put its strategies, personnel, and resources under enormous strains. Consequently, it is important for the Department to adopt business practices that will enable it to acquire the systems and services to allow it to operate effectively in this environment. Doing so will help ensure that its resources are used in the most efficient manner possible. I am confident that the leadership of the Department is committed to that objective. Success over the long term will depend on the leadership sustaining its commitment to improving business practices through a strategic, integrated, and DOD-wide approach to ensure that these efforts achieve their intended results.

Mr. Chairman, this concludes my statement. I will be pleased to respond to questions from the subcommittee.

Senator ENSIGN. Ms. Styles.

STATEMENT OF HON. ANGELA STYLES, ADMINISTRATOR, OFFICE OF FEDERAL PROCUREMENT POLICY

Ms. STYLES. Mr. Chairman, Senator Akaka, and members of the subcommittee, I am pleased to have this opportunity to update you on efforts of this administration to address many procurement challenges.

While our efforts are government-wide in nature, the decisions are often shaped by the critical mission needs of the Department of Defense. You will find our activities guided by two principles: Making the Federal marketplace more competitive, and preserving acquisition flexibilities through more accountable and strategic management.

With these principles in mind, there are several important initiatives we are pursuing: Creating a viable infrastructure for public/private competition; strengthening the use of competition in our everyday acquisitions, particularly for services; expanding our small business supplier base; reducing transaction costs and increasing transparency through technology advances; and improving purchase card practices.

I will briefly discuss a few of these efforts, but the focus will be on competitive sourcing. Competitive sourcing—the use of competition for selecting sources to perform government activities that are commercial in nature—is a key component of the President's management agenda and this administration's vision for a market-based government.

After nearly 2 years of hard work, agencies are, for the first time, institutionalizing public/private competition. DOD has the largest and most experienced infrastructure in the Federal Government for conducting competitive sourcing. The Center for Naval Analysis, the GAO, and other evaluators have reviewed the results of DOD's competitions and found two important things. The net long-term savings are significant and permanent; and few Federal employees are worse off after competition.

DOD has committed to reviewing half of its 452,000 commercial positions. DOD estimates that announcements of new A–76 competitions will be around 10,000 positions in fiscal year 2003 and at least 10,000 in fiscal year 2004.

In spite of DOD's many successes, the process has faced significant and valid criticisms. As a result, last November, we proposed major revisions to OMB Circular A–76.

I want to highlight a few of the points in the revisions. We want to help agencies easily distinguish inherently governmental from commercial activities. We have made a more concise definition of what is an inherently governmental activity.

We want to integrate the processes for private/private competition on the one hand with public/private competition on the other hand, so we have one force, one workforce that understands competition, and competition whether it is private/private or public/private.

We want to fully accommodate a program's need for best value and innovation, while still requiring cost to remain a factor in every competition. This is a misunderstood point. In every single competition, cost will continue to be a factor. But very importantly, cost will be a deciding factor in most public/private competitions.

We also want to ensure that sourcing deadlines are made in real time; and, yes, we are going to impose some very aggressive deadlines. It is unacceptable from our perspective for the private sector or public sector employees to be committed to a public/private competition for an average of 3 years. Sometimes, these exceed 3 years, going into 4 years for a public/private competition.

We have been working aggressively to consider the more than 700 comments we have received. In analyzing these public comments, we have been keeping an especially watchful eye out for areas where processes may cause results that fall short of expectations, instances where the processes unnecessarily constrains management's ability to fully consider and compare the options.

In this regard, a number of commenters have pointed out that administrative convenience may drive agencies to pursue direct conversions even where in-house providers may be the better and the cheaper alternative.

Senator Akaka pointed out that these changes must promote trust. As we look at these comments that we have received, we are being very careful to take into consideration how we can create a fair process that is easy to understand, and we realize that we must promote trust in what we write in the circular as well as how we implement this.

I would also like to add that we are adding several points on the appropriate allocation of resources for the public sector entity to be able to compete and to be able to provide a competitive bid in this area.

Public/private competition will not work and we will not achieve the best value for the taxpayer unless we have a competitive process that allows the public sector to provide the best bid that they possibly can.

The theme of competition continues through a host of other acquisition-related initiatives including one to strengthen the use of competition on multiple award contracts, such as the Multiple Award Schedules; and also initiatives to create a level playing field between Federal Prison Industries and the private sector, thereby increasing opportunities for small businesses and giving agencies greater flexibility to obtain best value when spending the taxpayers' money.

In conclusion, this administration remains committed to promoting access to the Federal marketplace and ensuring competition is effectively used at every level of purchasing throughout the Federal Government. This will enhance opportunities for all businesses, small and large, spur creativity in the marketplace, and provide the framework for the delivery of better value for our agencies, but ultimately for our taxpayers. There is more to be done, but I am confident that these steps are laying the foundation for an acquisition process that is considerably more market-driven and results-oriented than the one we inherited.

This concludes my prepared comments, but I am happy to answer any questions.

[The prepared statement of Ms. Styles follows:]

PREPARED STATEMENT BY ANGELA B. STYLES

Chairman Ensign, Senator Akaka, and members of the subcommittee, I am pleased to have this opportunity to update you on efforts the Office of Federal Procurement Policy (OFPP) is taking to address the challenges facing our procurement community. My comments, reflective of OFPP's activities, are Government-wide in scope, but are shaped in many important ways by the critical mission needs of the DOD.

Broadly speaking, the majority of OFPP's current activities are intended to: (1) make the Federal marketplace more competitive in order to lower costs for taxpayers and improve program performance to citizens, and (2) preserve acquisition flexibilities through more accountable and strategic management. As you know from prior statements, my primary mission since assuming the responsibilities of Administrator of OFPP in May 2001 has been to renew our acquisition workforce's focus on the fundamental building blocks of procurement: sound planning, consistent use of competition—applied in a fair, transparent, and ethical manner—well structured contracts, and solid contract administration. While these principles are hardly strangers to our workforce, we often find ourselves struggling to apply them consist-

ently in a world of rapidly changing needs and ever-evolving technologies. My hope is that clearer emphasis on acquisition basics will better position us as a community to ensure that taxpayer resources are managed well and used more effectively.

There are several important initiatives OFPP is pursuing, in close coordination with other offices within OMB, to pave the way to a performance-based environment—in terms of both fostering effective use of competition and instilling greater accountability for our actions. These initiatives include:

- creating a viable infrastructure for public-private competition;
- strengthening the use of competition in our everyday acquisitions for services;
- expanding the small business supplier base;
- reducing transaction costs and increasing transparency through technological advances; and
- improving purchase card practices.

Let me now briefly discuss each of these efforts with you.

CREATING A VIABLE INFRASTRUCTURE FOR PUBLIC-PRIVATE COMPETITION

As you know well, competitive sourcing—i.e., using competition for selecting sources to perform Government activities that are commercial in nature—is a key component of the President's management agenda and the administration's vision for a market-based government. After nearly 2 years of hard work with the agencies, I am pleased to see a large number of our Federal managers accepting the difficult challenge of building an infrastructure to identify commercial activities, planning for their performance, and, for the first time, institutionalizing public-private competition to address those needs.

While creation of an infrastructure is just one step, it is a critical step. Many of the processes relied upon until now are rooted in long-outdated management ideals that have permitted vast numbers of our commercial activities to remain insulated from competition. As our mindset transforms from one that resists competition to one that embraces the value competition generates, agencies should find themselves well-positioned to achieve a mix of Government and contract support that is optimal for mission success.

Progress is proceeding according to plans at many of the agencies we are tracking in the budget (i.e., the "scorecard agencies"). We are starting to see real management advances in a few instances. DOD has the largest and most experienced infrastructure in the Federal Government for conducting competitive sourcing, which is governed by OMB Circular A–76. The Center for Naval Analysis and other evaluators have reviewed the results of DOD's competitions and found that: (1) the net long-term savings are significant and permanent; and (2) few Federal employees are worse off after competition, and many are hired by contractors who win competitions.

DOD is increasing the "tooth-to-tail" ratio through competition of military members and civilians in commercial activities to less support-oriented activities, particularly warfighting. DOD is committed to reviewing half of the 452,000 positions in commercially available activities. DOD estimates that announcement of new A–76 competitions will be around 10,000 positions in fiscal year 2003 and at least 10,000 in fiscal year 2004. A major DOD review of A–76 and other competitions by each Military Service and Defense Agency is scheduled this year so that the President's fiscal year 2005 budget can present how DOD will achieve this Presidential Management Initiative.

Action is occurring at other agencies as well. For example, the Department of Veterans Affairs is opening up the activities of 52,000 employees (primarily ancillary support functions) to competition over the next 5 years—initiating studies of 25,000 of them in 2003 alone. At the Federal Aviation Administration, 2,700 Federal flight services personnel are participating in a public-private competition. These Federal personnel currently provide weather reports to private pilots, a function that is currently outsourced by every major airline. Similarly, the Department of Energy has started public-private competition for a variety of functions (such as computer personnel, graphic designers, and financial services personnel) and locations nationwide.

Despite progress, overall use of competitive sourcing remains weak. This is not surprising when considering that the current processes governing sourcing decisions are time consuming and unnecessarily complicated. Therefore, OMB is committed to significantly improving how agencies determine whether commercial activities will be performed by public or private sources.

Last November, OMB proposed major revisions to OMB Circular A–76. The proposed changes would provide for processes that are more manageable, more competi-

tive, more even-handed, and more results-driven. These objectives would be accomplished by:

- helping agencies more easily distinguish between commercial and inherently governmental activities by offering a more concise definition of "inherently governmental" and rescinding the more complex description currently relied on;
- making processes simpler and easier to understand, including appropriate use of certain well-tested practices in the Federal Acquisition Regulation (FAR);
- more fully accommodating a program's need for best value and innovation, while still requiring cost to remain a factor in all competitions and the deciding factor in many competitions;
- incorporating appropriate mechanisms of transparency, fairness, and integrity (e.g., by separating the team that is formed to write the solicitation from the one established to develop the agency tender) so that competitions occur on a level playing field that results in performance by the best source;
- ensuring that sourcing decisions are made in real time by imposing deadlines that would reduce the cycle time from the current delay-plagued 3 years (on average) to 1 year; and
- improving post-competition oversight so that selected sources, whether from the public or private sectors, make good on their promises to the taxpayer.

With regard to the first element, in particular, which involves distinguishing the universe of activities that may be eligible for competition from those that would not, I would emphasize that competitive sourcing is not, and has never been, about outsourcing inherently governmental activities. We are focused strictly on commercial functions, whether they be specialized functions or more routine functions such as hanging dry wall or mowing the lawn. I am puzzled to hear statements that the administration is planning to contract functions intimately related to the public interest, such as determinations on the content and application of regulations. These types of functions must be performed by public employees and we will continue to depend on our able workforce to execute these important responsibilities on behalf of our citizenry. This notwithstanding, we will still require agencies to identify their inherently governmental functions to ensure activities are properly characterized. By doing so, commercial functions that should be considered for competition will not remain insulated from the savings that a fair competition can yield. At the same time, we will not force agencies to pursue competitive sourcing for competition's sake. We appreciate that each agency has a unique mission and workforce mix and will continue to work with agencies in tailoring competition plans accordingly.

We have been working aggressively to consider the more than 700 comments that were submitted on the proposed rule. These comments are posted on the Internet at http://www.omb.gov and a discussion of their general disposition will be provided in the preamble to the final circular.

In analyzing the public comments, we have been keeping an especially watchful eye out for areas where processes may cause results that fall short of expectations—e.g., instances where the process unnecessarily constrains management's ability to fully consider and compare options. In this regard, a number of commenters pointed out that administrative convenience may drive agencies to pursue direct conversions even where in-house providers may be the better alternative. We are examining the viability and fairness of a process that would allow for a highly simplified and streamlined consideration of public and private sector sources.

We are aiming to complete our review of public comments shortly so that agencies may soon take advantage of our transformed processes. While final decisions have not yet been made, you should anticipate that the major elements I described a moment ago will be incorporated, in appropriate fashion, in the final revisions to the circular.

Of course, our commitment doesn't end with publication of the circular. This is just a beginning. We will continue to work with agencies in crafting appropriate competition plans. Equally important, we will track results through our scorecard so that successes are promoted and shortfalls corrected.

STRENGTHENING AND IMPROVING THE USE OF COMPETITION IN OUR EVERYDAY ACQUISITIONS FOR SERVICES

As agencies look to the marketplace for "managed solutions," we must continually strive to make sure that the vehicles and strategies we use for these purposes are shaped to achieve good results. For this reason, we have been paying increasing at-

tention to the popular Multiple Award Schedules (MAS) program and looking for ways to encourage greater use of performance-based services acquisitions.

MAS Purchases. OFPP recognizes that agencies have been inconsistent in adhering to certain basic acquisition requirements in their MAS purchases, such as in their use of statements of work, pricing of orders, application of competition, and documentation of award decisions. The issuance last fall of a final rule in the DOD FAR Supplement (DFARS) implementing section 803 of the National Defense Authorization Act for Fiscal Year 2002 will significantly assist in strengthening the Department's use of competition in its schedule purchases for services over $100,000. But additional steps must be taken. I, and the other members of the FAR Council, seek to significantly improve the application of acquisition basics on MAS purchases for services and reinforce sound MAS practices generally at all agencies.

Within the next several weeks, I anticipate issuance of a proposed FAR that will:

- add new coverage on use of statements of work when acquiring services from the MAS;
- reinforce documentation requirements generally and address the documentation of sole-source orders and price-reasonableness determinations in particular; and
- clarify and strengthen the procedures for establishing blanket purchase agreements against the MAS.

In developing these changes, we gave careful consideration to the findings and recommendations made by the General Accounting Office as part of its study of DOD's large MAS buys for services.

Performance-based services acquisitions (PBSA). OFPP is taking steps to reinvigorate the use of PBSA and capitalize on the competitiveness and innovativeness that is generated when contractors are given the freedom to figure out the best solution to meet the Government's needs. Specifically, an OFPP-sponsored inter-agency working group has developed a set of recommendations for making PBSA policies and procedures more flexible and easier to apply. The working group's recommendations will form the basis for proposed amendments to the FAR's coverage on service contracting. The recommendations also will be used to develop new practical guidance, such as sample performance-based statements of work that OFPP plans to post on the Internet for easy access and application to appropriate agency services acquisitions. This new guidance may replace OFPP's current best practices guide, which was last updated in 1998.

OFPP intends to review data collected by the Federal Procurement Data System (FPDS) to measure PBSA usage. FPDS began collecting data in fiscal year 2001 on whether service contracts are performance-based. This measure will not, by itself, indicate the effectiveness of PBSA. However, the measure will serve as a useful gauge of whether agencies are making PBSA a priority.

EXPANDING THE SMALL BUSINESS SUPPLIER BASE

The administration seeks to create a dynamic atmosphere where competitive and innovative small businesses can flourish and apply their talents to the many pressing needs facing our Government. Over the past 10 years, we have seen a significant increase in contract bundling—i.e., where agency procurement requirements are consolidated into contracts that are unlikely to be suitable for performance by a small business because of the size or performance requirements of the contract. As we have broadened the scope of contract requirements and awarded fewer contract vehicles over the past decade, the pool of small business contractors receiving new contract awards declined from 26,000 in 1991 to about 11,600 in 2000.

We cannot afford to revert back to the paperwork and labor-intensive acquisition system of the past; nor can we pursue operational efficiencies at the expense of reducing small business opportunities. We must find an appropriate balance between operational efficiency, opportunity, and fairness. We must also recognize that bundling decisions should not be an "either or" decision, i.e., a decision to either bundle or not bundle acquisitions. Like any acquisition strategy, analysis of bundling should account for how it would help or hinder the operation of programs within and across agencies. For example, the administration's e-Government initiatives often require integration that may be facilitated by bundling if the agency demonstrates substantial benefits. However, even in instances where bundling is found to be necessary and justified, agencies should seek alternative acquisition strategies that have less negative impact on small businesses.

Today, there are certain conditions under which an agency may be able to bundle contracts without analyzing the benefits or considering alternatives that may produce similar positive results with fewer negative effects on small businesses.

Without this analysis, we put ourselves at risk of a shrinking contractor base and fewer products and services from which to choose.

Last October, OFPP submitted a nine-point strategy to the President for eliminating unnecessary contract bundling and mitigating the effects of bundling that agencies find to be necessary and justified. The strategy is designed to: (1) promote leadership and accountability; (2) close regulatory loopholes; and (3) mitigate the effects of necessary and justified contract bundling. With successful implementation of this strategy, we believe that we will have reduced a significant barrier to entry and, in doing so, allowed small businesses to bring their innovation, creativity, and lower costs to the Federal marketplace.

With this result in mind, OFPP established and heads an interagency task force to bring the bundling strategy to fruition. The task force's primary task has been to develop regulations that implement the new bundling strategy in the FAR and SBA's regulations. Proposed regulations, which were published in the Federal Register at the end of January, would:

- provide more effective agency small business contracting review procedures;
- require agencies to identify alternative strategies that reduce bundling and justify decisions not to use those alternatives; and
- make clear that multiple award contracts and orders under those contracts are not exempt from regulatory requirements and procedures designed to eliminate unnecessary contract bundling and mitigate the effects of bundling.

Comments on the proposed rules are due by April 1, 2003.

We have also asked agencies to report quarterly to OMB on the status of their efforts to address contract bundling issues. OFPP will be monitoring agency actions and will develop additional guidance as necessary.

REDUCING TRANSACTION COSTS AND INCREASING TRANSPARENCY THROUGH TECHNOLOGICAL ADVANCES

The President's management agenda calls on Federal agencies to champion a citizen-centered electronic government that consistently delivers high quality service at lower cost. The appeal of "e-Government" for procurement is easy to see. The efficiency, transparency, and administrative simplification that technology enables can stimulate the type of robust participation that makes for a successful virtual marketplace. Consider "e-Buy"—i.e., a new electronic quote system for MAS purchases. As a convenient and easy medium for transmitting notices, e-Buy can be a catalyst to further increase MAS competition without hampering the efficiencies that draw buyers to the MAS program.

The introduction of e-Buy is particularly timely in light of the recent and pending regulatory changes that seek to strengthen MAS purchasing. I commend both the Federal Supply Service (which operates the MAS) for making this infrastructure available to MAS customers and DOD for highlighting the availability of e-Buy in the DFARS as part of its coverage on schedule purchases.

The "inter-agency contract directory" (ICD) offers another good example of how we are using the powers of the Internet to improve our buying practices. While agencies have become increasingly interested in inter-agency contracting, there are few, if any, places, they can turn to see the range of contracts across Government that may be suitable for their use. The ICD is designed to overcome this shortcoming and facilitate more informed decisionmaking. Later this year, the ICD will provide general information about contracts available for inter-agency use, including information about: the scope of the contract, socio-economic considerations, ordering procedures, and fees. Agencies will be able to use this information as one data point in deciding whether they are better served by placing an order under an existing contract or pursuing a new open market contract action. The ICD will also help senior managers to get a better picture of the number of inter-agency contracts that their agencies are operating.

GSA, which manages this project in consultation with my office, has been working for a number of months to address configuration issues. In addition, the FAR regulatory councils have evaluated public comments on proposed FAR changes that will provide the regulatory underpinning for the ICD. Population of the directory is expected to begin after validation testing is completed this spring. FAR changes will be finalized at that time to encourage consideration of the ICD during acquisition planning and market research as well as to ensure agencies regularly input information on new inter-agency vehicles in a timely fashion.

Of course, "e-Buy" and the ICD are just two components of our efforts to reshape information technology (IT) investments in ways that mirror the integrated nature

of acquisition. Our "integrated acquisition environment" (IAE) initiative seeks to facilitate the migration and leveraging of IT investments to modernized, technology-based infrastructures that harmonize the varying functions that support the acquisition process. GSA serves as managing partner of the IAE initiative, working closely with OMB's Office of Information Technology and Electronic Government, and OFPP.

IAE projects have been placed into one of three broad functional areas that collectively encompass the acquisition process, namely, functions that: (1) promote access to business opportunities, (2) manage information about the Government's business partners, or (3) capture information on acquisition activities. For instance, "e-Buy" and the ICD are part of a larger "business opportunities network" that also includes:

- "FedBizOpps," our Government-wide point of entry for information on actions over $25,000, and
- "SUBNet," a one-stop resource for information on subcontracting opportunities.

The functional groupings are helping managers across agencies to more easily identify and avoid redundant IT investments. This saves money for the Government and can reduce burdens on contractors as well. An integrated "business partners network," for example, means that contractors may register once and avoid the effort of submitting redundant data each time they seek to do business with the Government. Accurate and up-to-date registration information also facilitates timely payment to contractors.

In short, the IAE is laying the foundation for lasting change. As we work our way closer to a technology-based infrastructure, we greatly increase the odds of achieving major improvements in how agencies carry out their missions.

IMPROVING PURCHASE CARD PRACTICES

It is no secret that purchase cards have evolved quickly into a major institution in our procurement system, with expenditures increasing more than eight-fold since the mid-1990s. The reason for the purchase card's popularity is not difficult to understand: purchase cards eliminate many of the impediments of traditional procurement. Unfortunately, the efficiency of the card program has increasingly become overshadowed by waste, abuse, and even fraud, with little or no corrective action taken by the agency. While some members of our procurement community appear concerned that corrective action will unnecessarily erode flexibility, I believe that failure to act is much more likely to put this flexibility at risk.

To help preserve public confidence in our workforce's ability to be effective stewards with purchase cards, we have taken several important actions. In January, OMB began requiring agencies to report quarterly on certain aspects of their purchase card programs to ensure that agencies are implementing strong internal controls. Agencies will provide information regarding the number of cards, span of control, spending limits, rebates, delinquency rates, fraud and misuse investigations, disciplinary actions taken, and other agency information related to the management of these programs.

In addition, the President's budget for fiscal year 2004 proposes a statutory amendment that would require departments and agencies to evaluate the creditworthiness of individual employees before issuing a Government purchase charge card (or Government travel charge card). Agencies would not be allowed to issue charge cards to those without a credit history or with an unsatisfactory credit history. Agencies would be required to develop guidelines and procedures for disciplinary actions to be taken against agency personnel for improper or fraudulent use, or abuse of charge cards. Better management over card activities, as reinforced by this provision, will help agencies capture cost-saving efficiencies in acquisition and finance operations without wasting hard-earned taxpayer dollars.

I would emphasize that our efforts are focused not just on protecting against waste. We are also seeking to capitalize on the value that cards offer in furthering strategic decisionmaking. Cards give agencies the ability to gain much better insight into buying behaviors of their employees. Agencies must actively use this information to identify opportunities for smarter purchasing and we plan to work with agencies to find appropriate ways to make this happen.

IMPLEMENTING A BALANCED REFORM OF FEDERAL PRISON INDUSTRIES

Before concluding, I would like to draw your attention to promising developments regarding the reform of Federal Prison Industries (FPI). The administration strongly supports a balanced reform of FPI that would level the playing field between the private sector and FPI, increase opportunities for small businesses, give agencies

greater flexibility to obtain best value when spending taxpayer money, and ensure continued work opportunities for Federal inmates. As the Armed Services Committee has recognized, the products that agencies have been required to buy from FPI may be ones that many of our Nation's private sector contractors are able and willing to provide at better prices and at a level of quality that FPI, as a Federal correctional program, is not always in a position to match.

Over the last several months, FPI's Board of Directors has taken several administrative steps that will benefit all agencies. I suggested many of these actions to the Board and strongly commend them for recognizing the need for reform and taking timely action. Let me briefly describe these actions for you.

In January, the FPI Board of Directors raised the waiver threshold for application of the mandatory source requirement from $250 to $2,500. This change, which will apply to all Federal agencies and become effective when implemented in the FAR, will give buyers across the Government the opportunity to carefully consider the wide array of products offered in the marketplace, as well as by FPI, and make buying decisions free from the management restraints associated with mandatory sourcing.

Agencies will further benefit from additional business reforms the Board announced earlier this month. The Board resolved that:

- FPI will immediately begin granting waivers in all cases where the private sector provides a lower price for a comparable product that FPI does not meet.
- The FPI Chief Operating Officer will prepare and present to the Board by March 31 a plan to end the application of mandatory source for products for which FPI's share of the Federal market exceeds 20 percent.
- Inmates will be denied access to personal information of any kind, including credit card numbers, medical records, social security numbers, credit records, and other personal information.

In addition, the Board agreed to consider ending the practice of selling products for which prison labor does not have a substantial portion of the value (at least 20 percent) of the product. OFPP's intent in offering this proposal to the Board is to help ensure that all of FPI's activities further the goal of providing work opportunities for Federal inmates. We think such an action would be consistent with the Board's announcement made at the end of last year to eliminate the practice of "pass through" sales, in which FPI purchases products directly from commercial manufacturers and resells them to a Federal agency to meet delivery deadlines. The Board has tabled action until it can obtain more information. We look forward to a continued collaborative effort with the Board as it pursues reform efforts.

CONCLUSION

As this year's budget again illustrates, the administration remains firm in its resolve to improve the performance of Government and the culture that drives our investment decisions. For the acquisition community, this means that we must continue our efforts to promote access to the Federal marketplace, and ensure competition is used effectively at every level of purchasing throughout the Government. This will enhance opportunities for all businesses—small and large—spur creativity in the marketplace, and provide the framework for the delivery of better value for agencies and the taxpayer.

There is more to be done. But I am confident that the steps we are taking are laying the foundation for an acquisition process that is considerably more market-driven and results-oriented than that which this administration inherited.

This concludes my prepared remarks. I am happy to answer any questions you might have.

Senator ENSIGN. I thank each of you for your excellent testimony. I think this is a very important hearing, bringing out some of the things that have been done and some of the huge challenges that are ahead of us. There is no question that all of us recognize that we cannot have 20 years to bring a new weapons system on board. Some of the practices of the past cannot continue, especially with how quickly technology is changing. Those kinds of practices will leave the United States behind in the future.

Secretary Aldridge, I am not sure if you will be able to address this because I do not know exactly when the evolutionary spiral-type development was applied to the Joint Strike Fighter, but if it

was, first of all, when was it? But also, if it was applied from the beginning, do we have any idea how much time, how much cost, theoretically, at least, could have been saved in development of the Joint Strike Fighter?

Secretary ALDRIDGE. Well, let us see. The Joint Strike Fighter from its evolution when we entered into this phase had a spiral development plan in place. We made the decision back in October to enter into the system development in demonstration phase. We knew we were going to have blocks, and what is different is that we have planned blocks, and we have a technology plan that goes with it. When the technology is developed, it can be phased into those specific blocks; and that is the plan. That was the way it was set up from the beginning.

I think what you are getting to is that we did not do that for the F–22. The F–22 was designed to go to the ultimate configuration from the beginning. I was involved in the source selection process of that airplane back in the early 1980s, so it has been around for 20 years and it has not yet entered its operational test phase. But it is because we wanted to get the ultimate configuration.

We know there will be upgrades to it, but they are not planned upgrades that the Joint Strike Fighter has in place, so we know the first block of the Joint Strike Fighter will not be the full-up configuration. It will be about 80 percent. We will have a block B that will have an improved capability for air-to-air, and some additional air-to-ground. We know we have those planned.

How much we could have saved on the F–22 is kind of speculation if we went to a block design there. But I think it would have been significant, because we would have had fielded the airplane sooner. We would have gotten rid of some of the older F–15s that are really costing a lot of money to maintain. We would have gotten rid of them earlier. We would have done so with a lot less risk, and I think with a lot less cost. How much that would have been saved is speculation, but significant.

Senator ENSIGN. Have we done a lot in the private sector? I know that there are models out there that hopefully we are looking at in the private sector. There are inherent differences between the private sector, obviously, and the public sector. But, I think that there are a lot of principles that can be applied from the private sector to the public sector. One of those principles, the whole idea of quality management.

Now, depending on whose definition of quality management, there are many different practices that lead us to that. But, certainly the private sector in the United States has had to learn some from the Japanese, some from the Germans, and now the Americans are being very innovative in their management practices.

One of the things that they do is they benchmark each other. They look for what is working out there. How much of your workforce is benchmarking the private sector and trying to figure out how they are doing it, and how can those private sector practices be brought into the public sector?

Secretary ALDRIDGE. I do not think we are doing enough of it. I will start off by saying——

Senator ENSIGN. By the way, when you were mentioning training earlier—and I think, Mr. Walker, you mentioned that a lot as well—that bringing part of the training needs to be that benchmarking. I mean, that is a big part of showing people how to even benchmark.

Secretary ALDRIDGE. One of the areas that I find we have to get into, this gets into the benchmarking idea, is that the Government has to be the smart buyer. We cannot pass off that responsibility to the commercial sector or the contracting sector.

So we, as Government officials in trying to determine what we are buying for the taxpayer, and the best thing we can get for quality and cost, we have to be smart. So inside the Government, we need to have smart program managers that stay for a period of time to apply their skills overall, rather than every 2 years. Also, program managers that understand what is benchmarked in the commercial sector, so they can measure the performance of the contractor against some quality standard. I do not believe we do enough of that, quite honestly.

I am worried about making sure that the workforce that we have in the Government, the AT&L workforce, is qualified with the right skills as I have mentioned. We are putting a lot of emphasis at the Defense Acquisition University on training these people, bringing in case studies, which is also part of benchmarking, to see how we did things right and wrong, and applying that to our people.

I am very worried about that, and you mentioned it in your opening statement that we have 50 percent of our acquisition workforce eligible to retire in the next 5 years. Unless we do something to encourage them to stay, I think we are going to end up with the workforce not having the skills to be the smart buyer. That, I worry about.

Senator ENSIGN. Mr. Walker.

Mr. WALKER. Can I comment on the two points real quickly? First, you mentioned spiral development, and clearly that is something that is being used for JSF, and has been contemplated from the very beginning.

I would assert that the F–22 and certain other platforms may be an example of the old "I have a dream" mentality. "I have a dream. Why can we not have X that is perfect and has all these different capabilities." Whereas now with spiral development we have an idea of what we are looking for, but we recognize that we need to try to go for an 80-percent solution and that it needs to evolve over time.

Where I think there is a direct correlation with the private sector based upon GAO's work that was commissioned by this subcommittee, is "What is the level of maturity of any new technology before you move into the next level of the acquisition process?" That is where there has been the biggest problem in the past. There has been a drive to try to hit the dates, no matter what the maturity of the technology is, and to move into the next stage.

The later that you solve your technology problem, the more it is going to cost, the more it is going to be delayed, the more you are going to have to compromise. They, I think, are realizing that. Spiral development is an effort to try to address that, and I think it

is something that clearly has to be promoted and expanded within the Department.

Senator ENSIGN. Well, I have many other questions, but my time is up. If we have a second round, I may get into some others further; otherwise, I have some questions that I will submit for the record.

Senator Akaka.

Senator AKAKA. Thank you very much, Mr. Chairman.

Mr. Walker, you and I have discussed the human capital problems facing the Federal Government on a number of occasions. I am concerned that we lack a coherent focus on these issues.

The different parts of the executive branch propose policies on outsourcing civil service reform and civilian pay. Different committees of Congress considered these proposals, even in our own committee. Different subcommittees are responsible for outsourcing and for civilian personnel policy. Yet, these policies all impact the same civilian workforce.

We are telling this workforce that we want to reform the civil service system to make it more flexible by eliminating some of the protections now available to Federal employees. But, at the same time, we are telling these same employees that we want to outsource their jobs and that they do not deserve the same pay increase as we provide to the military.

Mr. Walker, would you agree that even if the right hand does not know what the left hand is doing, this combination of policies is likely to have an adverse effect on employee morale? Should we not make a greater effort to take a coordinated approach to these human capital issues?

Mr. WALKER. I think it is critical that we continue to devote more time and attention to modernizing our human capital strategies, policies, and practices. The fact of the matter is that the Federal Government needs a number of different types of capabilities in order to deliver on its promises and to achieve its many missions. It needs dedicated and capable Federal workers. It needs contractors. It needs effective partnerships involving both.

I think that we have made a tremendous amount of progress in the last 2 years in the human capital area, in part due to your efforts and others. GAO put the lack of a strategic approach to human capital strategy on its high-risk list about 2 years ago. There has been more activity in that area in the last 2 years than the last 25, both on the administrative side as well as legislative. I am hopeful that we are going to have more progress in the next 2 years than the last 2.

I do think it is critically important that we have a well-conceived and executed process for competitive sourcing, not outsourcing. I do not use the word "outsourcing." I think it is a loaded term. I think what we are talking about is strategic sourcing strategies. It could be insourcing, outsourcing, or co-sourcing. In most cases, co-sourcing is what it is going to be, because you may want to have an internal capability as a Reserve, and even if you outsource something, you have to have an adequate number of qualified, dedicated Federal employees to manage cost, quality, and performance, because if you do not, you are going to get in trouble.

By the way, if you look at our high-risk list, we have a lot of areas on our high-risk list, NASA, IRS, DOD, DOE, that are on high risk for contract management because they do not have an adequate number of skilled, knowledgeable people to manage cost, quality, and performance from contractors.

So I think it is important that the principles of the Commercial Activities Panel be adopted by the administration. I am hopeful that Congress will consider any related legislation that will help make them a reality. It is important that we continue to make progress on the broader human capital challenge to meet the needs and address our challenges going forward.

Ms. STYLES. Senator Akaka, can I add a point about morale and competitive sourcing?

Senator AKAKA. Of course.

Ms. STYLES. I think it is a very important issue as we move forward with these changes. Competitive sourcing can really increase morale when it is done right. The President just gave an award to Offutt Air Force Base, where the in-house organization actually won. It increased morale. They learned how to do things more efficiently and cheaper, and they beat the private sector.

The problem we face is morale issues when the public sector does not have the resources or the commitment from management to really be able to prepare a competitive bid. We are working to make sure that in implementation and in our circular that we give the public sector entities the resources, the training, and the ability to be competitive and bid against the private sector when it is appropriate.

Senator AKAKA. Mr. Secretary, 647 of the Treasury Appropriations bill, as enacted through the Omnibus Appropriations Act earlier this year, contains a provision which prohibits the use of any goal, target, or quota for outsourcing, "Unless the goal, target, or quota is based on considered research and sound analysis of past activities and is consistent with the stated mission of the executive agency."

The administration has established a goal of considering 425,000 jobs or 50 percent of the eligible workforce for conversion to private sector performance. Although no timetable has been set for the achievement of this long-term goal, OMB has established a 2-year goal of considering 127,500 jobs, fully 15 percent of the eligible workforce for conversion to private sector performance by the end of fiscal year 2003. To reach this goal, each Federal agency has been asked to submit a plan to compete 5 percent in fiscal year 2002 and 10 percent in fiscal year 2003.

Ms. Styles, is it your view that the 50-percent goal and 15-percent goal are based on, "considered research and sound analysis of past activities of each Federal agency"? If not, what action does the administration plan to take to comply with this new statutory requirement?

Ms. STYLES. Well, I think I would like to clarify that these are and have been Government-wide goals. In application, we have worked over 2 years with each department and agency to develop a plan that was appropriate for that agency.

We have agencies that are competing as few as 7 percent of their workforce because they have had historic contract management

problems. We were concerned that competition as high as 15 percent would simply be inappropriate under the current circumstances. We have agencies that are up around 20 percent.

My boss, Mitch Daniels, has asked me to make sure that we clarify that none of these goals will be going forward, agency specific or arbitrary. Our management scorecard will reflect that as well.

We have worked so hard to make sure that the plans are appropriate for the mission of each agency, that they are carefully considered, that they are based on sound analysis and research, that we have that available for almost every department in the agency of the 26 major departments in the agency right now. I think we are concerned that the original goals that were put in place are distracting from the significant efforts that have gone into the plans of the different departments and agencies.

Senator AKAKA. My time has expired. Mr. Chairman, I understand that the standard in the legislation was drawn from the report of the GAO's Commercial Activities Panel. I wonder if we could take advantage of the presence of Comptroller General Walker to jointly request that GAO review the implementation of this new statutory requirement.

Senator ENSIGN. Senator McCain.

Senator MCCAIN. Thank you, Senator.

Secretary Aldridge, I would like to discuss with you the issue of providing sufficient assets to the United States Air Force and military for refueling capability. I am told that the Institute for Defense Analyses (IDA) just completed a study regarding this issue. Is that true?

Secretary ALDRIDGE. Yes, sir.

Senator MCCAIN. Will you share that?

Secretary ALDRIDGE. Well, I would say—let me clarify. They did phase one of a study. We have asked them to go back with some more data from the Air Force, to take another look at their results to try to resolve some differences that have been identified between the Air Force estimate of cost and the IDA estimate of cost.

Senator MCCAIN. Will you share that analysis with the committee?

Secretary ALDRIDGE. Sir, that was done for internal purposes. It was done using certain proprietary data from Boeing, and I think the judgment of the general counsel is that it was for internal decisionmaking.

Senator MCCAIN. So the answer is no?

Secretary ALDRIDGE. Yes, sir.

Senator MCCAIN. Have you or the Air Force done an analysis of alternatives on tanker replacements?

Secretary ALDRIDGE. The Air Force did an analysis looking at two different configurations that would be a suitable tanker using commercial aircraft assets. They did not want to go into a development program for a new airplane, for tankers, so they looked at two different versions.

The Air Force did the analysis, looking at a 767 and a European version. They concluded that the U.S. version was preferable for that purpose and would satisfy their needs.

Senator MCCAIN. I will repeat my question. Have you or the Air Force done an analysis of alternatives?

Secretary ALDRIDGE. The Air Force did the analysis of the two alternatives. I have not.

Senator MCCAIN. Has there been a complete analysis of alternatives done, which is a standard procedure, which is bringing into play all options, or was there just one done as you have said about two alternatives?

Secretary ALDRIDGE. There were two alternatives, one of which was rejected.

Senator MCCAIN. In other words, the answer then is no.

Mr. Walker, can you give us some of your preliminary findings about this issue?

Mr. WALKER. Senator, we did some work on this at your request, and we are also doing some additional work at the request of the Senate Armed Services Committee (SASC) on this issue. We have reported on your work, and we expect to report on this SASC work within the next 2 to 3 months.

My understanding is, as Secretary Aldridge said, that they looked at two alternatives for leasing. I am not aware that there has been any analysis of looking at a purchase versus lease. And it——

Senator MCCAIN. That is—thank you.

Mr. WALKER. Right.

Senator MCCAIN. Because that was the question I was trying to get from Mr. Aldridge, who did not choose to answer. Go ahead, please.

Mr. WALKER. One of the concerns that we have is: There is a tradeoff here. On one hand, there is absolutely no question that the Defense Department has certain requirements that need to be met. The question is how best to meet those requirements. Should you buy? Should you lease? Should it be a combination thereof?

Senator, one of the concerns that I have is: The way the budget rules work, if you end up leasing, you get more favorable treatment for budgetary purposes than you do if you purchase. Therefore, that can drive certain decisions whereby people might do something using one method which may or may not make economic sense in the broader scheme.

I personally believe that it is important to consider buy versus lease in any related decisions, because I would hope that our final desire is to do what is in the best long-term, not only based on our national security interest, but also the economic interest of the country and the taxpayers. But part of this problem, quite frankly, Senator, is the budget rules.

Senator MCCAIN. Secretary Aldridge, according to a story by Tony Capaccio that Air Force Colonel Frantz DeWillis, Deputy Director for—with programs, says that the Boeing company wants to sell bonds to a special purpose entity to finance construction of 100 Boeing 767 aircraft that would be leased to the Air Force as refueling tankers.

Colonel DeWillis said, "There will be a three-way contract." It says, "Boeing will build the planes. They will be sold to a special purpose entity that leases them to us after it gets financing to pay Boeing for the airplanes." Are Colonel DeWillis' comments accurate?

Secretary ALDRIDGE. Yes, sir. From what I understand of the lease arrangement, which there are a lot of details, is that that is—the special purpose entity would be the financier of the lease.

Senator MCCAIN. Do you have anybody in the Air Force that has any training, experience, or knowledge of special purpose entities?

Secretary ALDRIDGE. You would have to ask the Air Force that. I am not aware of any.

Senator MCCAIN. Nor am I. It was the special purpose entities that the Enron accounting practices were all about, Mr. Secretary. Some of us are a little skeptical that the Air Force would do such a thing.

Perhaps you can explain to me, Mr. Secretary, the logic of leasing an aircraft for 10 years that has a life of 35, 45, 40, depending on which expert you talk about, and then giving those aircraft back to the manufacturer as opposed to an outright purchase of those aircraft. Perhaps you can explain to me the logic of that? Besides, as Mr. Walker said, getting around the budgetary constraints.

Secretary ALDRIDGE. It starts with the need to begin the recapitalization of the tanker fleet. There are some 500 KC–135s that are over 40 years old. There are about 130 of them, which are the older E models. With recent depot maintenance, they are beginning to see a significant increase in corrosion and some structural problems. The time it takes in the depot is getting longer, and the cost to maintain the aircraft is increasing year by year at a faster rate than was previously planned.

So the Air Force has identified the need to begin the recapitalization of these, some 500 aircraft. It takes a long time to recapitalize that number of aircraft. They want to begin as fast as they can.

In looking at their budget process, however, and in their program plan that they submitted to the Department of Defense, they began the replacement of the tankers starting in fiscal year 2006. Because of affordability, they could not start any sooner than that, given the other priorities that existed in the Air Force.

The proposal came to the Air Force from Boeing as to starting that program earlier by leasing the aircraft and getting someone to finance that leasing arrangement. They could begin delivering aircraft much sooner in the future years defense plan than the Air Force proposal.

The identification was that if they began leasing with someone financing the upfront costs, they could get 67 tankers delivered in the fiscal year 2006—versus one if they purchased this under the Air Force plan.

Senator MCCAIN. But the——

Secretary ALDRIDGE. The Air Force thought that that was a preferred solution to begin the recapitalization sooner and not requiring the upfront costs that would be in the Air Force budget. For example, if the Air Force bought the same number of aircraft on the same schedule as the lease, we would have to add over $10 billion to that, or take out some other $10 billion worth of other programs. The Air Force recommended that we start the lease for the purpose of getting tankers sooner.

Senator MCCAIN. Well, my time has expired.

I have been briefed that the Institute for Defense Analyses has given a very negative view of this cockamamie proposal. I am sure that is why you sent it back for further study.

I will continue, Mr. Chairman, to do everything I can to see that the taxpayers of America are protected from this military industrial rip off, which has been contemplated.

Secretary ALDRIDGE. Can I respond to that——

Senator MCCAIN. Certainly.

Secretary ALDRIDGE. —the question or assertion?

Senator MCCAIN. However you would like, Mr. Secretary.

Secretary ALDRIDGE. The Air Force estimate of the cost, the unit cost of the tanker if they bought it was $146 million. The IDA estimate of the unit cost was $125 million.

Senator MCCAIN. Well, I guess I would have to respond by saying: On their website, they list the—Boeing themselves lists the cost between $95 and $125 million. So——

Secretary ALDRIDGE. Which does not include the tanker modifications.

Senator MCCAIN. It does not include the $1.7 billion which would be required to modify the hangers, Mr. Secretary.

Thank you very much, Mr. Chairman.

Senator ENSIGN. Senator Nelson.

Senator BEN NELSON. Thank you very much, Mr. Chairman.

In looking at the forming of the acquisition process, clearly as a former governor I know how—and I have experience with wanting to streamline the process to make things work faster, work better, and better serve taxpayers. Ultimately, you also want to make sure that those who are the users of the product, the services, are going to benefit from any streamlining of the process as well. So I commend the effort to try to do that.

I am also encouraged by the discussion that cost will always be part of it. As I say this, I am not going to use any eraser words, but—in connection with that suggestion that it is important. In the process also, though, you have to think not simply of cost, but you have to think of whether or not there truly is an increased quality, increased serviceability, increase in availability, a number of other considerations. "Getting the best value," I think, was the word or words that I heard being expressed.

I also spent time debating between privatization, challenging for public/private competition, or private/private competition. I hope that the effort toward improving quality, best quality, is not just simply a drive toward the road of total privatization.

I hope that there is a retention of the goal of getting the best quality, whether it comes from the public or the private side. I also hope that in any effort to create competition between private and private, or private and public every effort is made to be sure that it is fair with respect to the rules and the opportunities. Because that is the only way that you can get, I think, the best deal for taxpayers, as well as the best available services or serviceability of products for the users, in this case, the military.

No one wants to think about the possibility of lowest price, lowest cost, least value being achieved favoring either the public or the private side.

I will ask this to the three of you. Are you convinced that the efforts that you have made thus far truly push for best value, not weighing the balance in favor of one group versus the other, private or public?

Secretary ALDRIDGE. Senator Nelson, let me begin by describing a little bit of the process by which the number of positions are available for the competition. The Department of Defense goes through a process in asking each of the military departments and the commanders of the various facilities what jobs here could be done by the private sector, and what jobs could not be done by the private sector. In other words, those core functions that he, as a military commander with a mission to perform, believes has to be inherently governmental jobs.

Then he looks at those, and he then provides a list of those which could be privately competed for the purpose—and not part of the core function necessarily of his mission. Then those are identified. That is the number we have heard about, 452,000 jobs have been identified within the Department of Defense for the private sector for competition, for sourcing competition.

We then identified it through OMB, said, "Look, let us make a plan to compete for 50 percent of those," which comes out to be the 226,000 that will be open for competition, and we will phase that over time, because it takes an enormous amount of time. Then those are competed in a plan.

It so happens about 60 percent of the time, the Government wins the competition, but in every case, 25 to 30 percent savings for doing the function that was previously being performed by the Government. So competition, in fact, works by——

Senator BEN NELSON. That is the cost factor. What about the best value?

Secretary ALDRIDGE. The process is that up until now it has been a cost process, and that is what the OMB's new circular is all about. It is, "Let us change that from a cost only competition to a best value competition." We have not exercised that yet because the process will not permit us to do so.

Senator BEN NELSON. Mr. Walker.

Mr. WALKER. My answer would be: It is too early to tell. I think that their intention is to do that. There are two aspects of it. One is design. What is the design of the new process? Director Styles has not yet finalized what that final process is going to be, so I think we have to see what the final design is going to be.

As we all know, implementation is key. You can have a design that looks good on paper, but the real key is "How does it actually get implemented in the real world?" So I think it is too early to tell.

Clearly, I think the intent is to do that. I expect that we will be involved in trying to look at the actual application over time.

Ms. STYLES. We have tried to be very clear from the beginning that this initiative is about bringing value to the taxpayer. We have said from day one that we do not care who wins. We care about competition. We are so committed to that fundamental principle that we have actually changed a policy—or we have proposed to change a policy for the Federal Government that has been in place for 50 years that says, "If it is commercial, the private sector can do it better."

We have said, "No. If it is commercial, let us determine which sector can do it better, which sector can do it for a better value, and oftentimes for a lower cost."

When I talk about best value and services, there are many services that you do not want to be based on a low-cost determination, which is why we are trying to make these changes to the circular. There are, however, a lot of things that you do want based on low cost.

We want grass mowing to be determined based on low cost, so we do not want to preclude that by changing the circular in saying everything is going to be a tradeoff between cost and technical reasons.

Senator BEN NELSON. My time has expired. Thank you very much.

Thank you, Mr. Chairman.

Senator ENSIGN. Senator Allard.

Senator ALLARD. Thank you, Mr. Chairman.

Secretary Aldridge, good to see you again.

In your written statement, you discussed the acquisition cadre. We have been waiting on the space cadre strategy from the Air Force. I understand it is just about ready. Part of the space cadre focuses on the acquisition core of space programs. Did you confer with the Air Force space commander to ensure both sets of acquisition professionals meet consistent expectations?

Secretary ALDRIDGE. Yes, sir. I have been intimately involved with that, the whole Space Commission and the implementation of which this cadre is part of. In fact, I am getting a briefing on that early next week.

Senator ALLARD. Okay. Thank you for your response.

Also, Secretary Aldridge, you talk of the acquisition reform initiative or initiatives, and address numerous programs that will transform the battlefield, and I applaud you for looking at ways to improve the efficiencies and time to task these programs.

What, if any, military space programs do you envision will be developed as transformational or spiral programs?

Secretary ALDRIDGE. Space-based radar. We—in fact, the new program that we call now the Space Tracking and Surveillance System (STSS) that used to be called Space Based Infrared Radar System (SBIRS)-Low is now called STSS. It has a spiral development. In fact, the first two satellites will be a scaled-down version of that capability, and we will improve it with time. The transformational communication system, which is the equivalent of putting fiber optics into space, we will be using a laser communications system, that will obviously be evolved with time. Some of its earlier satellites will need to have certain capabilities, and we will grow it. As I mentioned, space-based radar is certainly one of those. So those are three examples that we have underway.

Senator ALLARD. Thank you. Are there any others that you did not mention?

Secretary ALDRIDGE. In transformational activities, the whole UAV/UCAV program will be spiraled. We mentioned the Joint Strike Fighter already. When we restructured the Comanche, the Army's Comanche helicopter program, we scaled it back, and now that is or has spirals in it, which would give us a little bit lower

risk, and I think more of a credibility of bringing the program in on schedule.

Senator ALLARD. Secretary Teets has testified recently about his priorities, the programs he viewed as transformational. Did Secretary Teets confer with you about—or before development, those priorities, and do you agree with his assessment?

Secretary ALDRIDGE. There was not a formal process by which we debated this process. He has shown those to me, and I agree with those.

Senator ALLARD. I see. Now, to move on, we have been utilizing A–76 studies for more than 10 years now. Apparently, there are accomplishments—or there are indications that these studies have shown results favoring both privatization as well as, in some cases, Government participation in the program. Do you think that this is an effective and fair way of analyzing your acquisitions?

Secretary ALDRIDGE. It is a fair way. A–76 permits competition for functions that can be performed either by the public or private sector. There are some problems in the conduct of those competitions. It takes too long. They tend to be too burdensome.

Because it takes so long, it tends to drive out small businesses from being able to compete, because they cannot stand around for the 3 years or so that it takes to conduct the competition waiting to get the business. So it discourages people.

What the Commercial Activities Panel is trying to do in their recommendations is to clean up the process to make it easier to compete, hopefully quicker and encourage more competition. Because every time we compete, as I mentioned before, it seems like we always find a way to save 25 to 30 percent of the cost from performing that function before.

Competition does, in fact, save money and improves quality and performance. That is what we are trying to get from the revision of A–76 and get rid of most of the barriers and burdens that it has.

Senator ALLARD. When we have Government agencies competing against private sector, for example—and maybe Ms. Styles, you would like to respond to this. For example, the Federal Government does not pay property taxes in Colorado. So how do you assess this as fair competition when the private sector has this tax burden that they pay but the Federal Government does not? Sometimes it is rather substantial.

Ms. STYLES. We actually adjust the Government cost and we take out the private sector taxes, so we make adjustments on both sides. The most difficult part of public/private competition in many respects is that a Federal manager only sees his budget costs. So if he makes a decision about a particular activity and whether he would like that to be performed by the private or public sector, without the A–76 costing mechanism we have right now, he has no idea what performing that function with Federal employees actually costs the taxpayers.

So what has been created in A–76 and is actually applicable right now, which we will be maintaining in the final circular, is a mechanism to pretty closely approximate what the Government cost to the taxpayer is as opposed to the appropriated or budgeted cost.

Senator ALLARD. Thank you.

Thank you, Mr. Chairman.

Senator ENSIGN. Senator Pryor has yielded to Senator Levin.

Senator LEVIN. Thank you, Mr. Chairman.

Thank you very much, Senator Pryor. I appreciate your courtesy.

The importance of competition is 1 of the 10 core sourcing principles adopted by the Commercial Activities Panel of the GAO in its report last year.

A few years ago, Secretary Cohen said that competition is the driving force of the American economy. As a matter of fact, Secretary, and before that Senator Cohen and I authored the Competition in Contracting Act.

Ms. Styles, I know that you share my commitment to competition for a number of reasons. You participated in the Commercial Activities Panel and endorsed its statements about competition. You have also taken strong actions to enhance competition throughout the Federal procurement system. I particularly appreciated the steps that you took to strengthen competition in the acquisition of services, and to implement the legislative changes that we have now made to permit private companies to compete with Federal Prison Industries.

However, I am troubled by the administration's proposed revision to OMB's Circular A–76, which governs the outsourcing policy of the Department of Defense and other Federal agencies. The proposed revision does not appear to reflect that commitment to competition.

The current version of Circular A–76 states right up front that it is the policy of the United States Government to achieve economy and enhance productivity, and the competition is the means that we use to achieve that objective. That statement of competition is our core policy. But that has been replaced now in the proposed revision of Circular A–76 with a statement that it is our policy "to rely on the private sector for needed commercial services."

Far from endorsing competition, the proposed policy directs agencies to "use Competition *or* Direct Conversion process to determine the providers of commercial activities." So we now have an equivalence between competition and direct conversion, whereas before we had the core policy of competition being emphasized.

The Comptroller General stated in a January 16, 2003, letter to OMB Director Mitch Daniels, relative to the proposed revisions, the following, "The Commercial Activities Panel strongly supported continued emphasis on competition in determining whether the public or the private sector should perform commercial services. . . [The proposed change] sends an unfortunate signal that the administration is attempting to increase the number of direct conversions. This is a particularly sensitive matter for Federal employees, whose trust in the objectivity and fairness of the system will be critical to the success of the administration's competitive sourcing initiative."

Competition is essential, not only to protect the taxpayer, which it clearly is, but also to provide fairness to our Federal employees. We need to recognize that these public servants are a valuable asset and that it is in the public interest for us to treat them as a valuable asset. Surely they should have a right to compete for their own jobs. It seems to me that should be a core principle too,

which is an inherent part of competition, that you should be able to compete for your own job before it is outsourced.

Let me start with the question to you, Ms. Styles. As I understand it, the administration proposes to authorize the use of direct conversions based on a "business case analysis," for outsourcing of functions currently performed by as many as 50 Federal employees, without providing Federal employees an opportunity to compete for their own jobs.

The cost of a function performed by 50 employees is probably somewhere in the order of $5 million a year, or $25 million over 5 years. This is my first question: Would we encourage agencies to transfer work away from one private sector company to another private sector company with contracts of that size on the basis of a business analysis without competition?

Ms. STYLES. No, we would not. Let me address your first comment. While our decisions are not final at this point, we have taken into consideration many concerns that the direct conversion process and the streamlining process that are in the draft are not competitive. I believe based on recommendations that I am making that that will significantly change.

I do not anticipate a reference to direct conversions in the circular itself. We are even in the process of discussing—and I will emphasize again that we have not made any final decisions about eliminating direct conversions altogether. Our concern certainly has been over the past 2 years that agencies have made decisions to directly convert that may not be in the best interest of the taxpayer. We do not want that to continue. We are trying to create a mechanism that is streamlined for under 50 or under 65 that would allow, in appropriate instances, the public sector to compete but would also require the agency to make a cost-effective determination, that any determination to go to the private sector would be cost effective.

What we are looking at right now is a structure for full public/private competition and then a smaller cadre under either 65 or 50 that would be more streamlined and flexible for the agencies, but would have an element of competition and a strong element of competition for any decision to send work to the private sector and to allow, where appropriate, Federal employees to compete.

I think we have understood the concerns expressed by many Members of Congress, by many employees and, I think, by the General Accounting Office. We are working hard to take those into consideration.

Many people have said for a long time, even in the Commercial Activities Panel, that under 10 is a de minimis number. You should be able to send those directly out to the private sector and have flexibility.

Our concern—and again I am going to emphasize, it is not a final decision—is that those decisions have been made without regard to cost, or without regard to the best value or effectiveness for the taxpayer.

Senator LEVIN. Thank you.

My time is up. Thank you, Mr. Chairman.

Senator ENSIGN. The way we run this committee is just—some people run it alternately based on the early bird. I just like to run

it based on who showed up first. So, Senator Pryor, you will be next, and then Senator Chambliss.

Senator Pryor.

Senator PRYOR. Thank you. Mr. Chairman, I appreciate that.

Let me just ask generally about sourcing and let me tell you my philosophy, the way I look at it. I want you to tell me if you agree or disagree, and educate me on why you might disagree.

When it comes to the Department of Defense, it seems to me that you have three factors that you consider. One, and the first factor should always be: Does it make military sense? Does it make military sense on where we are getting—what our sources are? Second, does it make fiscal sense? Third, does it make philosophical sense?

The reason I say that is because I think there is a temptation for people who want to see more privatization, and people who want to see no privatization almost, is that the philosophical sometimes overrides the fiscal considerations and also overrides the military considerations. But it seems to me that those should be our priorities in that order: Does it make military sense? Does it make fiscal sense? Third, should it make philosophical sense? Can I hear what you all think about that?

Secretary ALDRIDGE. Well, let me start off and maybe weigh in later. The process, as I described before, is for the military commander at a facility to look at his workforce. He or she understands the mission they have to perform, be it a depot or a maintenance facility, anywhere that has a significant number of in-house employees, "What is my mission? What is—what am I here to do?"

In some cases, it is warfighting. You look at the individual job and say, "Does this job—is it essential for this job to be performed to contribute to my warfighting ability or to my maintenance ability, or so forth? Do I need this job inside the Government or can that job be performed outside the Government? Whether or not it is performed at the facility or not, can it be done?"

Then they go look at it job by job and they identify what those functions are—and I believe, if I was a commander, I would take all these factors into account.

Now, you do not know the fiscal answer until you compete, because normally what happens is the Government function that is being performed, they think of new and better ways to perform that function at less cost than they are performing it now. We find that to be, as I mentioned before, almost a truism for every competition. It gets performed at lesser cost, a significantly lesser amount.

Senator PRYOR. Within the Government?

Secretary ALDRIDGE. Within the Government, even when the Government wins. Or if the contractor wins, it also gets performed at lesser cost, so the—you will not know that answer until you have kind of gone through "Is this job essential? Does it make sense to compete this job?" Maybe a little philosophical factors go in. But you do not know the answer until later, until you compete it, but in most cases, it is pretty obvious to the commanders. Knowing they have done this before, they will get a better product out of this competition.

Senator PRYOR. Mr. Walker.

Mr. WALKER. First, let me acknowledge for the record that your father, the former senior Senator from Arkansas, was a member of the panel and very ably contributed to our efforts. Please pass on my regards to him.

Senator PRYOR. I will. Thank you. Yes. He worked on that. Thank you so much.

Mr. WALKER. There is a strong resemblance, I might add. [Laughter.]

But I would say on all decisionmaking, I look at it from two primary factors: One, value and two, risk. What is the value that is added, and how do you manage the risk?

Commenting on your specific criteria, mission is number one. In other words, what are we all about? What are we trying to achieve? How does this fit into that? I would say fiscal would come after that, but equal to that, I would say, would be the people dimension.

I think you have to consider the people dimension. I think that is critically important. I would say that that is equal to the fiscal dimension.

I would not say philosophical, because I would hope that this would not be philosophical.

The last thing that I would say is feasibility. Because there are certain things that we might like to be able to perform certain functions or have certain capabilities in the Federal Government, but if our compensation policies are such that we cannot attract and retain an adequate number of people to do that, then the market may force us to look to a private sector alternative. Or if we are looking for certain types of technologies that, quite frankly, the Federal Government does not have or has not had the ability to develop and sustain over time, then we may have to look to the private sector.

But I also believe that we need to keep in mind that this is sourcing strategy, where it is not just outsourcing. It could be insourcing when contractors fail to perform in appropriate circumstances. More likely than not, we are going to be co-sourcing of a lot of things. There has to be adequate oversight and management even if you do outsourcing. So that is what I would say.

Senator PRYOR. Thank you.

Ms. Styles.

Ms. STYLES. I would like to emphasize that there is nothing that is critical to the mission of any agency that would ever even be contemplated for public/private competition. I mean, we are at a point where we are simply asking agencies to compete some pretty obvious things.

I will give you a couple of examples, just so you know how far we are from mission critical requirements. The Department of Navy has 500 people that make eyeglasses. We have thousands of people at the Veterans Administration (VA) that do laundry, serve food, hang drywall. We have lifeguards at the Department of Interior. These are very basic commercial services that we are simply asking to be competed and to figure out if we can perform it cheaper with the private sector or with the public sector, or we can get better value from one sector or the other.

Without the pressure of competition, we are going to continue not knowing. We are going to continue not managing these functions as well.

Senator PRYOR. Yes. Actually, I think that there are a whole range of things that are good candidates to be outsourced. Let me give you one example of that and—I am about out of time here, so we can talk through it very briefly.

A friend of mine was in the Gulf War 12 years ago. When he gets to Kuwait, he finds the food service has been contracted with some locals there. The U.S. Army, the GIs did not feel that comfortable with a bunch of Kuwaitis, et cetera, serving the food. You get into that, is that mission critical? Certainly if the food supply is tainted and if we do not have the proper safeguards built in, then that certainly is mission critical.

But they are in Kuwait. Apparently, the safeguards were there, and the contracts were done, and everything was fine. There was no problem at all whatsoever. So we have to balance that. Again, it has to make good military sense to do it.

I will note this, Mr. Chairman, before I step aside here, is that Fortune Magazine, in this most recent issue, had a story about sourcing—I know we do not want to use the word "outsourcing"—but about sourcing and contracting. It said that in the Gulf War, for every 100 soldiers, there was 1 contractor. Today for every 100 soldiers, there are 10 contractors.

I would just ask you all to help us work through evaluating whether we are being most efficient with our dollars and evaluating the effectiveness of what we are trying to do here.

Mr. WALKER. Senator Pryor, I think part of that has to do—and I would ask Secretary Aldridge if he wanted to comment on it—with the sophistication of our weapons systems and our technologies. It goes back to what I said before, when you look at the people dimension, and when you look at the market dimension, being able to have the type of skills and knowledge in the requisite numbers to be able to deliver on mission and to achieve the objective. So I think there is an interrelationship.

Senator PRYOR. No, and I agree with that. I think things have become so high-tech, so advanced, so technically critical that obviously our needs on that will grow. Again, we are contracting out more laundry services, more grass cutting, more things like that. A lot of that makes sense.

But at the end of the day, we need to look at it, in my view, of: Is the military purpose being served? Second, fiscally, does it make sense? Does it make sense to have all these contracts—all these contractors do this?

Senator ENSIGN. Senator Chambliss.

Senator CHAMBLISS. Thank you, Mr. Chairman.

Mr. Secretary, it is always good to see you. Very glad to have you back with us.

Secretary ALDRIDGE. Thank you.

Senator CHAMBLISS. I cannot help but put it in—as I am listening to this discussion, as we are sitting here on the brink of war, one of my projects over the last 8½ years now has been to get a definition of "core." You all know what we went through last year with our National Defense Authorization Bill. I was finally willing

to concede at the end of the day because of the right concessions being made.

But I do not see any contractors jumping up and down today volunteering to go to the Middle East. I know that there are any number of civilians at Robins Air Force Base who are prepared to go, not because they want to go, but because that is part of their job. So I am always reminded of the fact that there is core work out there and that the public depot system is an absolute necessity, and I hope we never lose sight of that.

I say that leading in, Mr. Secretary and Ms. Styles, to my comment and my question on A–76. I do not like A–76, and I do not like it because I do not think it is fair. There is nobody who believes in competition more than I do. I think competition does wind up giving you the best bang for the buck.

But what has happened with A–76 is: It is a one-way street. Every A–76 contract that I am familiar with is a project that is being done within the depot that all of a sudden we decide we want to A–76 it and see whether or not we can do it cheaper on the outside.

I am familiar with only one project that has ever been A–76'd from the outside to decide whether or not we can do it cheaper within the depot.

Now, I beat up on the last administration every time I had the opportunity over this issue. I was willing to give you all some time to try to straighten that out, because I asked this question for the last 2 years on the House side. I do not see any movement in that direction now, so I would like the benefit of your thinking with respect to contracts that have been awarded or outsourced, because—I am marking it like you. I do not like that word, but it is a fact. We have outsourced contracts, both under A–76 and otherwise.

What are we doing with respect to those contracts that have been outsourced regarding the possibility of being able to do that work more cheaply within the depots?

Ms. STYLES. If I can start by addressing what we are doing in the draft, the revisions that we have of the A–76: When I first confronted this question with the current A–76 that is now in force—that has been in force for quite a while, it appears to me that there are barriers in the circular and in the policy to bringing work back in.

I have made changes to eliminate all barriers to bringing work back in-house, to holding a competition for bringing work back in-house. Those will remain in the final circular without any question in my mind. There is——

Senator CHAMBLISS. The changes are going to remain, not the barriers; am I understanding you?

Ms. STYLES. The barriers will be removed.

There is no question that the barriers that I perceive to be in the current process to bringing work back in-house will be removed. There are specific instances in this administration where we have been encouraging agencies that are clearly having contract management issues, that have sent more than an appropriate amount of work out the door without having the capacity to manage that work from a contract perspective to look at bringing work back in-house through competition. That would be the Department of

Housing and Urban Development (HUD) and that would be the Department of Energy, both.

However, I will be frank with you: Our focus has been on work that is in-house that is performed by Government employees that is commercial in nature and has never been subject to the pressures of competition. I think we made that decision because we have 850,000 jobs that have never been subject to the pressure of competition. At least when work goes out to a contractor, it is subject to competition every 3 to 5 years.

Secretary ALDRIDGE. Senator, I have—just a comment on a couple of things. One, the concern I think we all have is that if a Government agency wants to re-enter and compete for something that has gone private, it implies there is excess capacity to do so, which may or may not be the true case, but——

Senator CHAMBLISS. I never have been able to get a good definition of what "excess capacity" is.

Secretary ALDRIDGE. That is right. But I do remember visiting Robins, as a matter of fact, right shortly after I was confirmed and went through the depot, and clearly they showed me one case where we have some problems on some C–5s, the engines themselves. The work could not be defined well enough to go out for contract, because you have to write down the specifications. The only people who could have done that were Government employees who could react immediately to the demanding requirement to replace those themselves on C–5s as rapidly as possible.

That is clearly one of those cases where we would not have been able to contract out that kind of work. The way we are heading is looking at making sure the functions are well-performed. For us to create partnerships, I believe, with the industry is probably the best long-term solution to these problems.

Senator CHAMBLISS. I agree with that. Partnering is the long-term answer. It has worked well.

Secretary ALDRIDGE. Yes.

Senator CHAMBLISS. But you all will be asked that question by me the next time you come as to what progress we have made on reviewing contracts that have been outsourced to see whether or not we ought to bring them back in.

Thank you, Mr. Chairman.

Senator ENSIGN. Senator Clinton.

Senator CLINTON. Thank you, Mr. Chairman.

I want to just add a word to Senator Chambliss' questions because I share his concern about this. I think there is also a growing question about the impact and implication with respect to national security. You may not be able to put that in a circular, but I think it is something we have to take into account. I know that after the U.S.S. *Cole* was bombed by the terrorists, there was only one place left in our country where you could procure armored steel for the repair work. Frankly, I do not want to be dependent on a Chinese steel company to determine whether or not we get the armored steel that we need. I do not want to be dependent, whether it is a depot or an arsenal or any other manufacturing facility, on contractors in an uncertain economy under these very challenging circumstances. So I, too, am very concerned about some of these ongo-

ing issues and what it means to subject national security concerns to competition.

But I have a different set of questions that I would like to explore with Secretary Aldridge. They arise out of the recent news articles in this Monday's Wall Street Journal. Oops. Did we outsource this or what? [Laughter.]

Senator ENSIGN. No. That was strictly a Government contract. [Laughter.]

Senator CLINTON. In those Wall Street Journal articles, sources have indicated that multi-million dollar contracts are being let for rebuilding Iraq and according to the Journal, "The Bush plan as detailed in more than 100 pages of confidential contract documents would sideline United Nations development agencies and other multi-lateral organizations that have long directed reconstruction efforts in places such as Afghanistan and Kosovo. The plan also would leave big non-governmental organizations largely in the lurch, with more than $1.5 billion in Iraq work being offered to private U.S. companies under the plan. Just $50 million is so far earmarked for a small number of groups, such as CARE and Save the Children."

These articles raise a lot of questions. Let me just run through my concerns and then ask Secretary Aldridge to respond. The article also points out that U.S. Agency for International Development (USAID) is expected this week to pick the prime contractor for a $900 million job rebuilding Iraq's infrastructure, including highways, bridges, airports, and government buildings.

Now, first, Secretary Aldridge, has this USAID contract for $900 million been awarded yet? If so, who received the contract?

Secretary ALDRIDGE. I am not aware that it has been awarded. I am not that familiar with the contract itself. I am familiar with the activity that has to be done in preparation because the people who go there also must be prepared to react because they have to get vaccinations and things of that nature. But I do not have the specifics. I will get back to you with an answer to that.

[The information referred to follows:]

These questions deal with contracting done by the USAID. I am not in a position to answer the questions since they do not involve Department of Defense contracting actions. General information about the contracting being done by USAID to support Iraq reconstruction is available at *http://www.usaid.gov/iraq/about—reconstruction.html.*

Senator CLINTON. Mr. Walker, do you know if the contract has been let, and who received it?

Mr. WALKER. I do not know, Senator, but I will tell you that I have already let the Defense Department know last week that they can expect that we are going to be involved in trying to understand where the money went and who the money went to with regard to both conflict and post-conflict operations.

Senator CLINTON. Ms. Styles, do you know anything about the awarding of the contract?

Ms. STYLES. No, I do not.

Senator CLINTON. With respect to this contracting process—and I appreciate Mr. Walker's comment—Secretary Aldridge, what steps are being taken to avoid conflicts of interest? We all have become aware of the article in the New Yorker magazine with respect

to the role that a company that Mr. Perle apparently has a financial interest in, might be involved in both devising the criteria for the granting of contracts and then possibly being a recipient of such a contract. Are there conflict of interest rules in effect?

Secretary ALDRIDGE. Conflict of interest rules are definitely in effect. We follow them precisely. I am not aware of what Mr. Perle's relationship with this company is, but we have very strict conflict of interest rules and regulations that we must follow and we are very serious when we find that someone has violated those laws.

Senator CLINTON. Well, one of the things that concerns this member of the committee is sitting in those chairs a few weeks ago, we heard some rather vague testimony from Secretary Feith and others about post-Iraq, post-Saddam planning. Every question we asked about "How long is it going to take? How much is it going to cost? How many people are going to be involved," the answer we got was, "We cannot tell you. That is unknowable."

Now all of a sudden, we have private companies being given hundreds of pages of information about potential contracts, which I assume have details in them in order to be able to bid, information that has not been given to this committee.

Now, I would also want to know, and we will give you, all three of you, follow-up questions and specifics about this, because I assume that these firms were given estimates as to how long their services might be necessary, how long they might be expected to have employees in the area. That is information that I think the public is entitled to as well as potential private bidders.

Now, with respect to the non-governmental organizations, have any discussions gone on in DOD with respect to the role of non-governmental organizations that have a history and also a reputation of being non-political, uninvolved in the conflict, such as Save the Children or CARE, on the role they could play?

Secretary ALDRIDGE. I am not aware of any discussions in that regard.

Senator CLINTON. Thank you, Mr. Chairman.

Senator ENSIGN. All of us have a lot more questions. Unfortunately, we do not have time for a second round.

I want to thank the witnesses for your excellent testimony, and we will be submitting other questions for the record.

One of the questions I had—would request a fairly prompt response on would be with regards to the level of the conflict, as you all are aware, between the House and the Senate and the mandatory cuts in personnel, and how that is affecting you. I am very curious to get that, especially before we do committee markups and I know sometimes the written questions take a lot longer. So I would like to get that from you all as——

Secretary ALDRIDGE. This is the size of the acquisition workforce?

Senator ENSIGN. Yes. As soon as possible.

[The information referred to follows:]

Certainly, the conflict regarding the Defense Acquisition and Support Workforce between the United States House and the United States Senate is disconcerting to us in the DOD. The Department does not support the reductions being proposed by the House. Reductions in the acquisition workforce are not driven by our strategic planning and efficiency improvements have the potential for exposing the Department to significant risk. The DOD Inspector General ("DOD Acquisition Workforce Reduction Trends and Impacts") and the General Accounting Office ("Acquisition

Workforce: Department of Defense's Plans to Address Workforce Size and Structure Challenges") have already suggested that DOD is experiencing risk in contracting and program management as a result of past workforce reductions. DOD needs sufficient people in the workforce to allow us to be smart buyers, provide enough people to both accomplish the Department's mission and train our workforce simultaneously, and continue to decrease acquisition cycle time. I appreciate your willingness in the past to support DOD's workforce management and request your continuing support.

Senator ENSIGN. So I would excuse this panel.

I welcome our second panel. This panel will focus on specifics of the outsourcing debate.

Both of our witnesses were members of the Commercial Activities Panel and have very different views on this issue.

Stan Soloway is President of the Professional Services Council, an association of services contractors. Prior to his current position, he was Deputy Under Secretary for Acquisition Reform in the previous administration.

Bobby Harnage is President of the American Federation of Government Employees, a union that represents 600,000 Federal employees, of which almost 200,000 come from the Department of Defense.

I would request this panel, just due to the shortness of time, if you could summarize your remarks in under 5 minutes, we would appreciate that.

We will hear from Mr. Soloway first.

STATEMENT OF STAN Z. SOLOWAY, PRESIDENT, PROFESSIONAL SERVICES COUNCIL

Mr. SOLOWAY. Mr. Chairman, members of the subcommittee, thank you very much for this opportunity to share the perspectives of the Professional Services Council (PSC) on the critical issues associated with the Commercial Activities Panel report, and the administration's proposed revisions to A–76.

As some of you have already noted, this is, of course, a time when all of our thoughts and prayers are with our men and women in uniform, a time that serves to remind us again of the unique responsibility that we have of providing them the best possible support.

Moreover, at times like this, we are, again, reminded of the importance and value of a robust partnership between the public and private sectors. For it is only through such a partnership that we can truly meet our responsibilities to the troops, responsibilities that include large numbers of contractor employees that are today on board ships and at base camps and throughout the theater of operations helping to ensure mission success.

Senator Clinton, your interesting questions regarding the AID contract, which I cannot comment on because none of the companies involved are companies I am involved with, it is not an assistance contract. It is actually a contract to do physical reconstruction, the kind of building, clearing, and so forth that is traditionally done through USAID, through companies.

But Mr. Harnage and I were both privileged to serve on the Commercial Activities Panel, which was led so ably by the Comptroller General. Today, I will very quickly review the recommenda-

tions and some of our perspectives on it, and the administration's proposed revisions to A–76.

I have also attached to my written statement PSC's detailed comments on those proposed revisions, as well as a companion statement from the industry-wide coalition on outsourcing and privatization. I would ask that they both be made a part of the permanent record.

Senator ENSIGN. They will be.

Mr. SOLOWAY. The Commercial Activities Panel, as the Comptroller General said, unanimously agreed to a set of 10 overarching principles to guide Federal sourcing. They call for a sourcing policy that treats all offers fairly; that is, based on a strategic assessment of agency mission needs and capabilities, and that is transparent and accountable.

All told, the principles represent a common sense approach to sourcing. The current A–76 process, which applies to only about 1 percent of all Government procurement, fails to align with these principles. However, the Federal Acquisition Regulation, which is proven, well understood, and guides virtually all other Government procurements, aligns very well with the principles the panel unanimously adopted. Hence, our recommendation to conduct public/private competition under the auspices of the FAR was a purely logical extension of those principles.

The principles also make clear that mandating public/private competitions across the board is inappropriate and helps neither the Government nor its workforce. Recognizing that competition is the key to driving performance and efficiency, and that competition is typically already robust, even when the Government is not a bidder. The principles state, "The Government should not be required to conduct a competition open to both sectors merely because a service could be provided by either. Such decisions must involve a range of strategic and other considerations, including agency capabilities, human capital realities, technology, budgets and more."

Where the Government is not particularly competitive or need not continue to perform a given function, there are recent examples of strategies that both avail the Government of cutting edge solutions while also ensuring the protection of the interests of the affected employees, often greatly benefitting those employees. This kind of strategy serves everyone's best interest, but is not possible under A–76 or any other form of public/private competition.

The panel also strongly recommended that sourcing include the assessment of both cost and non-cost factors, a so-called best value approach. Now, some have interpreted best value to be akin to a kind of unconstrained bazaar. In reality, it is a flexible but objective and reasonably constrained approach that enables the full assessment of appropriate cost and quality factors.

In a recent letter to the Director of OMB, some of you stated your concern that public/private competitions must be based on cost and quality. In fact, it is under best value, not under the A–76 process, where cost and quality come together.

Best value is also an objective process and an accountable one. If I could digress, under a best value process, all offerers are told the relevant weights of each of the factors to be considered, but the Government within its own acquisition plan must have absolute

numerics assigned to each of those weights and follow those numerics in scoring the respective proposals. It is an accountable process, one that treats everybody the same and fairly, but also gives you the opportunity to consider the kinds of factors that Senator Nelson and others have spoken to this morning.

The administration's proposed revisions to A–76 and its efforts to more closely align the process with the unanimously approved principles of the panel contain a number of key improvements. At the same time, there are a few critical and fundamental issues that need to be addressed.

The proposed revisions include two primary methodologies for the conduct of these competitions, the so-called integrated process and the phased process. The integrated process comes very close to aligning with the principles contained in the CAP report, while the phased process remains highly problematic.

The principal problem with the integrated process is that its use is limited to information technology only. It, therefore, excludes a wide range of other sophisticated Government requirements one would never want to buy on cost alone. As such, the integrated process must be made available to a much wider array of requirements and in a wider array of circumstances.

As well, the very definition of "information technology" contained in the revision is so narrow that it also excludes many other solutions for which IT is a driving force, but not the only element.

On the positive side—and I speak here to the comment Senator Akaka made earlier this morning—two benefits of the integrated process that would accrue would be, number one, it is fully accountable; and number two, it is the process under which one could justify providing the public bidder the opportunity to protest source selection decisions.

Throughout the last number of years, the General Accounting Office has routinely found that public employees do not have standing to protest, the principal reason being that they are not considered or treated as bidders in the process. In a process that provides both equal responsibilities to all offerers, equal rights then flow. It is our belief that under the integrated process, protest rights would be available to all participants.

That is not true of the phased process that Ms. Styles referred to as dominating the majority of the A–76 competitions. The phased process is more problematic than the integrated process. In the interest of time, let me just focus on one overarching concern.

Under the phased process, all bidders compete in a technical evaluation, and only those deemed minimally technically acceptable move to the second round, a cost shootout. Cost shootouts by their very nature tend to perpetuate a kind of low-bid mentality that many, including the General Counsel of the America Federation of Government Employees and other members of this subcommittee, have appropriately lambasted.

Moreover, under the phased process, the competition cannot move to the cost round unless and until the Government is deemed to be technically acceptable. Thus in those cases, where the Government's capabilities are simply not up to the par with that which is available in the marketplace, the performance requirements will be driven by the Government's existing capabilities, not by agency

needs or the art of the possible. That violates the principles of sound management, is completely inconsistent with the unanimous recommendations of the CAP, and is a disservice to the agencies and the people they serve.

As is true under the current A–76, such a strategy also lays waste to performance-based contracting, which this committee has long advocated become the norm and not the exception in Government procurement and, of course, inhibits the consideration of best value.

Mr. Chairman, the current A–76 process is, as the CAP stated, fatally flawed. The CAP recognized that it makes no sense to have one small subset of Government procurement not governed by an ethic of equal rights and equal responsibilities.

The CAP recognized that the Government disadvantages itself by limiting sourcing decisions to cost factors only, and not fully assessing all of the elements that make for a true quality decision.

I urge this committee to support the full implementation of the CAP's recommendations, including revisions to current Title 10 restrictions on the issue of best value, decisionmaking for public/private competitions at DOD.

Finally, we fully support aggressive initiatives to provide more training and resources to the acquisition workforce. We proposed the creation of a Federal acquisition workforce training fund 2 years ago to help accomplish this vital goal, because training funds are amongst those that are first to be cut in constrained budget environments.

We were also deeply concerned about the ongoing debate over the size of the acquisition workforce, an issue I had the privilege—or not so much "privilege"—to deal with when I was at the Department of Defense, and suggestions that we should mandate arbitrary cuts to that workforce. This is a critical workforce for the Government. More resources and training for that workforce are absolutely critical.

Thank you, again, for the opportunity to appear today. I certainly look forward to answering any questions you might have.

Senator ENSIGN. Thank you.

[The prepared statement of Mr. Soloway follows:]

PREPARED STATEMENT BY STAN SOLOWAY

Mr. Chairman and members of the subcommittee: thank you for the opportunity to testify today on behalf of the PSC on the important issues associated with competitive sourcing. PSC is the principal national trade association of the Government professional and technical services industry. Our membership includes more than 140 companies of all sizes providing services of every type to virtually every agency of the Federal Government, prominently including the Department of Defense. We have long believed that a robust partnership between the public and private sectors is essential to ensuring the optimal performance and delivery of Government services and to ensuring the highest quality of support to our men and women in uniform. We appreciate the committee holding this hearing and advancing the dialogue on this very important issue.

In the main, PSC does not believe it is appropriate, nor in the Nation's best interests, for the Government to compete with the private sector for work that is commercial in nature. We believe the Government's and the Nation's best interests are served when the Government focuses its energies on its core competencies. Core competencies are those things a company or Government agency does best. The term has a different meaning than "core requirements", which, of course, refers to those things that must be done to execute a mission effectively. They are very different terms but unfortunately are often used interchangeably. In simple terms, there are

many core requirements that can, and probably should be competed or outsourced, unless they are also core competencies of the organization. This is certainly the norm in the private sector and is a key strategy to achieving optimal performance and efficiency.

Clearly, the private sector is market driven, and interested in expanding opportunities to support the Government's mission. In other words, no one denies the private sector's market interests. The Federal employee unions have similar self-interests. The coming Federal employee retirement wave, the Government's continued problems attracting and retaining people, and the enormous budgetary pressures facing every agency of Government present the unions with business challenges of historic proportions.

In the final analysis, however, Federal sourcing policies must be based solely on the best interests of the Government and the taxpayer and should not be driven by the market interests of either the private sector or the Federal unions.

While there are many issues involved in competitive sourcing, and time does not allow us to examine all of them, I would like to address two principal questions. First, when and where should the Government compete its commercial functions, either through a competition among private sector providers only or through the process prescribed under OMB Circular A–76? Second, what rules should govern the sourcing process itself to ensure accountability, the best possible outcomes, and fairness?

In order to answer those questions, I call the subcommittee's attention to the April 2002 report of the Commercial Activities Panel, which was created at the direction of Congress and was chaired by the Comptroller General. I was pleased to serve on that panel with Mr. Harnage, two other union representatives, administration officials, and outside experts.

The Commercial Activities Panel agreed unanimously to a set of 10 overarching principles to govern Federal sourcing policy and procedures. Those principles were specifically crafted to be taken as a whole and not broken into pieces; and taken as that whole, they provide the answers to the two aforementioned critical questions. Moreover, the panel clearly recognized that competition is a positive force and is the key to driving efficiency, innovation, and performance. At the same time, the panel clearly recognized as well that the mere existence of a Government bidder does not create, nor is it essential to, ensuring competition. Competition, after all, is the norm in Government procurement. Thus, it is wholly inappropriate to assume that public/private competitions are the only true competitions. As such, the real questions before us relate to how to determine when and where the Government should be a participant, and then, how to conduct the competitions in a fair, transparent, and accountable manner.

The CAP report is clear in its endorsement of a Government sourcing policy based on a strategic process. It also identifies the inextricable link between a strategic approach to sourcing and key related factors such as human capital capabilities; obtaining contemporary and effective solutions for the Government; providing all offerors the same rights and same responsibilities; and more. This is both sound management practice and in the best interests of the taxpayer.

The panel recognized that to mandate public-private competitions for all work, regardless of whether it is currently being performed by Federal employees, is inconsistent with smart, performance-based management, and with the sourcing principles the panel unanimously agreed upon. There are numerous circumstances involving work currently being performed by Federal employees in which the Government might appropriately opt not to compete, particularly when the activities involved require skill sets, resources, or technology that the Government simply does not have and would not reasonably be expected to acquire.

Similarly, for new work or already-contracted work, the panel recognized that the Government should compete for such work only if there is a compelling strategic reason to do so, and if the Government has the existing capacity, resources, skills, and performance history to justify doing so. To do otherwise would be a waste of taxpayer dollars. That recognition is contained in the language regarding principle number seven of the panel's report, which states: ". . . the Government should not be required to conduct a competition open to both sectors (public and private) merely because a service could be performed by either." The report then states that the circumstances under which a public-private competition is conducted should be "*consistent with these principles*", prominently including the strategic decisionmaking process.

I might add that, in addition to being contrary to the unanimously adopted principles of the CAP, the unions' continued demand that public/private competitions be mandated across the board is also at odds with the best interests of its own members. After all, the membership's interest, like that of any employee group, lies in

job satisfaction, opportunities to grow and develop professionally, rewards for performance, and more. In those cases where the Government is not particularly competitive and lags behind the capabilities available in the competitive private sector, it is often in the best interests of the Government, and the employees as well, to avoid a public/private competition and to instead compete the work solely among private offerors in a manner that treats the affected Federal employees as real assets in the transaction, and rewards them accordingly.

We have seen this model work in several recent cases where the Government activity recognized that resource realities, human capital challenges, and other factors rendered them relatively non-competitive with the private sector, and where the agency determined it no longer needed to perform the functions in-house. The agencies also recognized, however, that their workforce was one of quality and commitment that deserved to be treated as such.

Thus, in conducting the competitions, the agencies placed the best interests of their workforce near the top of the list of source selection evaluation criteria. As a result, in each of these cases, the affected workforces benefited more from the outsourcing than could have been the case through a complex, lengthy, and contentious public/private competition in which they would have been competing against these very same firms, or if the work had simply been retained in-house.

The reality is that the Government is not, cannot, and need not be competitive with the private sector in many areas. Moreover, there is no inherent benefit to having the Government perform numerous commercial functions. Consistent with the CAP report's unanimously approved emphasis on approaching sourcing from a strategic perspective, agency managers ought to be given the flexibility to make these kinds of strategic decisions. When they conclude that a public/private competition is not consistent with their mission needs or resources, they should conduct private sector competitions in a manner that offers the affected workforce real benefits, such as we have seen in other similar cases.

Unfortunately, however, the competitive sourcing debate is dominated by histrionics and mythology intended to create palpable fear among the Federal workforce and that makes it virtually impossible to explore, and pursue, such innovative approaches. The results of an agency outsourcing initiative, we are told, have been and will continue to be massive Federal unemployment, scandalously low wages, and horrendous private sector working conditions.

Never mind that to buttress their campaign for higher civil service pay, Federal union leaders correctly point to the "pay gap" between the public and private sectors. Never mind that for wage-grade positions, wages on Government contracts are often determined by the Government, not the contractor. Never mind that the data show that outsourcing has had a negligible impact on employment for Federal workers. Never mind that many private sector unions have noted that private sector employers often offer much more to their employees than the Government can offer its own employees. These are inconvenient realities. But to paraphrase one former Senator, while everyone is entitled to his or her own opinion, they are not entitled to their own set of facts. Facts should underpin policy.

The Commercial Activities Panel also unanimously provided important guidance on how to conduct public/private competitions when they are appropriate. Simply put, the panel's overarching principles state unequivocally that such competitions should treat all offerors the same and fairly, should be transparent, and should take into account both cost and non-cost factors. This common-sense approach is reflected in several of the principles as well as the panel's recommendation that such competitions be conducted under the tenets of the Federal Acquisition Regulation (FAR).

On the other hand, the existing A–76 by design does not treat all offerors the same. The panel quite simply would not accept that a small subset of Federal procurement—less than 1 percent of all Federal procurement—should be handled in such a manner, while the FAR and its principles of fairness, equality, and transparency govern the remaining 98 percent. This is why the panel was inexorably led to its second primary recommendation: that public/private competitions, like virtually all other Federal procurements, be governed by the FAR. In addition, because the FAR is the common language of Government procurement, the panel believed that the competitions would be better conducted and more consistently applied than is currently the case under A–76.

The panel also could not accept that all competitions must be determined on a low-bid basis, the essence of A–76, when common sense dictates that many decisions must involve an array of factors in addition to price, including past performance, technical excellence, management experience, and more. We hear repeatedly that best value contracting is akin to some kind of unconstrained bazaar. In truth, it is nothing of the sort. Rather, it is a process that affords important flexibility to the agencies to meet their specific mission needs within the construct of clearly defined

and accountable boundaries. It is a far more rational and appropriate means by which to procure goods and services than the low bid processes of old.

Throughout the Government procurement environment, the low-bid, cost-only mentality of the past has been supplanted by a recognition that smart business and smart procurement requires that many factors be considered in any decision. That is what best value is all about, and nothing more. Under the rules of the FAR, best value enables a Government acquisition professional to match an acquisition strategy and the relative weights of all factors to the requirement at hand. Moreover, all offerors are told in advance of those relative weights and the contracting officer must have, and follow, specific numeric scores for each criteria involved. It is a process that offers important flexibility but is also carefully bound. It is time to bring this proven, common sense strategy to public/private competitions as well.

Thus, I prefer to associate myself with the comments made by the General Counsel of the American Federation of Government Employees, who, in congressional testimony, decried the "low bid" mentality that led to the problems with the airlines' contracts for baggage screening. He is correct. I also agree with Senator Kennedy and others who signed a recent letter to the Director of OMB calling for a sourcing process based on "cost and quality." Cost and quality is what best value is all about. A–76, on the other hand, minimizes, and in many ways prohibits, the Government's ability to appropriately and fully assess all of the elements that make up a proper definition of the word "quality".

It is also time for Congress to replace the current provision in Title 10 that limits decisions on public/private competitions at DOD to a cost comparison with specific authority for DOD to utilize best value strategies in its public/private competitions just as DOD, and every other agency, does with the remainder of its procurements.

Finally, the FAR embodies a full array of acquisition strategies and options that enable smart acquisition strategies tied to agency requirements. It is the antithesis of a "one size fits all" approach to sourcing. Unfortunately, A–76 is, again by design, a one size fits all process that limits smart acquisition planning and alternative implementation strategies. It also inhibits performance-based contracting, which this committee, and Congress have long urged become the norm in Government procurement.

I have devoted much of my testimony today to the findings of the Commercial Activities Panel because it represents an important and largely successful effort to deal with the real issues associated with competitive sourcing and outsourcing.

Since the CAP issued its report last year, much of the ensuing debate has focused on the President's management agenda's (PMA) emphasis on competitive sourcing, as well as the administration's recently proposed revisions to A–76.

With regard to the President's Competitive Sourcing agenda, it is important to bear in mind that the President's agenda is specifically not an outsourcing agenda. It is, rather, a competition agenda. Moreover, it no longer includes specific numeric competitive sourcing targets that each agency must achieve, thus addressing one of the principal concerns expressed by some in both Houses of Congress. The PMA makes no assumptions as to the outcomes of the competitions and virtually ensures that incumbent Federal employees will participate in competitions that involve their work. For the reasons I mentioned earlier, PSC is concerned that the Competitive Sourcing agenda actually goes too far in guaranteeing that incumbent Federal activities will have a chance to compete, even when sound strategic analyses make clear that such competitions do not serve the Government's best interests.

Attached to my statement are PSC's detailed comments on the November 2002 proposed changes to Circular A–76. We are all now waiting for the administration to release its final revisions to A–76.

I would, however, like to highlight a couple of key issues associated with the proposed revisions.

It is clear that the administration has made a serious effort to improve an A–76 process that is hopelessly broken. There are many elements of the revisions that represent real improvements. There are, however, a set of continuing problems that must be addressed if the process is to meet the challenge set forth by the Commercial Activities Panel and, in so doing, generate optimal outcomes for the Government.

The revisions provide two principal methodologies for the conduct of public/private competitions. The so-called "Integrated Process" comes closest to reflecting the principles unanimously supported by the CAP. Yet, within that process, there are two main areas that need further improvement.

First, its use is limited to information technology requirements. But throughout Government, there are many requirements that are sophisticated and complex and which should never be procured in a cost only, low-bid process. In order to utilize the integrated process for those requirements, Government activities will have to go

through a convoluted and time-consuming approval process all the way to OMB. Further, even the definition of information technology contained in the revisions is too limiting and ignores the fact that there are many solutions that are IT-driven but which would not be classified as information technology procurements under the proposed framework.

Second, the integrated process does appropriately open the door to the use of best value contracting. However, one of the most important criteria in source selection is past performance and, under the integrated process, no past performance assessment of the Government is permitted. Thus the revisions create both a problem of bidder equity as well as an enormous evaluation headache for the Government.

To address these issues, PSC has made several recommendations. Either the integrated process needs to be made more broadly available or the approval for its use should be devolved to the agency leadership. OMB is a policy organization and should not micromanage individual acquisitions. Nor does OMB have the manpower to do so in an efficient manner. Likewise, the definition of IT must be broadened to include the full array of complex solutions being sought by the Government. Until such time as the Government creates the kind of internal performance tracking system that it has for contractors, the source selection teams should be encouraged to substitute for past performance information a risk analysis that includes realistic assessments of a variety of performance risk factors. This can be done fairly and openly and would help ensure not only a more level playing field, but also a better outcome for the Government, whether the work goes to contract or stays in house.

The phased-process presents a whole different set of problems. Although the revisions refer to it as a "FAR-based" process, in too many critical ways it is not, and it continues to reflect some of the real weaknesses of the current A–76 process that the Commercial Activities Panel decided was fatally flawed. One glaring problem with the phased process if not addressed, will perpetuate a wider range of problems.

Under the phased process, there are two steps to a procurement. In the first phase, all bidders, including the Government, undergo a technical evaluation to determine their ability to meet the minimum performance standards called for in the request for proposals. All bidders respond to the same request for proposal, must submit their bids on the same timeline, and are evaluated at the same time. All of these represent significant improvements over the current A–76.

The second phase of the competition involves only bidders that have been deemed to be technically acceptable in the first phase. These bidders then move into a cost shootout where the low bid wins. It is here that the process falls apart.

The competition is prohibited from moving into the second phase until the Government is deemed to be technically acceptable. In other words, regardless of the Government's technical competency in any given area, it must be made technically acceptable and thus included in the cost shootout. In cases where the Government's capabilities are on par with or even greater than the private sector's, this is not a big problem. But in those cases where the Government's capabilities do not match up, it is an enormous problem. The end result will be a lowering of the performance requirements to whatever level the Government can achieve. Whether or not that level represents an optimal performance, the performance requirements will be determined by the Government's capabilities. Of course, since the second phase is a cost-only shootout, no other bidder can or will bid beyond the stated minimum performance requirement, since doing so guarantees one will lose.

Further, the very use of cost shootouts inhibits innovation and creativity and limits the Government only to those solutions that meet minimum, rather than optimum, performance standards. Ironically and unfortunately the phased A–76, like the current A–76, will make performance based contracting impossible.

Thus, our recommendation is to eliminate the phased approach altogether. The Integrated Process, with its true reliance on the principles and tenets of the FAR, offers the complete suite of acquisition strategy options, including a low price/technically acceptable approach for those activities for which a procurement might appropriately focus almost solely on cost. It is thus more than adequate to enable the Government to match its acquisition strategy to the requirement and to ensure a fair, balanced, and accountable process.

Mr. Chairman, this is a difficult and highly contentious issue. I urge this committee to continue to assess the substance and not be swayed by the rhetoric. The imperative to greatly optimize the efficiency and performance of our Government has never been greater. It is our collective responsibility to the taxpayer, to our men and women in uniform, and to the millions of citizens who rely on the Government for a wide array of services, to ensure that the Government is taking full advantage of the many innovations available today in the competitive private sector.

Moreover, sourcing decisions are not judgments on the quality of the people involved. Rather, they are strategic decisions designed to not just improve, but to opti-

mize performance through real competition, and to thus better serve the customer. It is patently clear that the Government can do all of that, and, at the same time, not only protect, but also improve, the status of the affected Government workforce. I urge this committee to support such initiatives and to support conducting public/private competitions under the proven and well established procedures of the Federal Acquisition Regulation.

I thank you again for the opportunity to appear here today and for the committee's continued interest in and leadership on this very important issue.

December 19, 2002

Mr. David C. Childs
Office of Federal Procurement Policy
Office of Management and Budget
725 17th Street, NW Room 9013
Washington, DC 20503

Dear Mr. Childs:

The Professional Services Council (PSC) is pleased to provide these comments on the proposed revisions to OMB Circular No. A-76, Performance of Commercial Activities, published in the Federal Register November 19, 2002 (67 FR 69769). PSC is the principal national trade association of companies that provide the full range of professional, technical, and support services to the federal government

OMB's proposed revisions to Circular A-76 are long overdue and represent a clear improvement over the current Circular. We applaud OMB for taking an important, initial step toward achieving the vision of a fair, transparent, accountable, and effective process. While the revisions contain many important improvements, we believe that additional changes must be made in order to achieve that vision. In addition, given the importance and scope of these revisions, we think it also would be appropriate to delay implementation for a short time until OMB has fully reconciled the many comments being submitted and releases a final document. Accordingly, we suggest that the effective date of the changes be moved to at least February 1, 2003.

PSC's member companies believe that competition is a fundamental ingredient for optimizing performance and efficiency in any organization. Indeed, PSC member companies compete every day in a robust marketplace. As such, PSC also has long held that the government's focus internally should be on the optimal performance of those core and inherently governmental activities that must be performed by public sector employees, while at the same time fully exploiting the competitive marketplace to ensure high quality performance of the government's other missions.

As a matter of policy, PSC believes that competition between the government and the private sector for such work often is contrary to the best interests of the government and its workforce. Nonetheless, PSC also recognizes the reality that public-private competition will continue for those activities currently being performed by the government, and is thus committed to helping forge a process and policy that, as recommended by the Commercial Activities Panel (CAP), is genuinely fair, transparent, and accountable, and which enables the government to access and implement solutions that serve the best interests of the American people. Thus, we believe it is important that the Circular explicitly reaffirm the more than fifty years of established federal policy of reliance on the private sector to provide commercial goods and services. This recognition of and reliance on the private sector not only is consistent with five decades of public policy, but also was recently reaffirmed by Congress and the President in the legislation creating the Department of Homeland Security.

Most significantly, the proposed revisions apply key elements of the Federal Acquisition Regulation (FAR) to all public-private competitions. The FAR is the common language for the more than 95 percent of federal procurements that are not competed under A-76 and do not involve incumbent federal employees, and is founded on the tenets of fairness and accountability. PSC believes that the FAR should be the basis for all federal procurements and that it is inappropriate to segregate a single, small category of procurements from those basic tenets. Thus, PSC strongly supports the application of the FAR to public-private competitions and believes that the full flexibility of the FAR should be made available to all public-private competitions.

At the same time, much work remains to be done to fully recognize the vision described above. In addition, numerous clarifications included in this letter must be addressed in order for the new process to be implemented effectively.

The following is a summary of the positive steps taken in the proposed revision. We also include comments on those elements of the proposed revisions that must be further reformed.

Policy and Process Improvements

Overall, there are ten major process and policy improvements which PSC strongly supports and urges be retained in the final proposed revisions to Circular A-76. These changes are briefly summarized below:

I. The proposed revision clearly states that a government activity is presumed to be commercial unless otherwise documented to be inherently governmental in nature. This is an important statement that reflects the reality of current government missions and functions. It also is particularly important in the context of the proposed recission of OFPP Policy Letter 92-1, "Inherently Governmental Functions," the substance of which is incorporated into the new circular. While the language of 92-1 remains largely intact, the proposed revision is clearer, more precise, and less open to abuse or confusion.

II. The proposed revisions require that the FAIR Act inventory include data relative to an agency's "inherently governmental" functions. This represents a permanent policy change that should be retained, and builds on the Administration's recent administrative requirements. However, the specific inventory listings remain *so vague and non-specific that meaningful challenges to either the commercial or inherently governmental classifications are virtually impossible.*

III. The revised Circular provides important new clarity with regard to the roles and responsibilities of government personnel managing and overseeing public-private competitions. Specifically, the articulation of the roles and responsibilities of the 4.e. official, the Agency Tender Official, the Contracting Officer, and the Source Selection Authority are vital to ensure both functional effectiveness and the application of appropriate conflict-of-interest rules.

IV. The proposed revision seeks to establish appropriate limits on the circumstances in which announced studies can be cancelled (Paragraph C.1.b.(2)). This is a critically important step toward improving the process; today, numerous studies are arbitrarily cancelled after announcement. In fact, the Center for Naval Analyses estimated that half of all studies commenced by the Navy between 1995 and 1999 were cancelled by June 2000, a trend most recently evidenced at a Naval Depot which cancelled four existing studies in favor of a sub-optimal, completely non-competitive, process that guarantees all work will be retained in-house. By limiting the criteria by which a study can be cancelled, OMB is taking an important step toward imposing critically needed discipline on the process.

However, these limitations conflict with the language in C.2.(14) that indicates that the cancellation of a solicitation after a private sector company is selected is authorized, apparently with little or no formal rationale required. In these cases, the selected contractor should be authorized to recover bid and proposal costs associated with the cancelled solicitation. Further, the language in C.2.(14) pertaining to cancellations authorized under FAR Part 15.206 should be clarified. As written, it is inconsistent with, and apparently represents a significant expansion of the authorities contained in FAR Part 15.206, which limits the authority to cancel a procurement to cases in which the scope of

an amendment is so great that it could affect the outcome of the competition or where the government no longer has the requirement for the services involved.

V. The revisions include vital changes clarifying conflict-of-interest rules contained in C.1.b.(4). In recent years, a number of protests of A-76 studies have confronted this issue, and the General Accounting Office has held consistently that the A-76 process must be held to the same levels of integrity and accountability as all government procurements. As such, the revisions, which effectively incorporate into the Circular the conflict-of-interest rules contained in the Federal Acquisition Regulation, are of significant importance and value and will help ensure the integrity of the process. In addition to specifying that "procurement integrity, ethics and standards of conduct rules" will apply, we recommend that the Procurement Integrity Act (41 USC 423) and Trade Secrets Act (18 USC 1905) be mentioned specifically. In addition, *while PSC applauds this change, we believe that the issue of conflicts-of-interest is so significant that it should be subjected to further modifications and protections similar to those imposed on private sector offerors. Specifically, government personnel should be required to sign Non-Disclosure Agreements when provided access to source selection sensitive information and data. Such NDAs already are required by some agencies, and we believe their use should become standard for government personnel.*

VI. The revisions take an important, initial step toward placing on government activities some of the basic requirements that always are placed on private sector offerors. One of those requirements is that of a timely submission of a proposal (or, in the case of the incumbent government entity, a tender). The revision makes clear that if a tender is not submitted on time, it may be eliminated from the competition. This is a start; however, *to ensure fairness, the language should be aligned with rules now governing all other government procurement, under which any offer not submitted on time is automatically eliminated from consideration, absent special circumstances governing late submissions and the application of the normal FAR provisions under which proposal submission deadlines can be extended for all offerors.*

Moreover, the proposed revisions are self-contradicting on this point. In one place the proposed revision states that an agency tender may be eliminated from the competition if not submitted on time; yet in two of the four source selection processes, the revisions explicitly prohibit the source selection authority from moving to the cost phase of the competition unless and until the government has been deemed to be technically qualified. This contradiction must be eliminated and can most effectively be dealt with by applying the FAR provisions for submittal extensions AND eliminating the prohibition on moving forward with a competition until the government is deemed qualified, as addressed more fully later in this letter.

VII. The creation of a single solicitation document for all parties and clarity relative to the roles of the contracting officer and the source selection authority should help to eliminate both a significant amount of confusion and criticism of the current process. Specifically, these requirements will help to eliminate one of the most highly criticized elements of the current process, which involves inconsistent statements of work and an ensuing inconsistency in the evaluation process.

VIII. The proposed revision's focus on timelines also is important and addresses one of the most problematic—and expensive—elements of the current A-76 process. A-76 competitions take an average of two to three years to complete and can last as long as four years, not including the extraordinary post-award time consumed by repeated appeals, protests, and political intervention. It is estimated that the cost to a company of participating in procurement under A-76 is fifty to one hundred percent higher than that

for an equivalent, traditional government procurement. PSC thus strongly supports the time boundaries established by the revisions. Moreover, since contracting activities will be conducting the competitions, the time associated with planning prior to public announcement (which is not addressed in the revision) also should be reduced. The Commercial Activities Panel report states that private-only source selections took only two-thirds as much time as public-private competitions when the study involved more than 100 positions, and less than one-third the time when the study involved less than 100 positions. We believe that the 12 months from public announcement to award decision as provided for in the proposed revision, is appropriate.

IX. The revision also takes an important step toward ensuring post-award accountability of A-76 decisions, particularly with regard to in-house "wins," which today are subject to little or no post-award oversight. A recent study of long-term post-A-76 award performance by both private sector and government activities highlighted this problem. The study, conducted by the Center for Naval Analyses (CNA), established that over the long term, contracted activities were achieving the savings and performance goals established in the initial award. However, CNA was unable to make any assessment of long-term performance by government activities <u>because the data simply does not exist</u>.

In addition, in a recent survey of government procurement leaders conducted by PSC, the issue of post-award accountability for in-house activities frequently was cited as a key challenge. To that end, the fact that the revisions now require the establishment of a Letter of Obligation (LoO) is a step toward enabling better post-award accountability, even though it is not clear how that accountability will be implemented. While PSC remains concerned with the monitoring of in-house costs and performance and the methodology for doing so, we strongly support the requirement for, and the essential elements of, the LoO.

X. Finally, PSC strongly supports the revised Administrative Appeals process. Under the current process, administrative appeals often are protracted and confusing. The establishment of a single appeals process will help address that problem in a manner that is fully fair to all parties. While it is clear that the administrative appeal authority will review all appeals concurrently and not conduct a sequential appeals process, we encourage OMB to revise the proposed revision to make the optional comment period standard in all cases. We also believe it *is important to make clear that, in the case of such appeals, <u>all</u> parties to the procurement are to be notified by the appeal authority of the issues that the appeal authority has deemed relevant and on which the appeal decision will focus, and then given time to submit their comments on any or all of those issues. This clarification, which is fully consistent with the intent of the proposed revision, will greatly improve the appeals process.* This additional information will enable the AAA to make a more informed decision that is less likely to be protested. In addition, the revisions make clear that only the Agency Tender Official may file such appeals, another important clarification that recognizes that only an official of a company or government activity who has cognizance over and responsibility for both the proposal and subsequent performance, can be deemed to be an "interested party" with "standing," be it for appeals or protests. Finally, the definition of the Administrative Appeal Authority should be amended to make clear that not only must the individual be independent of the activity, ATO, CO, SSA and HRA, but the Authority must also be so remote from the activity and affected individuals that the AAA could not be influenced.

PSC views these ten major changes as representing significant improvements to the current A-76 process. These changes will help create consistency and fairness in a process that is currently neither consistent nor fair. Nonetheless, while important, these changes themselves are not adequate to achieve the goal of a transparent, accountable, fair, and effective sourcing process. To achieve that vision, additional changes must be incorporated into the new circular. A summary of those changes follows.

Process and Policy Weaknesses

The Problem: Processes Out of Alignment
The proposed revisions do not create the kind of consistent, clear, and common process that is applicable regardless of the source selection methodology (sealed bid, low price/technically acceptable, phased, or integrated). Instead, the revisions create an unnecessary amalgam of processes that is bound to create confusion and conflict for both government acquisition professionals and tenders, and contractors. Each of the source selection processes described in the revision share some positive as well as negative aspects; but there also are a number of important, sometimes subtle, differences that limit the proposed revision's ability to achieve the vision of a fair, accountable, transparent, and effective process. These differences almost certainly will increase confusion and sub-optimize the process. To resolve this critical weakness, PSC recommends that the four methodologies be aligned by adopting their common positive elements, eliminating their common weaknesses, and resolving the remaining differences to create a single, consistent source selection process that is applicable to all four source selection methodologies.

Among those key differences, and perhaps the single most important inconsistency in the revision, is the question of the status of the agency tender in a source selection. In all of the source selection process options, the proposal due date may be extended if the agency tender is not completed on time—a luxury rarely available to private sector offerors and only made available when genuine extenuating circumstances can be demonstrated.

In two of the four processes (sealed bid or phased cost/technical trade-off) the government is explicitly guaranteed to be included in the final phase of the competition regardless of technical competence and quality. The revision is clear that in these cases, the source selection cannot proceed to the cost phase unless and until the agency tender offer has been deemed to be technically acceptable. In addition, under the negotiated Low Price/Technically Acceptable and the Integrated Cost/Technical Trade-Off processes, the extent to which the source selection authority must go to ensure the technical viability of the agency tender offer virtually ensures that the government always will be in the final cost competition, even if achieving that end requires the government to ignore higher quality solutions and/or to establish performance requirements that are sub-optimal.

The revisions also perpetuate one of the most criticized and litigated elements of the current A-76 process: technical leveling. Regardless of the terms used to define it, any time one bid must be adjusted, up or down, to guarantee it is able to achieve performance levels proposed by other offerors, technical leveling is involved. This raises significant questions of fairness, intellectual property protection, and more.

In no other aspect of public OR private sourcing is any specific source guaranteed to be technically acceptable. Indeed, it is an arbitrary and unacceptable premise. It leads to a perpetuation of the widely criticized and litigated practice of technical leveling, serves as a stark disincentive for innovation and excellence, and inhibits the participation of companies that place a high premium on exceptional service, innovation and quality. It also is in diametric opposition to the principles adopted unanimously by the CAP, which explicitly called for a process in which all offerors are treated the same. Unless and until that inconsistency is removed, the proposed revisions cannot achieve the goal of a fair, transparent, accountable, and efficient process, and the process will continue to suffer from severe credibility problems.

For this reason, we propose that three source selection methods (sealed bid, negotiated and integrated) be aligned to create a common, single set of characteristics that apply regardless of the source selection method used. The phased method should be phased out as soon as is practical. The alignment of these three processes, and the eventual elimination of the phased approach, will eliminate the inappropriate but unavoidable incentive to choose a source selection process based on one's ability to affect the outcome of the source selection process rather than use a source selection methodology that genuinely serves best the nature and scope of the procurement and the agency's needs.

Finally, in an era when the government is appropriately seeking to foster more performance-based contracting, the guarantee that the government always will be technically competent is a disincentive to achieving that goal. A true performance-based approach invites all solutions—from those involving little technology to solutions that are far more sophisticated. The government then determines which solution meets a combination of performance and budget requirements. However, IF the government does not have the technical capabilities to propose a more sophisticated approach, there will be no incentive for companies to propose high performance solutions. Indeed, the likely outcome of having the government always guaranteed a seat at the finalists' table is that the performance requirements will be tied to the government's existing, documented capabilities, rather than new, more innovative solutions. Companies that have invested in innovation and excellence will thus be strongly disincentivized to propose top-quality, contemporary solutions since they would almost certainly have little or no chance of winning. Moreover, the government's laudable goal of fostering more performance-based contracting strategies will become ever more difficult to achieve.

At the same time, PSC recognizes OMB's appropriate concern for ensuring that the organic federal workforce involved in a public-private competition is given a full and fair opportunity to compete. We believe that opportunity can be accomplished by following the recommendations of the CAP, which suggested that the government not be eliminated from any competition without at least one opportunity to revise its proposal and correct deficiencies. PSC supports the application of this principle to all source selection processes that are a part of the new Circular, including, if necessary, the sealed bid option, even though, in that case, the opportunity for revision might have to be available only to the government.

Achieving Alignment

Achieving the alignment recommended above involves first assessing the principal similarities and differences among the four source selection methodologies. Those similarities and differences are outlined in the following chart:

	Positive Aspects	Negative Aspects
Sealed Bid	• Roles and responsibilities described • Guidance provided concerning cancellations • Procurement integrity, standards of conduct and ethics rules apply universally • Common solicitation for all bidders • Common source evaluation • Time limits • Performance agreements apply regardless of outcome	• Opportunity exists to extend proposal due date if agency tender is not completed • *The agency tender must be adjusted to be responsive and satisfy cost realism analysis*
Negotiated – Lowest Priced Technically Acceptable	• Roles and responsibilities described • Guidance provided concerning cancellations • Procurement integrity, standards of conduct and ethics rules apply universally • Common solicitation for all bidders • Common source evaluation • Time limits • Performance agreements apply regardless of outcome • *Communication must be consistent with FAR*	• Opportunity exists to extend proposal due date if agency tender is not completed • *Independent person appointed by 4.e. official assigned to resolve differences between SSA and ATO appointed by 4.e. official* • *Process drives agency tender toward being technically acceptable*

Cost/Technical Tradeoff	Integrated	• Roles and responsibilities described • Guidance provided concerning cancellations • Procurement integrity, standards of conduct and ethics rules apply universally • Common solicitation for all bidders • Common source evaluation • Time limits • Performance agreements apply regardless of outcome • Conducted consistent with the FAR • *Source selection can be based on low cost or a cost technical tradeoff* • *Agency tender may be eliminated if it is not technically acceptable*	• Opportunity exists to extend proposal due date if agency tender is not completed • *Use limited to IT if performed in-house, already contracted work regardless of the type, or when a waiver is obtained* • *If ATO and SSA disagreement over agency tender, person appointed to resolve differences or justify tender exclusion*
	Phased	• Roles and responsibilities described • Guidance provided concerning cancellations • Procurement integrity, standards of conduct and ethics rules apply universally • Common solicitation for all bidders • Common source evaluation • Time limits • Performance agreements apply regardless of outcome • Conducted consistent with the FAR • *Source selection can be based on a cost technical tradeoff*	• Opportunity exists to extend proposal due date if agency tender is not completed • *Agency tender must be found technically acceptable before the start of the second phase* *1. Cannot be down selected* *2. Result in technical leveling* • *Source selection based on lowest cost of all technically acceptable offers*

While each of the source selection methodologies have more in common than they have differences, the key differences, which are in italics in the chart, will have profound adverse impacts on the conduct of the competitions. Moreover, it is difficult to understand the logic behind perpetuating these differences that run so clearly contrary to both the tenets of the FAR and the CAP's unanimously agreed to principles.

In order to achieve the alignment that is necessary, PSC recommends the following:

I. Eliminate the guarantee that the agency tender will be technically acceptable, as described in the Sealed Bid and Phased Cost/Technical Trade-Off processes. Require instead that the Agency Tender Official be notified of deficiencies and be given at least one opportunity to revise the agency tender to resolve those deficiencies. Additional opportunities for revision are at the discretion of the source selection official and must be available equally to all offerors, as provided for under the FAR.

II. Eliminate the role of the "independent official" designated to resolve differences between the SSA and ATO under the Negotiated Low Price/Technically Acceptable and Integrated Cost/Technical Trade-Off processes. Direct that disputes over technical qualifications, and any down-selections that result, are settled through the Administrative Appeals process, as is currently the case with competitions conducted under the FAR.

III. Establish a firm sunset date for the Phased Cost/Technical Trade-Off process. This methodology differs from the Negotiated Low Price/Technically Acceptable process only in that it explicitly prohibits the source selection authority from moving to the cost phase of the process until the agency tender is deemed technically acceptable–whether or not doing so requires the government to ignore higher quality, higher performance options. For the reasons articulated earlier, this inequitable "guarantee" is contrary to all precepts of smart and fair sourcing and serves principally to disadvantage the government.

IV. Similarly, the Circular should recognize explicitly the reality that the Negotiated Low Price/Technically Acceptable process is one end of the Integrated CTTO process

established under the current FAR. To set it off independently is contrary to the FAR and will cause additional and unnecessary confusion.

V. Further align the changes with FAR provisions by explicitly prohibiting the sharing of any solution-related information in the course of identifying deficiencies in the any offeror's tender or proposal. For example: a requirement is for a maintenance activity to be able to repair 100 trucks a week. One proposal offers a performance level of 150 trucks a week (and identifies, as required, the basic cost deltas that would be involved in getting to the higher performance level), and achieves that higher level largely through a different management structure and innovative use of technology. In the course of identifying deficiencies to other offerors (including the Agency Tender Official), the source selection authority must make known only that an offeror has proposed 50 percent higher performance and ask all offerors to submit proposals that achieve that level of performance. As articulated in the FAR, no elements of the technical solution or cost information can be shared with any other offeror.

VI. Expand the definition of functions that are authorized to utilize the Integrated CTTO process. The CAP specifically recommended that this approach be phased in utilizing a variety of requirements. The limitation on utilizing the Integrated CTTO process in the absence of a waiver to information technology, or new or already contracted work, is contrary to a key—and logical—recommendation of the CAP. There are many government requirements that, by any measure, should never be procured on a low bid basis. If the intent of phasing-in the Integrated CTTO is to develop a body of knowledge and lessons learned, it follows that it should be utilized on a variety of requirements during the phase-in process. Limiting the use of the Integrated process to IT functions will limit the number of opportunities to generate lessons learned. Lastly, the revisions indicate that the integrated process can only be used for IT requirements currently being performed in-house, but it can be used by any agency to convert any type of currently contracted work back in-house. This would seem to contradict the rationale behind OMB's effort to phase in the integrated process.

VII. Modify the definition of "Information Technology" contained in the revisions. As reported by the CAP, the contemporary irrelevance of the current A-76 is driven in large part by the fact that many government requirements, even those for what have traditionally been considered "low tech," now involve substantial information technology foundations. However, the definition contained in the revision would not enable those requirements to utilize the Integrated CTTO process. A recent A-76 study at Lackland AFB provides an excellent example of this dichotomy. The winning private sector offeror proposed an IT-driven solution for a base operations support requirement. Under the proposed definition in the revisions, that requirement could not have been conducted under the Integrated CTTO process unless a waiver was obtained, yet it is precisely that kind of information that only becomes clear during a performance-based, best value procurement, long after the time a waiver would have had to be sought.

VIII. Require that whenever the Cost/Technical Trade Off process is utilized, all rules governing use of CTTO under the FAR be applicable. This would include requiring that the relative weights of ALL factors to be considered in the evaluation process be made known to all offerors in advance, and may not be changed unless all offerors are both notified of the change and provided the opportunity to adjust their proposals/tenders to reflect the new balance of evaluation factors.

IX. The current A-76 incentivizes all participants, public and private, to focus on the lowest possible cost and to eliminate as many jobs as possible. This is true for both private sector offers and for the government most efficient organization (MEO); indeed, in many

cases, the MEOs are proposing workforce levels far below those proposed by the private sector, thereby actually placing MORE federal jobs at risk than would be the case with a conversion to private contract.

To address this problem, PSC proposes that in cases involving negotiated procurements in which the agency tender is deemed not to be technically acceptable, or an Integrated CTTO in which the agency tender is eliminated from the competitive range through a downselect, or a public-private competition is waived, the solicitation should add a source selection factor relative to the treatment of the incumbent federal workforce. The offerors' ability and commitment to smoothly transition and mitigate adverse impacts faced by the incumbent federal workforce should be a significant evaluation criteria, and all remaining offerors should be given the opportunity to revise their proposals to address this new evaluation criteria.

X. While the circular repeatedly and appropriately talks about the importance of cost realism, additional guidance is needed to ensure that cost realism is "real." Specifically, PSC recommends that the Circular require either a pre-award cost audit of the agency tender (such as those often conducted on private sector companies) or that the activity have a certified Activity Based Costing (ABC) capability similar to a company having an approved financial and/or purchasing system. While the definitions of ABC vary across government, work should be commenced immediately to establish a credible, widely accepted standard against which agency ABC efforts can be measured. This is similar to the standard accounting requirements government contractors must meet.

This issue is also relevant to the post-award environment. By definition, a Letter of Obligation with a government activity must be a cost-type contract. Under a true fixed-price contract, companies are at risk if they fail to meet performance requirements. It is inconceivable, however, that a government agency could or would not pay its workforce or its other infrastructure costs, regardless of its performance. As such, the government LoO must be treated like a cost-type contract when it comes to post-award accountability and transparency. Just as private contractors are subject to a range of post-award auditing requirements when they hold cost-type contracts, similar post-award cost and performance audits should be required of each government activity that wins a public-private competition.

XI. The revised Circular is very unclear on the application of the current ten percent conversion differential. While the revisions clearly require application of the differential to sealed bid, negotiated Low Price/Technically Acceptable, and the Phased Cost/Technical Trade-off processes, its application to the Integrated CTTO is not clear. Indeed, various OMB officials have expressed differing opinions on this question. At a minimum, the cost differential question must be explicitly clarified. In addition, clear guidance must be provided on how to apply the differential in a process in which cost is deemed to be less important than technical factors, particularly because the application of the differential could imbalance the stated weights of evaluation factors.

XII. A critical element missing from this process is the treatment of a past performance factor for the incumbent government provider. Performance risk is, by definition, based on an offeror's likelihood of success in performing the requirements, and that offeror's record of past and current performance is rightly considered a critical indicator. PSC has long supported the government's use of Past Performance as a key source selection criterion. Logically and fairly, an agency's or an agency component's past performance history also is critical to making a sound sourcing decision.

Therefore, an independent audit needs to be able to assess an agency's or activity's performance record and assess, in quantifiable terms, the relevance, currency, and significance of past performance data, management capabilities, existing workforce skills, and more, by reviewing the quality of products/services delivered, adherence to schedules, cost control, management of key personnel, and the quality of business relationships. Those making the source selection decision need to be impartial and are the appropriate officials for completing the past performance assessment of the agency tender.

Lastly, since the Circular requires that the government identify in its tender any subcontractors it plans to utilize for a given requirement, the past performance of those subcontractors, particularly the most significant subcontractors, should be considered by the source selection officials in the source selection analysis.

PSC believes that these recommendations are essential to achieving the vision of a fair, transparent, accountable, and effective process. They are consistent with the FAR, are competitively neutral, and are common to the remaining 95 percent of government procurement. If these recommendations are adopted, the new A-76 process for conducting public-private competitions will be marked by the following attributes:

- Conducted consistent with the FAR
- Roles and responsibilities described
- Guidance provided concerning cancellations
- Procurement integrity, standards of conduct, and ethics rules apply universally
- Common solicitation for all bidders
- Common source evaluation
- Time limits reduce length of process
- Common due dates for proposals and rules for extensions
- Post-award accountability via performance agreements apply for all
- Cost accountability for all achieved through audits/approved financial systems
- Agency tender assured at least one round of discussions
- If Agency tender is eliminated, solicitation modified to establish incumbent workforce transition and benefits as a significant evaluation criteria
- Down-selection disputes addressed by administrative appeals process, as per FAR today for private-private competitions
- Single, comprehensive administrative appeal process for all parties
- Consistent with Administration and Congressional support for Performance-Based Government
- Enables Agency to match an acquisition strategy to the performance requirement, rather than to the desired source selection outcome

Each of the improvements being proposed by PSC is fully executable and fundamental to one or more of the precepts of fairness, accountability, and transparency unanimously endorsed by the CAP to guide the federal sourcing process. Indeed, each of the proposed additional improvements enhances the Circular's ability to achieve those critical objectives, simplify the process, and more fully align it with the Federal Acquisition Regulation. As such, we urge OMB to adopt these additional changes in the final version of the new Circular.

Thank you for the opportunity to provide these comments. We look forward to working with OMB on efforts to improve the federal sourcing process.

Sincerely,

Stan Z. Soloway
President

cc: Hon. Angela Styles, Administrator
Office of Federal Procurement Policy

Mr. David M. Walker
Comptroller General
and Chairman,
Commercial Activities Panel

Hon. Michael Wynne
Principal Deputy Under Secretary of Defense (AT&L)

Hon. Raymond Dubois
Deputy Under Secretary of Defense (I&E)

Mr. Corey Rindner
Senior Procurement Executive
Department of Treasury

Senator ENSIGN. Mr. Harnage.

STATEMENT OF BOBBY L. HARNAGE, SR., NATIONAL PRESIDENT, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES

Mr. HARNAGE. On behalf of the American Federation of Government Employees, which represents more than 600,000 Federal employees, including 200,000 in DOD, I thank you, Chairman Ensign, for this opportunity to testify this morning before this Subcommittee on Readiness and Management Support. As always, I appreciate the opportunity to testify before the ranking member, Senator Akaka, because of his expertise over all issues of concern for Federal employees.

Mr. Chairman, my written statement is quite detailed, and I know it is being entered in the record, so this morning, I will limit my whole statement to a discussion of OMB's rewrite of A–76.

In the past, when I mentioned OMB Circular A–76, people's eyes glazed over, but not any more. OMB's controversial rewrite of the A–76 process has subjected this obscure directive to a much-needed glare of publicity. In fact, 170 House and Senate lawmakers have already signed on to a joint letter of opposition to OMB about its rewrite; and others have sent their own individual letters. I am not surprised.

The November draft is so one-sidedly pro-contractor, it defies belief. The Army's controversial "Third Wave" privatization initiative, which was designed to review the privatization without any public/private competition of at least 210,000 Federal and military positions, is widely viewed as being beyond the public policy pale.

But the A–76 rewrite, in some ways, is even more extreme, and could even be used by the Army or other services to implement the "Third Wave." The A–76 rewrite might actually be called the "Fourth Wave," and, if allowed to go forward, it would certainly constitute a "Final Wave" for Federal employees, effectively wiping out what is left of the in-house workforce.

Triumphant contractors are delighted by the rewrite, salivating in fact, according to The Washington Post. In fact, some contractors insist that under the rewrite, they will win 90 percent of all A–76 competitions, instead of the 40 to 50 percent they are winning now.

Like the "Third Wave," the A–76 rewrite would emphasize privatization to the exclusion of all other methods of making the provision of Federal services less costly, more effective, more efficient, and more reliable. Also like the "Third Wave," the A–76 rewrite would require agencies to treat 100 percent of their so-called commercial jobs as fair game for contractors.

Unlike even the "Third Wave," the A–76 rewrite would include an explicit bias towards privatization. Unlike even the "Third Wave," the A–76 rewrite would make it easier to privatize inherently governmental work.

Unlike the "Third Wave," which ostensibly calls for reviewing work performed by contractors, the A–76 rewrite will focus almost exclusively on the job of Federal employees. While DOD has scheduled to review for outsourcing hundreds of thousands of Federal employee jobs, not a single contractor job is scheduled to be reviewed for insourcing.

The A–76 rewrite overtly encourages agencies to directly convert work performed by Federal employees to contractors without any public/private competition, a la the "Third Wave."

However, the A–76 rewrite also covertly encourages agencies to directly convert work performed by Federal employees to contractor performance without any competition. For example, if competitions were not concluded within arbitrary deadlines or if managers do not submit the tenders on time, innocent rank-and-file Federal employees could pay the price with their jobs. Whether it is incompetence, negligence, or on purpose, the punishment is for innocent Federal employees to lose their job. It has nothing to do with saving money or efficiency. It is arbitrary. It is capricious, and it is dumb.

Under the A–76 rewrite, Federal employees, but not contractors, must compete to perform new work. Under the A–76 rewrite, Federal employees, but not contractors, must compete when they are doing exactly the same work as before, but the value of that work increases by as little as 30 percent.

Under the A–76 rewrite, Federal employees, but not contractors, must compete to continue to perform work when their contracts expire; or agencies may simply give such work away to contractors through direct conversions.

Federal employees are also held more accountable for failure than contractors. For example, when Federal employees are found in default, the work must automatically be converted or competed. For contractors, however, it could be business as usual. Agencies must provide many more justifications under the A–76 rewrite before canceling an award to a contractor than when the work has been won by Federal employees.

Under the A–76 rewrite, contractors, but not rank-and-file Federal employees directly affected by privatization or their union representatives, can participate in all appellate processes to the Administrative Appeal Authority, the GAO, or the Court of Federal Claims.

Under the A–76 rewrite, only the confidential nature of proprietary information of the contractors' bids is protected.

The only conflicts of interest addressed by the A–76 rewrite are those that might conceivably benefit Federal employees in the privatization process. The longstanding conflicts of interest which demonstrably benefit contractors will continue to undermine the integrity of the privatization process.

Under the A–76 rewrite, tenders submitted by Federal employees must include all costs, even when they are irrelevant or have already been counted, while contractors would be allowed to exclude significant costs from their own proposals. Even worse, the new A–76 would allow agencies without the statutory safeguards possessed by DOD to use a best value process that would allow contractors to win contracts even when they submit more expensive and less responsive bids than Federal employees.

Although today they cannot prove that privatization has saved one dime, they claim it does, but under the rewrite they do not have to save anything. Under the rewrite, privatization can even cost more every time. This is not about saving money. It is about

moving money to the private sector contractors, taxpayers be damned.

It is a sham, smoke and mirrors, and tap-dancing all rolled into one. It is legalizing gouging. The Enron-style shenanigan is an insult to this Congress. This Congress should stop it dead in its tracks.

AFGE urges lawmakers on this subcommittee to take action to prevent this manifestly pro-contractor, anti-taxpayer, A–76 rewrite from being implemented and enforced.

Again, Chairman Ensign, I thank you for the opportunity to testify, and I look forward to answering your questions and your colleagues' questions.

[The prepared statement of Mr. Harnage follows:]

PREPARED STATEMENT BY BOBBY L. HARNAGE, SR.

INTRODUCTION

On behalf of the American Federation of Government Employees, AFL–CIO, which represents more than 600,000 Federal employees, including 200,000 in the Department of Defense (DOD), who serve the American people across the Nation and around the world, I thank you, Chairman Ensign, for this opportunity to testify this morning before the Senate Armed Services Subcommittee on Readiness and Management Support. I always appreciate the opportunity to testify before Ranking Member Akaka, who takes such great interest in Federal employees issues as a member of the Armed Services Committee as well as of the Governmental Affairs Committee.

Over the last several years, AFGE has striven to reform Federal privatization policy and thus promote the interests of warfighters and taxpayers as well as Federal employees. In fact, last year, an amendment offered on the floor to the defense authorization by Senator Edward Kennedy (D–MA), which came within one vote of passing and was strongly supported by AFGE, would have ensured real and equitable public-private competition under an objective, cost-based process for work performed by DOD civilian employees, DOD contractors, as well as at least small fractions of work not yet performed by either workforce. The Kennedy Amendment would have also ensured greater accountability through the establishment of an inventory to track the cost and size of DOD's contractor workforce.

AFGE will continue to work with other unions and public interest organizations as well as our Republican and Democratic friends in both chambers of Congress to enact the significant changes in law necessary to improve the delivery of services for warfighters and reduce expenses for taxpayers, including those called for in the Truthfulness, Responsibility, and Accountability in Contracting (TRAC) Act, which claimed the cosponsorships of 215 House and Senate lawmakers in the 107th Congress.

Today, however, I will limit my written testimony to seven main topics:

1. the Office of Management and Budget's (OMB) privatization quotas,
2. the rewrite of the OMB Circular A–76 privatization process,
3. the threat to use "best value" in DOD's public-private competitions,
4. the threat of the Army's "Third Wave" privatization initiative,
5. the threat to eliminate in-house depots and arsenals,
6. the threatened introduction of the Service Acquisition Reform Act, and
7. the report filed last May by the Commercial Activities Panel.

1. OMB PRIVATIZATION QUOTAS

Although well over one-half of all congressional lawmakers have emphatically repudiated the essence of the administration's privatization policy—261 in the House of Representatives and another 48 in the Senate—the infamous OMB privatization quotas are still with us. Regardless of their needs or missions, agencies are being forced by OMB to review for privatization, either with or without public-private competition, at least 15 percent of the positions listed on agencies' Federal Activities Inventory Reform (FAIR) Act inventories. According to the November 14, 2002, draft proposal to rewrite the A–76 process, it is ultimately the administration's goal to review every single position on every single agency's inventory, which works out to at least 850,000 positions.

I would like to make these points about the OMB privatization quotas:

A. The use of the term "competitive sourcing" to describe the OMB privatization quotas betrays either bias or ignorance. OMB explicitly encourages agencies, including DOD, to give work performed by Federal employees to contractors without public-private competition, either through direct conversions or privatizations. According to the administration's fiscal year 2004 budget proposal, some agencies, including the General Services Administration and the National Aeronautics and Space Administration, are using direct conversions exclusively to hit their OMB privatization quotas. Other agencies are using direct conversions extensively to hit their OMB privatization quotas. There is nothing "competitive" about this corporate welfare-style privatization.

The "competitive sourcing" (sic) initiative is not about saving money for the taxpayers; it is about replacing Federal employees with contractors and shifting money to the private sector. The administration's refusal to help already overwhelmed agencies do a better job of conducting competitions fairly and administering their contracts satisfactorily is highly illustrative of this point. The threatened shift to a loosey-goosey "best value" competition process in which contractors can submit bids that are less responsive to the terms of the solicitation and more expensive than bids submitted by Federal employees and still win contracts is also illustrative.

Office of Federal Procurement Policy (OFPP) Administrator Angela Styles, who is responsible for the implementation and enforcement of the OMB privatization quotas, now, according to Government Executive, must "caution against judging the (privatization quotas) program on savings alone." (Emphasis added.) According to the March 2003 edition, Ms. Styles insists that threatening to privatize the jobs of 850,000 Federal employees, either with competition under a privatization process that is being rewritten so that it becomes more pro-contractor, or without any competition whatsoever, "can have a positive effect on morale, and could even help attract young people to Government service." Defending the indefensible can often require intelligent people to say the most preposterous things. However, as savings from the "competitive sourcing" (sic) initiative fail to materialize, we can expect other highly subjective, to say the least, and conveniently unquantifiable rationales to be served up for our consumption in the months ahead.

Ms. Styles apparently considers public-private competitions to be intrinsically virtuous, whether or not money is actually saved—but only when the work in question is being performed by Federal employees. While OMB is forcing agencies to review for privatization 850,000 Federal employee positions, only a tiny handful of contractor positions will be reviewed for possible insourcing, even though contractors acquire and retain almost all of their contracts without ever having to compete against Federal employees.

The Department of Housing and Urban Development (HUD) is one of only two agencies that will be reviewing work performed by contractors for possible insourcing. In fact, HUD will get credit towards its privatization quotas by reviewing work performed by contractors in the area of home loan programs. DOD, however, is not reviewing a single contractor job for insourcing, despite a much larger and more unaccountable contractor workforce. This dereliction becomes even more difficult to comprehend when we remember that 10 U.S.C. 129a requires DOD "to consider particularly the advantages of converting from one form of personnel (military, civilian, or private contract) to another for the performance of a specified job" and DOD, in the person of Under Secretary of Defense for Acquisition, Technology, and Logistics E.G. "Pete" Aldrige, said in 2001, that "we (may) have already contracted out capabilities to the private sector that are essential to our mission. . ."

B. As implemented, the OMB privatization quotas have profoundly ugly class, race, and gender biases, and are systematically encouraging agencies to place target signs on the backs of employees who are lower-ranking, female, and members of minority groups.

For example, in the Department of Veterans Affairs (DVA), it is the employees in building maintenance, food services, and laundries who will be reviewed for privatization, rather than health care professionals. In fact, OMB has directed that all agencies aggressively review for privatization the jobs of blue-collar, clerical, and maintenance workers. In the Department of Labor's Employment Standards Administration's Office of Federal Compliance Programs, all but 2 of the 72 employees categorized as candidates for privatization are GS–9 or lower. All of the employees categorized as inherently governmental are GS–10 or above.

DVA managers have publicly expressed concern about the impact of the OMB privatization quotas on the hard-won diversity of the agency's workforce. According to a DVA manager quoted in Federal Times, "(A)ny significant effort to outsource jobs (in the functions listed above) will have huge diversity implications." Moreover, the Department of Transportation, in its comments on OMB's A–76 rewrite, reported the disproportionate impact of the privatization quotas' direct conversions on women

and minorities. A consultant who has run Federal public-private competitions for more than 20 years told Government Executive that, "(I)n looking at the affected workforce it is disproportionately minority and female."

Whether or not it is one of the intentions of those who designed the administration's policy, it cannot be denied that the consequences of the OMB privatization quotas will ultimately have the effect of turning back the clock to the days when Federal agencies were managed and staffed primarily by white males. This is a concern that has drawn too little attention. Thanks to the hearing you are conducting here today, Chairman Ensign, perhaps we can rectify this oversight.

C. Although there was an attempt to portray the final result of the fiscal year 2003 effort to free agencies from the OMB numerical privatization quotas as a compromise, such is not the case. The administration agreed that numerical privatization quotas are bad public policy—except when they are based on the administration's own research and analysis. Report language requires OMB to submit a report that provides such research and analysis.

The role of the General Accounting Office (GAO) in the defeat of what began as a bipartisan effort to end the use of numerical privatization quotas is disappointing. On the very day, July 24, 2002, that the House of Representatives passed an anti-numerical privatization quotas amendment, by a vote of 261–166, the Comptroller General went out of his way to criticize the effort in the media.

Later, he elaborated on his criticism in an August 9, 2002, letter to a Senate lawmaker, in which he insisted that the amendment would be a "blanket prohibition on the use of goals." As even the most cursory reading of the language would have revealed, the amendment was in no way a "blanket prohibition." Rather, it would have prevented only the use of numerical privatization quotas. Agencies could have used research and analysis to establish non-numerical goals if the amendment had been enacted. In fact, by preventing political appointees from plucking numbers out of thin air and then imposing them on helpless agencies, the amendment would have promoted the use of research and analysis in the establishment of goals.

Moreover, it is well understood by any observer of the Federal privatization scene that the OMB privatization quotas are not based on "research and analysis." Representatives from GAO were in attendance, and one even testified, at the March 6, 2002, hearing of the Senate Governmental Affairs Committee hearing in which Ms. Styles said that the privatization quotas had been established by the President himself—who is unlikely to have had the time to perform any "research and analysis." Indeed, the Comptroller General, in his August 9 letter, correctly asserted that he had "seen no evidence to indicate that its numerical FTE goals were based on considered research and sound analysis." Unfortunately, the inclusion of a vague "research and analysis" requirement gives the administration an obvious out and renders the amendment unenforceable.

Finally, the GAO's recommendation that any prohibition on the use of numerical privatization quotas include an "escape clause" for those quotas that are based on "research and analysis" was strangely incomplete. The elaboration provided in the letter was vague management-speak: "a review of historical data and sourcing activity in the public and private sector combined with an analysis of current and emerging market trends. . ." However, the GAO's recommendation did imply that the OMB privatization quotas should take "into account the capacity of agencies . . . to conduct public-private competitions."

Unfortunately, some Senators accepted the GAO's fundamentally flawed criticism as a rationale for voting against the anti-numerical privatization quotas amendment. Consequently, agencies are still being forced to review for privatization, regardless of their needs and missions, tens of thousands of Federal employee jobs, either with or without public-private competition.

D. I will conclude this section of my testimony by providing you with my own thoughts on how to reform the OMB numerical privatization quotas so that agencies can, if appropriate, establish non-numerical, agency-specific, equitable sourcing goals:

1. Don't use numbers. Numbers are a lazy person's short-cut, an unworthy alternative to conducting the "research and analysis" necessary to establish goals that promote good public policy, as opposed to narrow private interests. AFGE criticized the disastrous use of numbers to manage the DOD civilian workforce during the Clinton administration. We'll criticize the Bush administration when it perpetrates the same blunder in the context of DOD privatization.

I would ask the Comptroller General to review a key passage in his own August 9 letter in which he implies that the desired "result (of a goal-setting process) would be the identification of specific functions or activities that should be

subject to public-private competition." In other words, sourcing goals, he believes, should be function- or activity-based; and, of course, I would add, no numbers are needed to establish such sourcing goals.

2. Take politics out of the process. Any non-numerical sourcing goals should be designed by managers in the individual agencies, not the politicals over at OMB. Since they are closer to the action and have an institutional investment in seeing that their customers are well-served, agency managers, although far from perfect, are in a better position to establish appropriate goals that complement agencies' actual needs and missions. OMB politicals have no business in imposing privatization quotas on agencies, let alone telling managers exactly which jobs to review, as occurs regularly today. We would do well to remember that OMB's expertise is limited to the indelicate art of telling people what to do, not in actually doing something.

3. Get rid of the corporate welfare. Direct conversions and privatizations have no place in any sourcing goals. With all respect to the Comptroller General, no amount of "research and analysis" can justify taking jobs away from Federal employees and giving them to contractors without public-private competition. That does a disservice to Federal employees, taxpayers, and customers.

4. Look beyond the usual suspects so that agencies can establish non-numerical, equitable sourcing goals. DOD has three different workforces: civilian, military, and contractor. However, only the civilian and military workforces have been looked to for savings. As Army Secretary Thomas E. White, of all people, has acknowledged, "In the past 11 years, the Army has significantly reduced its civilian and military workforces. These reductions were accompanied by an expanded reliance on contractor support without a comparable analysis of whether contractor support services should also be downsized." The same is true for the rest of DOD. If HUD and the Department of Energy can review contractor work for insourcing, there is no reason DOD cannot do the same.

Just as it's important to track the work performed by Federal employees, it is also important to track the work performed by contractors. This means that agencies must have contractor inventories analogous to the FAIR Act, so that managers can determine, as Army managers are currently attempting to do so, what work has been privatized already, particularly with respect to whether it is actually inherently governmental work.

5. Any non-numerical, agency-specific, equitable sourcing goals must take into account the need for a diverse Federal workforce. Federal agencies should be model employers, rather than reactionary employers who use, purposefully or not, privatization quotas to roll back all of the progress made in creating a Federal civil service as diverse and inclusive as the American people.

6. Non-numerical, agency-specific, equitable sourcing goals should also peacefully coexist with other, more proven techniques—from labor-management partnerships to demonstration projects to reorganizations and consolidations—to make agencies' operations more efficient. The administration has broken with bipartisan precedent and emphasized the OMB Circular A–76 privatization process to the exclusion of all other techniques.

7. Non-numerical, agency-specific sourcing goals that are truly equitable cannot possibly be created unless both contractors and Federal employees have the same rights to challenge agencies' sourcing decisions. Currently, only contractors have legal standing to take agencies to GAO and the Court of Federal Claims—and not Federal employees and their union representatives. It is manifestly unfair that the administration has unleashed a tidal wave of privatization on Federal employees without making sure that Federal employees as well as contractors can both have their day in court.

8. Agencies should establish non-numerical, equitable sourcing goals for one reason only: so that customers can receive better services at the lowest possible costs. Competitions are a means to an end; they are not an end in themselves. As the costs and consequences of the privatization quotas become more clear, and the resulting savings fail to materialize, OMB officials are, as noted earlier, inventing rationales for their failed policy that have nothing to do with promoting the interests of customers or taxpayers. Well, conducting competitions for the sake of conducting competitions is not acceptable public policy. As OMB officials should know, the adverse impact on workforce morale of a privatization review, as well as the commensurate adverse impact on productivity, is significant.

9. Agencies should also be required to conduct and make public "research and analysis" before establishing any non-numerical, agency-specific, equitable sourcing goals, including:

a. whether the agency has the in-house capability to satisfactorily perform these inherently governmental functions: conducting the competitions,[1] crafting the most efficient organization plans, and administering any resulting contracts;

b. what experiences the agency, other Federal agencies, or State and local governments have had in the past with public sector and I or contractor performance of the work in question particularly with respect to costs;[2]

c. to what extent the work has already been privatized;[3]

d. whether the agency can easily reconstitute an in-house capability if the work is privatized;

e. whether the private sector market can provide sufficient competition to avoid sole-source contracting if the work is privatized;

f. what impact, if any, there would be on service if the contractor were to provide its workforce with inferior compensation;[4] and

g. what alternatives to privatization exist to make the delivery of services more efficient and what are the costs of those alternatives in relation to the cost of conducting a competition and perhaps privatizing the work.[5]

Not a single agency has conducted that basic "research and analysis." Nor is there any indication that OMB or the agencies feverishly implementing the privatization quotas will rectify that dereliction, although the Army deserves some credit for thinking about these issues, albeit in the service of the indefensible "Third Wave" initiative.

2. THE REWRITE OF THE OMB CIRCULAR A–76 PRIVATIZATION PROCESS

In the past, when I mentioned "OMB Circular A–76," people's eyes glazed over. Not any more, though. OMB's controversial rewrite of the A–76 process has subjected this obscure directive to the much-needed glare of publicity. In fact, 170 House and Senate lawmakers have already signed on to a joint letter of objection to OMB about its November 14, 2002, A–76 rewrite proposal; and others have sent their own individual letters. I'm not surprised. The November draft is so one-sidedly pro-contractor, it defies belief.

The Army's controversial "Third Wave" privatization initiative, which was designed to review for privatization without any public-private competition at least 210,000 Federal and military positions, is widely viewed as being beyond the public policy pale. In fact, at least publicly, it has even been implicitly repudiated by the Army.

In summarizing the comments I submitted to OMB last December, I will argue that the A–76 rewrite has many similarities to the "Third Wave," is in some ways even more extreme, and could be used by the Army or other services to implement the "Third Wave."

In other words, the A–76 rewrite is in many ways a stealthy continuation of the discredited "Third Wave" by other means. It might actually be called the "Fourth Wave"—and, if implemented, it could constitute the "final wave" for Federal employees, effectively wiping out what's left of the in-house workforce. Triumphant contractors are naturally exultant about the rewrite. In fact, as a result of the changes pro-

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[1] According to the March edition of Government Executive, "No agency is implementing competitive sourcing without contractor support. 'There is no expertise left in government to do these competitions,'" says one agency official. (Emphasis added.) "For niche contractors that specialize in A–76, the initiative is big business," according to one consultant. "'The demand for consultant support is so great that industry is strapped to meet it,'" according to the consultant. "'The biggest problem is finding qualified people to do the work. . .'" Perhaps Ms. Styles meant that her privatization quotas would encourage young people to grow up and become the A–76 consultants necessary to implement her controversial initiative, rather than the Federal employees who are needlessly subjected to it.

[2] Obviously, the less experience with or information about an agency has in relation to the work in question, the more cautious an agency should be in shifting that work from one workforce to another.

[3] As the Department of the Army has concluded, it is necessary to determine whether commercial functions, "when contracted out beyond a certain level of reliance, increase overall risk to mission capabilities and readiness."

[4] It is commonly acknowledged that the historic and systematic failure of contractors to provide airport security screener workers with adequate compensation jeopardized passenger safety and played a significant role in the decision of Congress to contract in the screening function.

[5] The consideration of alternatives to public-private competition is imperative when we remember that it can cost taxpayers as much as $8,000 to review just a single job for privatization.

posed by OMB, contractors insist that they will win 90 percent of all A–76 competitions, instead of the 40–50 percent they are winning now.[6]

A. Like the "Third Wave," the A–76 rewrite would emphasize privatization to the exclusion of all other methods of making the provision of Federal services more effective, more efficient, and reliable.[7] Also like the "Third Wave," the A–76 rewrite would require agencies to review 100 percent of their in-house inventories for privatization.

This represents a radical shift in philosophy. The current circular places the privatization process in its proper context, as just one tool in a manager's toolbox. The process of improving service delivery, according to the current introduction, page 1, "must consider a wide range of options, including: the consolidation, restructuring or reengineering of activities, privatization options, make or buy decisions, the adoption of better business practices. . ." Even DOD employs a "strategic sourcing" approach that involves a range of options similar to those recommended in the introduction to the current circular.

B. Unlike even the "Third Wave," the A–76 rewrite would include an explicit bias towards privatization.[8]

Per the A–76 rewrite, all work performed by Federal employees would be considered appropriate for privatization.

C. Unlike even the "Third Wave," the A–76 rewrite would "rewrite" through a mere circular the law that defines "inherently governmental" in order to make it easier to contract out inherently governmental work.[9]

D. Unlike even the "Third Wave," the A–76 rewrite does not include an inventory to track the work performed by contractors, making it impossible for agencies to determine which inherently governmental work has been wrongly privatized, even though key figures in the administration's privatization effort concede that this has already happened.

E. Unlike even the "Third Wave," which ostensibly calls for reviewing work performed by contractors, the A–76 rewrite would subject almost exclusively activities performed by Federal employees to review.[10]

Despite the fact that contractors acquire and retain almost all of their work without public-private competition and precious little private-private competition, OMB has never applied such quotas to the Federal Government's massive contractor workforce. For those keeping score, at least 850,000 Federal employee jobs would be subjected to privatization under the rewritten A–76. At the same time, only a tiny handful of contractor workers would be reviewed. In DOD, not a single contractor job is scheduled to be reviewed for insourcing.

F. Unlike even the "Third Wave," the A–76 rewrite would not establish a reliable and comprehensive inventory to track work performed by contractors, although the new process combined with the OMB privatization quotas will drastically increase the number of taxpayer dollars given to contractors.

I will now discuss how the A–76 overtly encourages agencies to directly convert work performed by Federal employees to contractors without any public-private competition, a la the "Third Wave."

G. The rewritten circular retains various direct conversion methods of giving work to contractors without public-private competition that are included in the current circular, including special authorities for smaller functions, whenever it can be claimed not to adversely impact Federal employees, waivers, and business case anal-

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[6] For example, James C. Fonta, Senior Vice President, Geotonics Government Solutions, told contractors gathered at a Contract Services Association of America event that merely switching A–76 to a "best value" process and "forc(ing) agencies to measure the true costs of their work" (i.e., double charging in-house bids for indirect personnel costs, while not charging contractor bids for the same costs) would "dramatically decrease number of Gov't 'wins' perhaps to 10 percent."

[7] Actual Text (Daniels Memorandum, 4., page 1): ". . . (A)ll commercial activities performed by Government personnel should be subject to the force of competition, as provided by this circular."

[8] Actual Text (Daniels Memorandum, 4.b., page 1): "*Presume all activities are commercial in nature unless an activity is justified as inherently governmental.*" (Emphasis added.)

[9] Actual Text (Attachment A, E.I., page A–3): "*These activities require the exercise of substantial official discretion in the application of Government authority and/or in making decisions for the Government.*" (Emphasis added) The addition of the word "substantial" rewrites the language in the FAIR Act that defines "inherently governmental."

[10] Actual Text (Daniels Memorandum, 4., page 1): ". . . *(A)ll commercial activities performed by Government personnel should be subject to the forces of competition.*" (Emphasis added.)

yses.[11] Because of the OMB privatization quotas, agencies would be encouraged to make use of all of these explicit direct conversion methods.

With respect to the authority for direct conversion of smaller functions, OMB has failed to require agencies to employ the Department of the Interior model that first performs a bare-bones cost comparison between the existing in-house workforce and private sector firms performing similar work before shifting any work to contractors.[12]

The direct conversion authority where there is ostensibly no impact on Federal employees has been significantly expanded so that it applies without numerical limitation on the number of Federal employees involved and could now also be used when "all directly affected Federal civilian employees within the agency . . . voluntarily retire." This is surely smart politics, encouraging agencies to give work to contractors when there might be no opposition from an in-house workforce, but is it good for Government? Of course not. Divesting an agency of a function through privatization without making a formal make-or-buy decision simply because of its political expediency is clearly bad for Government.[13]

I will now discuss how the A–76 covertly encourages agencies to directly convert work performed by Federal employees to contractors without any public-private competition, a la the "Third Wave."

H. If managers responsible for conducting competitions for work performed by Federal employees are unable to complete those competitions within 12 months, the work can simply be given to contractors.

"If you can't complete the (competition within 12 months) then you are not prepared to do the work, so we will outsource it," thundered OMB's David Childs, according to the November 18, 2002, edition of Federal Times.

In response to intense criticism, Ms. Styles, in a January 28, 2003, article in The Washington Post, spun OMB's position, "saying it was 'absolutely not' true that agencies who exceed the 12-month timeframe would automatically lose the competitions to a private-sector bidder. 'Could one of the alternatives be that this work goes to the private sector? Yes, it is,' she said. 'But that's not the favored alternative. It's not the presumed alternative.'"

The ability of rank-and-file Federal employees to perform a service and the ability of management elsewhere in the agency to conduct a competition for that service are obviously apples and oranges. To say that Federal employees should be converted without competition because the agency didn't finish its competition on time is like saying that all OMB staff should be fired because the Director didn't submit his testimony on entitlement spending to the Senate Budget Committee on time. No arbitrary deadline for the completion of a competition, particularly one that involves a direct conversion of jobs to contractors as a penalty, is ever appropriate, period.

I. Agencies should be able to convert work performed by Federal employees to contractor performance without competition when management does not punctually submit in-house tenders;[14] however, instead of canceling solicitations when contrac-

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[11] For the actual text, please see Attachment C, A.1., 2., 8., and 9, pages C–1, C–2.

[12] According to an April 8, 2002, GovExec.com article, "The Interior plan gives agencies a new option for holding public-private competitions on functions involving 10 or fewer employees. Currently, agencies may directly convert such small functions to the private sector without giving civil servants a chance to compete for their jobs. Interior's plan, by contrast, would allow Federal employees to keep their jobs if they could perform the work at a lower cost than private firms." While less than the ideal of allowing Federal employees to put their best bid forward as a real Most Efficient Organization, it's surely better than the wholly noncompetitive process mandated by the rewritten circular.

[13] This is the sort of loophole that caused the "human capital crisis," and the rewritten circular's expansion of that loophole would only exacerbate that crisis. For a precedent, we need look no further than the ruinous downsizing that has taken place in the Defense Department's acquisition workforce; as the Inspector General reported in 2000, DOD hired contractors to replace the civilian employees in the acquisition workforce who "voluntarily retired"—at higher costs. Among the adverse consequences reported by multiple acquisition organizations from the downsizing: insufficient staff to manage requirements efficiently, reduced scrutiny and timeliness in reviewing acquisition actions, increased backlog in closing out completed contracts, and lost opportunities to develop cost savings initiatives. The IG also reported that seven different acquisition organizations experienced "increased program costs resulting from contracting for technical support versus using in-house technical support." All such privatization occurred through direct conversions, the rationale being that the Federal workforce had (been) retired. The results: inherently governmental work was privatized and taxpayers paid more than before.

[14] Actual Text [Attachment B, C.3.(9), page B–9]: "*When the in-house bid is not submitted; the agency's privatization czar "may: (1) instruct the Contracting Officer to return received offers and tenders and amend the solicitation allowing additional time for resubmission of all offers and tenders, or (2) instruct the Contracting Officer to proceed with source selection without the Agency Tender.* "

tors submit bad proposals or don't submit their proposals on time, agencies are expected to rewrite their solicitations to address the complaints of contractors.[15]

If the Agency Tender Official, a management official, fails to submit the in-house tender by the deadline, the jobs of innocent rank-and-file Federal employees, who are in no way responsible for the mechanics of the privatization process, could be given to contractors without any public-private competition. This is obviously unfair to the affected workforce and to the taxpayers.

Because the OMB privatization quotas give agencies full credit for completing direct conversions pursuant to OMB Circular A–76, the same as if the jobs had been subjected to real public-private competitions, agencies will have little incentive to submit thoughtful in-house tenders in timely fashion. Why bother taking the time to craft the best possible in-house tender when the agency can do no work at all and get the same amount of credit, because OMB doesn't care whether the work is competed or converted, as long as any work performed by Federal employees is ultimately privatized?

I will now discuss how the A–76 rewrite requires Federal employees—but not contractors—to undergo public-private competition in order to perform or retain new work, segregable work, and existing work.

J. Federal employees—but not contractors—must compete to perform new work.[16]

K. Federal employees—but not contractors—must compete when they are doing exactly the same work as before, but the value of that work increases by as little as 30 percent.[17]

L. Federal employees—but not contractors—must compete to continue to perform work when their contracts expire; or agencies may simply give such work away to contractors through direct conversions.[18]

At the outset of this discussion, one point needs to be fully understood. The rewrite of the circular applies only to the circular, not the Federal Acquisition Regulation (FAR). However, the rewrite of the circular inserts the FAR into the circular. Consequently, to the extent the FAR itself has problems with respect to many issues involving competition between and among private contractors to perform the Federal Government's work—and it does—public-private competition will now be burdened with those problems.

As Ms. Styles remarked at a House Armed Services Readiness Subcommittee hearing last year,

> *"There needs to be some recognition that there are problems in the private-private system for competition and FAR based competitions. It's not a perfect system and we may be exacerbating some of the problems when we try to apply the FAR based system private-private competitions to public-private competition."*

Although "full and open competition" is technically still the law of the land, recent "acquisition reform" (sic) law (e.g., the Federal Acquisition Streamlining Act and the Clinger-Cohen Act) has virtually made "full and open competition" the exception

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[15] Actual Text: [Attachment B, C.3.(9)d, on page B–10]: "*When a Standard Competition is attempted but private sector offers or public reimbursable tenders are either not received; or those received are found to be non-responsive or not responsible . . . the contracting officer shall document, in writing, the following: (1) restrictive, vague, confusing, or misleading portions of the solicitation; (b) possible revisions to the solicitation to encourage participation; (2) the reasons provided by sources for not submitting responses; and (3) the reasons offers or tenders were either not responsive or not responsible. The contracting officer and the source selection authority shall evaluate the results of these discussions and propose a course of action in a written document to the (agency's privatization czar). The contracting officer shall provide a copy of this written document to the Performance Work Statement Team, Agency Tender Official, and to the public, upon request. . . (The agency's privatization czar) shall evaluate the contracting officer's written recommendation and make a written determination to either (a) revise solicitation or (2) implement the (in-house bid).*"

[16] Actual Text [Attachment A, A.2.b.(3), page B–2]: "*Agencies shall use Standard Competitions to justify . . . (a)gency . . . performance of a new requirement. A Standard Competition is not required for private sector performance of a new requirement competed (sic) in accordance with the Federal Acquisition Regulation.*"

[17] Actual Text: [Attachment A, A.2.b.(4), page B–2]: "*Agencies shall use Standard Competitions to justify . . . (a)gency . . . performance of an expansion of existing commercial activities. An expansion is the modernization, replacement, upgrade, or increased workload of an existing agency performed commercial activity that increases the operating cost of the activity by 30 percent or more . . . A Standard Competition is not required for private sector expansion competed (sic) in accordance with the FAR.*"

[18] Actual Text [Attachment B, C.5.b.(2), page B–16]: "*By the end of the last performance period stated on the Standard Competition Form, another public-private competition or Direct Conversion shall be completed in accordance with this Circular.*"

rather than the rule in awarding contracts, particularly with respect to service contracts.

There are so many exceptions to the rule that are technically deemed to involve competitive procedures [e.g., use of Government-Wide Acquisition Contracts (GWACs), multiple and single agency indefinite delivery/indefinite quantity (ID/IQ) contracts, General Service Administration (GSA) schedules, the higher dollar threshold and other requirements for "commercial requirements," etc.] that the "full and open competition" standard is essentially dead. (Of course, it's getting worse. The streamlined acquisition authority under Section 833 of the new Homeland Security Act allows any service to be deemed a commercial item for purposes of Federal procurement laws.) Moreover, many of these "competitive alternatives" are protest proof, meaning that they are not even subject to administrative or judicial review.

Agency Inspectors General, the GAO, respected procurement judges, and even OMB officials have bemoaned the largely non-competitive state of Government contract awards.[19] Here are some examples:

According to a 2000 report of the DOD Inspector General, "(I)nadequate competition occurred for 63 of the 105 contract actions" surveyed.

Later that year, the GAO reported that most information technology orders were sole-sourced. In fact, "only one proposal was received in 16 of the 22 cases" (or about $444 million of the total $553 million).

The Associated Press reported last year that the Federal Government,

> *"bought more than half its products and services (in 2001) without bidding or through practices that auditors say do not fully take advantage of the marketplace. . . Concerns about the Government's new (i.e., post-acquisition reform) style of shopping are simply put: Buying without competition often means the public treasury gets overcharged."*

Judge Stephen M. Daniels, Chairman of the General Services Board of Contract Appeals, has declared that,

> *"Although some parts of the (1984 Competition in Contracting Act) remain on the statute books, the guts have been ripped out of it. Openness, fairness, economy, and accountability have been replaced as guiding principles by speed and ease of contracting. Where the interests of the taxpayers were once supreme, now the convenience of agency program managers is most important. Full and open competition has become a slogan, not a standard; agencies have to implement it only in a manner that is consistent with the need to efficiently fulfill the Government's requirements.' It is now much easier to acquire goods and services without competition. Notice requirements have been reduced, particularly as the Government increasingly fulfills its needs without conducting formal procurements. The drive to have the Government present a single face to industry has been sent into retreat: agencies have been given greater discretion to procure in their own idiosyncratic ways, Government-wide regulations have been discarded or diminished in importance, and programs and whole agencies (the Federal Aviation Administration being just the first) are being allowed to procure under unique and sometimes vague rules and procedures."*

Ms. Styles herself has also said that,

> *"Since the beginning of the (acquisition) reform movement, over a decade ago, I have not seen a serious examination of the effects of reform on competition, fairness, integrity, or transparency. As a result, I think we are seeing some serious competitive problems surface with the proliferation of Government-wide contracting vehicles and service contracting. "*

Clearly, contractors are not always required under the FAR to compete against one another to win or retain service contracts. Consequently, while the rewritten

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[19] Contractors still try to insist that there is competition between contractors, albeit unpersuasively. At a March 6, 2002, hearing of the Senate Governmental Affairs Committee, a contractor representative insisted that "Contractors, for instance, are subject to a range of checks and balances, including continual competitive pressures. In fact, some 75 percent of all services contracting actions, and more than 90 percent of all information technology services contracting actions, are competitively awarded. . ." As AFGE pointed out subsequently, this is a very misleading use of statistics from the Federal Procurement Data System. Although the contract vehicle (a.k.a., "hunting license") in a multiple award scenario may be considered to be competitively awarded, funding is provided through task orders. Such task orders through September 30, 2001, were automatically classified as competitively awarded, regardless of the circumstances. Although it is not possible to recreate the records to determine whether task orders to multiple award service contracts were competitively awarded, a DOD IG review indicated that an astounding 72 percent of 423 multiple-award task orders awarded in fiscal years 2000 and 2001 were awarded on a sole-source or directed-source basis.

circular will require Federal employees to compete to perform new work and segregable work as well as retain existing work, contractors will be able to acquire and keep such work without ever having to compete against Federal employees or even one another.

Let's look in particular at segregable work. Under the rewritten circular, an automatic competition requirement kicks in for Federal employees when the value of work that they are already performing merely increases in value by 30 percent. What happens to contractors in such circumstances? The FAR does not use the concept of percentage increases in scope of work in order to determine whether a new competition is required. Rather, the FAR and Government contract case law use the concept of "scope."

For example, if operating a telephone servicing center is expected to cost $10,000,000 but ultimately costs $15,000,000, this does not necessarily mean that new work has been added. It could just be that the original cost estimates were low, that the winning offeror low-balled his bid, or that more effort was required than originally anticipated. The general test of whether new work has been added is whether the added work is within the original "scope" of anticipated effort that the contractor was supposed to provide. Mere dollar value increases in the work under contract does not constitute expanded scope requiring a new competition. In practice, however, even if new scope is added to a contract, this is almost always performed by the original contractor. That's just a way of life in Government procurement. If the contract is a high visibility contract, typically a sole source justification will be written, with the justification stating that "given the experience of the contractor in the work already performed, it is the only source that can continue to 'practicably' complete the work in process."

I will now discuss how the A–76 rewrite would hold Federal employees far more accountable for failure than contractors.

M. When Federal employees are found in default, the work must automatically be converted or competed; for contractors, however, it could be business as usual.[20]

What happens to Federal employees under the rewrite is clear. However, the consequences for defaulting contractors aren't quite so dire. Per FAR Part 49, "The following courses of action, among others, are available to the contracting officer in lieu of termination (of a contract) for default when in the Government's interest: (a) Permit the contractor, the surety, or the guarantor to continue performance of the contract under a revised delivery schedule. (b) Permit the contractor to continue performance of the contract by means of a subcontract or other business arrangement with an acceptable third party, provided the rights of the Government are adequately preserved. . ."

Moreover, contractors can and do vigorously litigate to avoid default.[21] Federal employees and their union representatives, on the other hand, have no such recourse.

I will now discuss six different ways the A–76 rewrite favors contractors over Federal employees.

N. Agencies should provide much more justification under the A–76 rewrite before canceling an award to a contractor than when the work has been won by Federal employees.[22]

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[20] Actual Text [Attachment B, C.5.c.(2), page B–16]: "*If an agency, private sector, or public reimbursable provider fails to perform to the extent a termination for default is justified; agencies shall comply with the following: (a) for a private sector provider, the Contracting Officer complies with the FAR Part 49; (b) for an agency or public reimbursable provider, the head of the requiring organization shall issue a notice to terminate and shall recommend; in writing, that the (agency's privatization czar) approve either (1) a Direct Conversion based upon a Standard Competition Waiver or (2) a Standard Competition.*"

[21] "How To Avoid & Overturn Terminations for Default," a veritable Bible for contractors who have strayed from the path of compliance, lists a variety of aggressive defenses that have been used successfully by contractors to avoid default determinations, including excusable delay, defective specification and impossibility, waiver of contract due date, contracting officer's failure to follow procedural requirements, contracting officer's failure to exercise discretion, and contracting officer's abuse of discretion; and there are many more defenses for specific types of contracts.

[22] When Federal employees win the work but the agency wants to cancel the solicitation, the contracting officer is merely required to cancel in accordance with the FAR. However, when a contractor wins, the agency's privatization czar must personally certify the cancellation. But wait—there's more. The agency's most senior official must then submit a detailed report to the OMB Deputy Director for Management, the agency's third most senior official, that states the contracting officer's cancellation decision was in accordance with the FAR. But wait—there's still more. The agency's most senior official must also justify to one of the most important officials

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O. Under the A–76 rewrite, contractors—but not rank-and-file Federal employees directly affected by privatization or their union representatives—can participate in all appellate processes, to the Administrative Appeal Authority, the GAO, or the Court of Federal Claims.[23]

P. Under the A–76 rewrite, only the confidential nature of proprietary information of the contractors' bids is protected.[24]

Q. The only conflicts of interest addressed by the A–76 rewrite are those that might conceivably benefit Federal employees in the privatization process; the long-standing conflicts of interest which demonstrably benefit contractors will continue to undermine the integrity of the privatization process.[25]

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in the Federal Government's most powerful agency that the cancellation "was clearly in the public interest," "provide the agency's rationale for canceling the solicitation," and then state the "approximate date for reissuance of the solicitation. . ." For the actual text, please see Attachment B, C.2.a.(14), page B–7.

[23] Actual Text [Attachment B, C.6.a.(I), page B–17]: *"The Administrative Appeal Process provides directly interested parties an opportunity to have an independent agency official review the Performance Decision. "*

"Directly interested parties" is not defined in the Definition of Terms. With respect to the in-house workforce, only the Agency Tender Official is identified in the rewritten circular as a "directly interested party." Actual Text [Attachment B, B.1., page B–3]: *"The ATO shall be considered a directly interested party."*

Directly affected Federal employees and their union representatives would not be allowed to participate in this process. Moreover, as the Agency Tender Official is a management official, it is manifestly unreasonable to expect that he could act independently on behalf of directly affected Federal employees in appealing to another management official who would serve as the Administrative Appeal Authority. Finally, it should be noted that the internal appellate process applies only after the Performance Decision. There is no provision for appeal of such important pre-performance questions as the decision whether to use sealed bidding or negotiation, the choice of evaluation factors and their weights, or an allegedly defective performance work statement. How can an internal appellate process be fair if it is forbidden to challenge the very "ground rules" of the competition?

While directly affected Federal employees will be allowed only representation by a management official who will determine entirely on his own whether to appeal to another management official who is forbidden to review most questions raised by the privatization process, contractors, on the other hand, will still be allowed to appeal all pre-Performance Decision and post-Performance Decision questions to the GAO and the Court of Federal Claims. Moreover, per Attachment B, C.6.a.(1), page B–17, contractors will still be able to participate in the internal appellate process with respect to "questions regarding a private sector offeror's compliance with the scope and technical performance requirements of the solicitation."

The rewritten circular is needlessly punitive with respect to the involvement of Federal employees in the appellate process. The current circular allows employees 20 calendar days during which to file an appeal. Per Attachment B, C.6.a.(2), page B–17, the submission period is reduced to 10 working days. Given that Federal employees, whether or not represented by unions, are less likely to have legal representation, this change will have a disproportionately adverse effect on the in-house workforce.

[24] Actual Text [Attachment B, C.6.a.(2), page B–17]: *"Where private sector proprietary information is involved a redacted copy of the appeal and decision documentation will be made available."*

[25] Excerpted Actual Text [Attachment B, D.2.a.(1), D.2.b.(1), D.2.c.l., pages B–19–20]: *"To avoid any appearance of a conflict of interest, members of the Performance Work Statement Team shall not be members of the (In-House Bid) Team. Members of the (In-House Bid) Team shall not be members of the Source Selection Executive Board"*

As OMB officials know very well, the reason managers experienced with privatization often had to play multiple roles in the process is precisely because agencies employ so few of them. Because the rewritten circular means more competitions and conversions but no more staff or training, agencies will be forced to rely even more on contractors to conduct the competitions, particularly with respect to writing performance work statements and in-house bids.

Again, because the radical overhaul of the privatization process is being accomplished only through a rewrite of the circular, contractors emerge completely unscathed. As anybody with even a modicum of experience with procurement understands, the privatization process is rife with conflicts of interest that benefit contractors. FAR Subpart 9.5, for example, purports to be designed to minimize contractor conflicts of interest. However, it is largely full of empty exhortations. Conflicts of interest arise when contractors recommend or otherwise advise buying agencies to make additional purchases from the contractors with whom the recommending contractors have business interests. While the FAR tries to address blatant conflicts (e.g., contractors recommending themselves for jobs), the nature of modern day government contracting is replete with contractor "partnerships," "strategic relationships," and other arrangements in which various contractors agree to help one another out—usually through various subcontracting relationships. The rewrite of the circular raises the very real prospect that contractors will be increasingly responsible for evaluating the work of other contractors—contractors with whom they have business interests at many levels. The inevitable conflicts of interest and the resulting corruption have the potential to make recent accounting and auditing scandals pale in comparison.

R. Under existing law and regulation, Federal employees—but not contractors—would continue to be subject to a myriad of requirements and obligations under the A–76 rewrite.[26]

S. Under the A–76 rewrite, tenders submitted by Federal employees must include "all" costs, even when they are irrelevant or have already been counted, while contractors should be allowed to exclude significant costs from their own proposals.

The calculation of costs has been an extraordinary obsession for contractors through the years. They know that if they could ever artificially inflate the cost of in-house tenders, they would win the vast majority of competitions. In OMB, contractors have an ally which is eager to help contractors finally fulfill this long-sought dream.

OMB has made much ado about ensuring that in-house tenders account for all of their "indirect costs." The existing circular already requires in-house tenders to include such overhead costs. The rewritten circular would require that in-house tenders be charged twice for the same overhead costs.[27]

The 12 percent "standardized cost factor" for indirect costs in the existing circular would be retained in the rewritten A–76.[28] However, the rewritten circular would allow agencies to charge in-house tenders for indirect costs a second time, under "personnel costs."[29]

Not only would the rewritten circular charge the in-house tender twice for the same costs, but the definition of in-house indirect labor costs is so broad as to ensure that any time an agency wanted to ensure the privatization of a function under competition management could easily manufacture the additional superfluous overhead costs.[30]

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[26] As the independent scholar Dan Guttman has written, Federal employees, but not contractors, are subject to a variety of rules "that address conflict of interest (e.g., 18 U.S.C. 208), assure that Government activities are (with limits) 'open' to the public (e.g., Freedom of Information Act), limit the pay for official service, and limit the participation of officials in political activities."

Despite this extraordinary effort to massively increase the number of politically well-connected contractors on the Federal payroll and so completely blur the appropriate and vital distinction between public and private, OMB will make no effort to ensure that contractors are as accountable to the American people as Federal employees already are.

[27] Actual Text [Definition of Terms, page F–7]: *"Overhead is a cost that is included in all cost proposals. The overhead used in cost estimates submitted by agency or reimbursable sources is the OMB required standard cost factor identified in Attachment E. This standardized cost factor accounts for indirect costs that are comparable to those included in private sector offers, represent costs to the taxpayer that are not necessarily visible at the installation, headquarters level or Department level, but are provided by the Government's budget at an expense to the taxpayer. . ."*

[28] Actual Text [Attachment E, B.4.b., page E–11]: *"The 12 percent overhead factor is a rate established by OMB to represent an overhead cost factor for all Federal agencies when performing Standard Competitions . . . This overhead factor represents costs that are not visible, allocable, or quantifiable to the agency, activity, or the Most Efficient Organization (MEO, or in-house bid). Use of the rate accounts for all management and support costs internal and external to the agency not required on Line 1."*

A 1998 GAO report (NSIAD–98–62) provides information on the origins of the 12 percent overhead that is charged to all in-house tenders: "Absent (actual cost data about in-house overhead), OMB selected a single overhead rate of 12 percent, a rate that was near the midpoint of overhead rates suggested by Government agencies and private sector groups. Most Government and private sector groups (GAO) contacted agreed that reasonable levels of overhead should be included in A–76 cost estimates and, absent anything better, the 12 percent rate is acceptable at this time." The report noted that the 12 percent rate for "(o)verhead was supposed to include two types of costs on a marginal or proportional basis: (1) operations overhead, which includes the costs of managing an organization that are not 100 percent attributable to the activity under study, and (2) general and administrative costs, which include the salaries and equipment, and work space related to headquarters management, accounting and finance support, personnel support, legal support, data processing support, and other common support activities such as facilities maintenance."

[29] Actual Text [Attachment E, B.1.b.(2), page E–4]: "Personnel costs for labor that is not dedicated to the MEO but clearly have responsibilities to the MEO are considered 'indirect labor.' Indirect labor includes, but is not limited to, personnel costs for MEO management and oversight activities, such as managers and supervisors above the first line of MEO supervision who are essential to the performance of the MEO. Indirect labor also includes the labor of individuals who are responsible for oversight and compliance actions implicitly required by the MEO in order to comply with the solicitation (e.g., supervision, human resources, comptroller, general counsel, environmental, OSHA Act compliance management)."

[30] Actual Text [Attachment E, B.1.b.(2), page E–4]: *"The agency shall include in the Agency Cost Estimate the cost of indirect labor to reflect personnel who are responsible to manage, control, regulate, preside over, oversee, or supervise MEO related activities but are not dedicated to the MEO as a direct labor cost."* With such a broad definition, the in-house tender could be charged for the cost of maintaining Air Force One because, of course, the President is ultimately

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But it gets worse. Not only would the rewritten circular charge the in-house tender twice for indirect labor costs, some of them wholly irrelevant to the MEO, contractors would not even be charged for their indirect labor costs.[31]

While the rewritten circular would charge in-house tenders with costs not once but twice and even when such costs are irrelevant, OMB is increasingly unwilling to charge contractors for their most basic costs. This raises serious equity and efficiency issues in the context of the circular and privatization generally.[32]

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charged with the responsibility for "managing, controlling, presiding over, overseeing, and supervising" the MEO. To belabor the obvious, the functions in the agency that are being charged twice against the MEO would in almost all cases need to exist, and thus require the same resources, regardless of the MEO. Moreover, it must be noted that the rewritten circular actually exacerbates the perverse incentive to privatize work in order to reduce the pay and benefits of those who perform work for the Federal Government by imposing redundant and irrelevant indirect personnel costs on in-house tenders.

[31] While contractors are charged with the cost of contract administration, they are not charged with the indirect labor costs of contract administration. For example, the costs associated with the personnel responsible for paying the contract administrators, or the cost of the human resources staff who hire the payroll staff, or the security guards who keep safe the building in which the contract administrators work, or the cost of the maintenance staff who keep clean the facility in which contract administrators work, or the managers of the contract administrators, or, in the words of the rewritten circular with respect to in-house bids, all of the other "personnel who are responsible to manage, control, regulate, preside over, oversee, or supervise (contract administration-) related activities but are not dedicated to the (contract administration workforce) as a direct labor cost."

[32] One major factor in properly administering service contracts is cost control. Without adequate cost control mechanisms in place, ultimate contract costs, and consequently prices paid by the taxpayers, can rapidly spiral upward. Although, much has been said about performance-based service contracting, the facts reveal that contractors continue to press Government agencies to award contract types that minimize contractor risk and cost control.

With the exception of common commercially available off the shelf services, cost evaluations and/or determinations play a significant role in Government contract pricing and/or reimbursement decisions. The simplest scenario is for cost-reimbursement contracts. For that contract type, actual reimbursement of the contractor is made on the basis of costs that have been determined to be allowable, allocable, and reasonable in accordance with specific accounting conventions, policy, and procurement regulations.

However, even for so-called fixed-price contracts, many times initial cost evaluations and/or determinations are required when estimating what a fair and reasonable price should be. In other cases, cost evaluations and/or determinations are required to estimate the pricing of "changed" or added work that occurs during contract performance. In still other cases, cost evaluations and/or determinations are required under fixed-price contracts in order to effect profit and/or fee adjustments, make progress (i.e., financing) payments, etc.

Traditionally, when cost evaluations were made, contractors were required to submit cost or pricing data (i.e., certified pricing data). Under the various acquisition reform (sic) laws, the need for formal cost evaluations has not been reduced, but the form in which submissions are made has been. Frequently, contractors are now permitted to submit "information other than cost or pricing data" which is the same thing as cost or pricing data; it's just that the cost data is no longer certified, which legally relieves contractors from all manner of oversight. A contractor's certification must be that the cost data submitted are current, accurate, and complete. If it is later determined to be untrue, the Government can make a claim against the contractor for defective pricing under the Truth in Negotiations Act (TINA).

The latest incarnation of the phenomenon of contractors running away from their costs is the rapidly increasing use of time and material (T&M) and labor hour (LH) contracts. These contracts place nearly all risk of cost control on the taxpayers, and substantially reduce cost visibility. T&M/LH contracts are frequently touted by contractors as an alternative to cost-reimbursement contracts. Unfortunately, T&M/LH contracts are prone to even less cost control than cost-type vehicles.

T&M/LH contracts are contracts in which hourly rates are paid by the Government as services are rendered (e.g., $75 hour for IT services). Added to these rates are any additional costs of material. Contractors claim that T&M/LH contracts are frequently used in the "commercial sector," thus, they should be used by the agencies. However, the increasing use of T&M/LH contracts has nothing to do with "commercial practice," rather it has to do with shifting performance risk to the Government, and increasing profits for contractors. Under a T&M/LH contract, a contractor only promises to use its "best efforts" to accomplish the work. Performance is not guaranteed. For example, if a computer programming job is budgeted at 500 hours x $75/hour, and the contractor does not complete the job within the hours specified, the Government's only real recourse is to pay for more hours. Worse yet, because contractors are asking that T&M/LH contracts be recognized as "commercial"—a euphemism for no price protections, oversight or auditing—the Government has tremendously reduced its ability to ensure that taxpayers are getting a good deal. As FAR 16.601 has long stated" A time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency."

Recently, as a part of a rule ostensibly designed to increase competition and accountability in DOD service contracting, OMB initially tried to specifically require that use of T&M/LH contracts be accompanied by audit and pricing protection clauses in order to ensure that the Government was getting a good deal. In doing so, OMB was only trying enforce an existing FAR provision (FAR 12.207) that restricted use of T&M/LH contracts to circumstances in which audit

The A–76 rewrite changes how costs are calculated to benefit contractors in other ways as well:

> Exclusion of the cost of a performance bond, which is executed in connection with a contract in order to ensure performance so as to protect taxpayer and agencies' customers from the consequences of default, would give contractors an unfair advantage.[33]
>
> Security clearances are another example.[34] With respect to security clearances for the Federal employee workforce, that is a sunk cost, one that has already been amortized, which is not the case with contractors.
>
> Phase-out costs are yet another example.[35] The term "phase-out plans" does not appear in the rewritten circular's "Definition of Terms." However, phase-out costs are considered to include such significant one-time costs resulting from the transfer or disposal of employees, equipment, and facilities.[36]

3. THE THREAT TO USE "BEST VALUE" IN DOD'S PUBLIC-PRIVATE COMPETITIONS

Section 824 of the legislative recommendations submitted by DOD for the fiscal year 2004 defense authorization bill calls for the end of an objective, cost-based competition process. It would be replaced by the controversial "best value" competition process, which allows contractors to submit more expensive and less responsive bids and still win contracts.

Contractors are not happy about losing almost three-fifths of the public-private competitions conducted under OMB Circular A–76. Rather than cut their costs and provide taxpayers with a better deal, contractors want to junk the existing ultimately cost-based process and replace it with a pro-contractor "best value". Process.

Instead of making the best decision for taxpayers, i.e., what costs less, acquisition officers would be encouraged to use all manner of subjective criteria to determine the winner of a public-private competition process, including such whimsical notions as a contractor's ability to respond "flexibly" to changing circumstances or the contractor's use of "innovative" approaches.

"Best value" would tilt the field of play even farther in contractors' direction by allowing acquisition officials to ignore the standards established in the solicitation in favor of the "bells and whistles" included in the contractor's offer.

"Best value" would also deny Federal employees the opportunity to reformulate their offer in response to a contractor offer that exceeds the standards in the solici-

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and TINA clauses are included in the contract award vehicle. Ultimately, in the face of ferocious opposition, from information technology contractors and their congressional supporters, particularly Representative Tom Davis (R–VA), Chair of the House Government Reform Subcommittee on Technology and Procurement Policy, OMB backed off its stance. It now appears reasonably likely that OMB will support allowing use of T&M/LH contracts without the safeguard provided by audit, TINA and Cost Accounting Standards contract clauses—while at the same time insisting the in-house tenders be charged twice for indirect labor costs, no matter how irrelevant.

[33] Actual Text [Attachment E, C.1.d., page E–12] "*When a solicitation requires the private sector offer to provide a performance bond; the cost of the performance bond is excluded from the private sector offer when entered on Line 7.*"

[34] Actual Text: [Attachment B, C.2.a.(12), page B–7]: "*The costs associated with security clearance requirements shall not be included on the Standard Competition Form for an agency tender, private sector offer, or public reimbursable tender.*"

[35] [Actual Text, Attachment B, C.2.a.(6), page B–6]: "*For a Standard Competition, the Contracting Officer shall include in the solicitation a requirement for private sector offers, public reimbursable tenders and the agency tender to propose a phase-in plan to replace the existing incumbent service provider. Phase-in plans shall include details to minimize disruption, adverse personnel impacts, and startup requirements. The length and requirements of the phase-in must consider hiring, training, recruiting, security limitations, and any other special considerations to reflect a realistic phase-in plan. The costs associated with phase-out plans shall not be required by the solicitation or calculated on the Standard Competition Form.*" (Emphasis added)

[36] For example, equipment that might have been used by the MEO could become surplus and then be made available for transfer to another in-house activity or to the contractor. In the event of transferring material to a contractor, it may be appropriate to do a special joint physical inventory, which would be a phase-out cost. Personnel, or labor-related costs, would include certain one-time labor-related expenses such as health benefit costs, severance pay, homeowner assistance, and relocation and training expenses.

A conversion to contract may also require an agency to take certain actions that would not be necessary if the activity had continued to be performed by Federal employees. For example, it may not be possible to terminate a rent or lease agreement without a penalty fee, or it may be necessary to move materials that are not associated with the activity under study to another location in order to complete the transition. Moreover, there are costs of labor associated with the transfer or disposal of equipment, property, or facilities. The rewritten circular should clearly define the many costs associated with phase-out and then count those costs against the proposals of the challenging offerors.

tation. If a contractor includes a feature in its bid that DOD thinks should be included in the solicitation, DOD should be allowed to go back and revise that solicitation—and allow Federal employees to reformulate their bid so that it includes that feature.

Contractors note that "best value" has been used in private-private competition. However, its use has been accompanied by extraordinary controversy and litigation because of its intrinsic subjectivity. Some of its most fervent critics are small business contractors. It is precisely that subjectivity that makes a "best value" process so dangerous in the context of public-private competition. While it is not possible to systematically discriminate against one group of contractors in favor of another group of contractors, "best value" could be used systematically to discriminate against Federal employees in favor of contractors, especially when wielded by an avowedly pro-contractor administration that is rushing to review for privatization 850,000 Federal employee jobs.

Contractors know that, historically, "best value" competitions between contractors have cost taxpayers more and taken longer to complete. However, they try to justify the use of "best value" by falsely asserting that A–76 currently doesn't allow for qualitative improvements in service. Wrong. As currently written, A–76 allows agencies, under a highly objective process, to establish the standards they want met by Federal employees or a contractor, whether they are the same as before or more exacting, and then choose the provider with the lower cost. That's what's best for warfighters and taxpayers.

Unlike other agencies, DOD is protected from a "best value" process by 10 U.S.C. 2462 and 10 U.S.C. 129a. OMB is breaking with bipartisan tradition and encouraging non-DOD agencies to use a pro-contractor "best value" in public-private competitions. However, even OMB acknowledges that there are "special considerations" that must be taken into account with the use of "best value" in public-private competitions and that its use in non-DOD agencies should be limited to a pilot project and that there should be testing before wider application is authorized. There is no reason for DOD to be the guinea pig. If "best value" boosters are so sure their much-criticized process is superior to objective, cost-based competitions, then let them prove it through the experience of non-DOD agencies participating in the OMB pilot project.

In the A–76 rewrite, OMB has created the worst possible "best value" pilot project process, one that would maximize the possibility of bias against Federal employees:

A. No guidelines regarding the use of subjective competition processes, even though OMB acknowledges the need for caution.

B. No traditional preference for sealed bidding, which would minimize management bias against in the in-house workforce.

C. No preference for the use of a lowest price technically acceptable process in the event it can be shown why sealed bidding absolutely cannot be used.

D. No limitation on the use of evaluation factors and subfactors, both objective and subjective, in the "best value" process.

E. No requirement that the weights given to evaluation factors and subfactors, both objective and subjective, be revealed before proposals are submitted.

F. No requirement that Federal employees be given a chance to reformulate their proposal if the contracting officer changes the solicitation in the "best value" process.

G. No requirement that cost be emphasized in the weighting of evaluation factors and subfactors.

H. The use of "past performance" is intrinsically biased against in-house proposals.

Actual Text [Attachment B, C.2.a.(13), page B–7]: "*Solicitation requirements for the following shall not apply to an Agency Tender: . . . (6) past performance criteria.*"

FAR 15.304 requires evaluation of "past performance" in all competitions, although it provides an out if a contracting officer "documents the reason 'past performance' is not an appropriate evaluation factor for the acquisition." The FAR also provides that if an offeror has no record of "past performance," the offeror "may not be evaluated favorably or unfavorably" on this factor. Historically, GAO has allowed agencies broad discretion in determining how to proceed. GAO has held that a Source Selection Authority, in making a trade-off decision, can weigh the value of a good (or poor) "past performance" rating against a neutral rating and conclude that the proposal with a good "past performance" rating offers better value than the offeror with a neutral rating. If this rule applies here, in competitions where cost and other technical factors are close, a contractor's good "past performance" rating

can make the difference and result in a decision in favor of the contractor on the basis of a factor not applicable to the agency. In other words, the approach to "past performance" could skew the evaluation results against the in-house bidder.

4. THE ARMY'S "THIRD WAVE" PRIVATIZATION INITIATIVE

In his October 4, 2003, memorandum, Secretary White set in motion a process he called "Third Wave," by which the agency would review for privatization, without any public-private competition, as many as 210,000 Federal and military positions. Some of the non-competitive privatization mechanisms endorsed by Secretary White, such as employee stock ownership plans and transition benefit corporations, were even criticized by OMB officials. Other options mentioned by the Secretary were quasi-governmental corporations and the ever-popular "negotiate with private sector." The one thing all of these options have in common is that they are not provided for in law. Even the Secretary acknowledged that "Most of these alternatives to A–76 will require enabling legislation that does not exist yet."

What a difference 3 months make. Come January 2003, the Army's privatization-related congressional correspondence included this paragraph:

> *"The implementation of competitive sourcing will adhere to congressionally approved process, e.g., A–76. The only known exceptions to the requirement for public-private competition are where 10 or fewer civilian employees perform the function where preferential procurement programs are used, and where legal restrictions against using the A–76 process apply to the function."*

Whether the Army will keep this assurance obviously remains to be seen. However, there are several disturbing questions that need to be answered:

A. Is the Army out there all by itself?

Some would write off the Army's preference for corporate welfare-style privatization as anomalous. However, senior DOD officials have expressed similar preferences. For example, on March 3, 2002, Michael Wynne, the Principal Deputy Under Secretary of Defense for Acquisition, Technology, and Logistics, wrote in his written testimony, that the department intended to "divest" itself of "non-core" work. When asked what he meant, Mr. Wynne said that "divestiture means that you transfer assets to the private sector, and, actually, they absorb the assets in line and the employees as well, as is different, if you will, than competitive outsourcing where you only compete the positions. You might want to just transfer the assets and essentially convert that activity to the private sector."

B. Where does OMB stand on "Third Wave"-style privatization?

While offering criticisms of parts of the "Third Wave," OMB officials refused to repudiate the initiative, notwithstanding that it was completely contrary to the administration's ostensible emphasis on "competitive sourcing." In fact, when I challenged Ms. Styles to condemn the wholly anti-competitive nature of the "Third Wave," she, according to GovExec.com, "refused. 'It's quite an exaggeration to say it's a privatization effort," she said. . . Styles had no reservations about the size of the Army plan. 'It certainly is up to the departments and agencies to determine how they want to do it,' she said."[6]

Moreover, at the 2002 hearing in which Mr. Wynne extolled the benefits of divestiture, Ms. Styles did not rebuke him. When the discussion turned to how DOD would hit its 50 percent privatization quota after achieving its 15 percent privatization quota, Ms. Styles said purposefully, "there will be appropriate elements of competition for the next 35 percent." (Emphasis added.) What does that mean?

C. What changes might OMB and DOD seek that would allow the Army to pursue the "Third Wave" and still keep its pledge?

For example, it is rumored that DOD will submit in its next fiscal year 2004 legislative package a proposal to gut or even eliminate 10 U.S.C. 2461, which, however inadequate, does ensure that Pentagon privateers cannot simply give away the department to contractors.

Moreover, OMB has never repudiated its September 2001 proposal to drastically expand the preferential procurement program to allow small businesses to receive contracts of any size to perform work that is currently performed by Federal employees without any public-private competition.

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[6] One can only assume Ms. Styles means that it "is certainly up to agencies to determine how they want to do it" when agencies want to do even more privatization than OMB has directed. Agencies that do less have had, according to Coast Guard memoranda, their in-house workforces slashed in retaliation by vengeful OMB privateers.

However, it is actually OMB's ongoing rewrite of the A–76 process that will allow the Army—and the other Services as well—to ride the anti-public-private competition "Third Wave." The rewrite expands on the already-existing direct conversion authorities to give work performed by Federal employees to contractors without public-private competition. More importantly, as noted earlier in my testimony, the rewrite creates hidden direct conversion authorities particularly if competitions are not concluded within arbitrary deadlines. A DOD official, who appeared at a recent American Bar Association event in Annapolis, MD, confirmed during a question-and-answer session that all of the Services are interested in the direct conversion possibilities of the arbitrary competition deadline. In other words, the A–76 rewrite is in many ways a stealthy continuation of the discredited "Third Wave" by other means.

5. THE THREAT TO ELIMINATE IN-HOUSE DEPOT MAINTENANCE AND ARSENAL CAPABILITIES

Section 324 of the defense authorization bill would lead to the destruction of any in-house depot maintenance capacity by radically changing the 50/50 rule governing the split of depot maintenance workload between Federal employees and contractors. Under the Pentagon's proposal, contractors would keep their 50 percent of the depot maintenance workload and then be given a chance to gradually take away the 50 percent of the work performed by Federal employees.

Without that safeguard DOD would have privatized all public sector depot maintenance workload long ago. Although chronically underfunded, the depots are the one part of DOD that has managed to escape the devastating consequences of DOD's self-inflicted "human capital crisis," precisely because of rules like 50/50, that ensure a strong in-house capability.

It is important to note that even with the necessary statutory safeguards, depot employees are still better service providers than their contractor counterparts. According to GAO, depot prices are lower for 62 percent of items repaired by both depots and contractors.

The Pentagon's recommendation ignores the reason for having public sector depots—so the warfighters always have a reliable capability to maintain national security-critical hardware that can respond instantly to ever-changing geopolitical conditions.

Some may try to sell this unwise proposal by arguing that the only way depots will be able to bring more work on site, and thus make the installations less vulnerable to the next round of base closure, will be through public-private partnerships, and that the only way to establish such partnerships is by gutting the 50/50 rule. Wrong. Per 10 U.S.C. 2474, work performed by contractors at depots with Centers of Industrial and Technical Excellence, which were established by Congress precisely to encourage public-private partnerships, doesn't count towards the 50/50 rule. Consequently, there is no rationale for gutting the 50/50 rule other than destroying the in-house depot maintenance capacity.

AFGE is also concerned about the privatization threat faced by the Army's arsenals. Per 10 U.S.C. 4532, Secretary White could "abolish any United States arsenal that he considers unnecessary" without any congressional input. Given the Army's "Third Wave" privatization bias, it is imperative that such unfettered discretion be restricted, perhaps in the same fashion as Congress restricted Secretary White's discretion to privatize, divest, or transfer the Corps of Engineers in the Fiscal Year 2003 Omnibus Appropriations Bill.

6. THE THREATENED INTRODUCTION OF THE SERVICE ACQUISITION REFORM ACT

Perhaps the most anti-taxpayer bill to be considered in the House of Representatives during the last Congress was the Service Acquisition Reform Act (SARA, H.R. 3832). The legislation was strongly criticized by agencies' inspectors general; public interest groups such as the Project on Government Oversight; and several unions, including the American Federation of Government Employees, American Federation of State, County, and Municipal Employees, International Association of Machinists, National Association of Air Traffic Controllers, National Treasury Employees Union, Professional Airways Systems Specialists, and AFL–CIO Professional Employees Department.

Last year's SARA was a lengthy service contractor wish-list that would have, among other things, drastically reduced Government oversight of service contractors, created many additional possibilities for service contractor conflicts of interest, substantially reduced competition between service contractors, and significantly increased the losses to taxpayers from service contractor waste, fraud, and abuse. SARA is being redrafted, and it is rumored that the legislation may have found

something it didn't have in the 107th Congress: a Senate sponsor. If the SARA to be introduced in the 108th Congress is anything like its predecessors, keep your hands on your purses and wallets at all times.

Among other things, the SARA legislation would have encouraged the use of risky share-in-savings contracts, which are proven losers and completely antithetical to public-private competition. Share-in-savings contracts are grievously mislabeled since they require agencies to borrow from contractors at high interest rates in exchange for services. This form of contracting has been criticized for locking agencies into long-term contracts that prevent shifting to superior contract or in-house options. Moreover, according to Ms. Styles' own testimony, although in existence for more than 25 years, share-in-savings contracts have not produced any savings.

A contractor lobbyist, who is close to the bill's House sponsor, had touted the bill in testimony on the basis of a share-in-savings contract at the Department of Education (DoEd). It wasn't until recently that an Inspector General (IG) investigation determined that DoEd's experience with share-in-savings was actually disastrous. According to the IG, "Performance measures were so inadequate that it could not be determined if the contractor was in compliance with the terms of the contract. There was no annual comparison of costs under the agreement to an outside market to determine whether the agreement actually provided the "best value". Even more alarming, an overstated baseline "create(d) a larger contractor payment than is actually earned."

Finally, the use of share-in-savings is indisputably anti-public-private competition and clearly promotes privatizing the jobs of Federal employees without giving them a chance to compete. At the last moment, as an amendment to a popular piece of E-Government legislation, a controversial pilot program was established late in 2002 allowing agencies to undertake a handful of share-in-savings contracts. These experiments will surely be the subject of very thorough scrutiny because of the serious threat each and every one of them poses to the interests of taxpayers.

7. THE RELEVANCE OF THE REPORT FILED LAST MAY BY THE COMMERCIAL ACTIVITIES PANEL

A. Introduction

I found the Commercial Activities Panel (CAP) experience to be perhaps my biggest professional disappointment. I was naturally apprehensive about serving on a 12-member panel that was dominated by pro-contractor interests, including 4 administration representatives and 3 representatives from the contractor community. However, I chose to serve because of the assurance from Senator Carl Levin (D–MI), one of the co-creators of the panel, that the Senate Armed Services Committee would not take up a CAP recommendation that did not represent a consensus.

I could have used that assurance as an excuse to take a never-give-an-inch, hard-line approach in the panel's deliberations, but I did not. As Ms. Styles noted in her additional comments to the CAP report, "I commend the willingness of the four panel members that did not vote in favor of the final report to seriously and thoughtfully consider significant changes to the process for public-private competition. Indeed, I agreed with several elements of the counter proposals initiated by these panel members."

You read that last sentence right. There were actually several important points, at least at that point in time, on which AFGE and OMB might have been able to establish a basic consensus. (Please see Appendix I for one consensus proposal discussed by AFGE and OMB.) Unfortunately, Ms. Styles' willingness to look for common ground was, alas, not shared by the other seven members of the majority, and the final result was a harshly polarized panel that could agree on only 10, vague and often vapid principles and disagree sharply on the actual recommendation.

I found the experience so professionally disappointing because the panel constituted a wasted opportunity. If both sides to this important public policy question had been more equitably represented, I believe the outcome could have been different. Similarly, even with a pro-contractor majority, I think a more satisfactory outcome might have been achieved if there had been a realization that a recommendation providing for incremental change with broad support was better than a recommendation for radical change with the support of only the majority.

I understand that there will be an effort to reassemble the panel in May to examine what it has wrought. Unfortunately, for those who wax nostalgic, there is far less to the CAP's legacy than meets the eye. The panel's report has faded into irrelevancy, with OMB officials using the parts in the A–76 rewrite they like and coldly discarding the parts they don't like. To be perfectly honest, had there never been a CAP, OMB's A–76 rewrite wouldn't look any different. It was clear from the

start that OMB officials knew what they wanted to do; they didn't look to a panel of outsiders for direction.

That being so, I commend the chairman for doing the best he could with a very difficult assignment. I also appreciated the opportunity to discuss important public policy issues with such a distinguished group of Americans. While we were unable to agree on a recommendation, nobody can say we didn't try to work together in an ultimately unsuccessful attempt to reconcile our very serious differences.

In any event, would anyone be surprised if a bunch of contractors and their friends in an avowedly pro-contractor administration got together and came up with a recommendation for making the service contracting process even more biased in favor of contractors? Of course not.

That's exactly what happened. The CAP, with a solid majority of pro-contractor representatives, quite naturally served up a recommendation that would benefit contractors, switching from an objective, cost-based public-private competition process to an explicitly subjective one based on the FAR, known as "best value". The members of the pro-contractor majority were unable to change the mind of any panelist that did not join the CAP sharing their point of view. Of course, that won't stop some from touting the pro-contractor panel's pro-contractor recommendation as one that would, in the words of one contractor panelist, "offer a path to the development of sound sourcing policies for the Federal Government."

Well, they have their work cut out for them. After all of that time and all of that money, the panel did little more than dust off a FAR-based "best value" proposal that has been on contractor wish-lists for years, one which had even been categorically rejected by the Clinton administration just 4 years ago when contractors strove, unsuccessfully, to attach it to the defense authorization bill. Anyone who has watched the crisis in Federal service contracting grow over the last 10 years knows that the Clinton administration was aggressively pro-contractor, and that its officials were completely possessed by the spirit of "acquisition reform." However, even Clinton administration officials, as eager as they were to cater to contractors and experiment with procurement procedures, wanted nothing, absolutely nothing, to do with FAR-based public-private competitions, and FAR-based "best value" public-private competitions in particular.

I was quite surprised by the contention made in last year's House Readiness Subcommittee hearing on the CAP report that the panel did not disproportionately represent pro-contractor interests. Only three members of the panel were specifically dictated for membership by the statute which established the CAP: the Comptroller General or his designee, a DOD official, and an OMB official. The other nine panelists were chosen at the discretion of the Chair.

Panelists from the Bush administration (4)
E.C. Pete Aldridge, DOD (required appointment)
Kay Coles James, Office of Personnel Management (discretionary appointment)
Angela Styles, OMB (required appointment)
Stephen Goldsmith (discretionary appointment)

Stephen Goldsmith, a discretionary appointment, is identified on the CAP report's inside cover as being the Senior Vice President of Affiliated Computer Services. Not until the Appendix J is it revealed that Mr. Goldsmith "served as chief domestic policy advisor to the George W. Bush presidential campaign." The truth is, actually, a little more interesting. Mr. Goldsmith has been frequently mentioned as an appointee to a senior position in the Bush administration, often the Deputy Director for Management at OMB, which is responsible for outsourcing policy. In fact, Mr. Goldsmith, as a Bush campaign official, was the principle designer of the outsourcing policy currently being pursued by the Bush administration. Moreover, as the Mayor of Indianapolis, Mr. Goldsmith privatized nearly 70 public services, and was a fervent supporter of the anti-taxpayer policy of privatization-in-place, which has even been criticized by the GAO. While still mayor, Mr. Goldsmith testified in favor of the Freedom From Government Competition Act, a measure so replete with pro-contractor pork-barrel that it was eventually emphatically rejected by Republicans and Democrats alike. Therefore, it can be said that Mr. Walker actually picked four representatives from the pro-contractor Bush administration, only two of them required by statute.

Panelists from the Contractors (2)
Stan Soloway, Professional Services Council
Marc Filteau, Johnson Controls
Additional Pro-Contractor Panelist (1)
Frank Camm, Rand Corporation

Mr. Camm, as discussed in his own biography in Appendix J, is an employee of the Rand Corporation, known informally as "DOD's Think Tank," and has advised

DOD for most of the last quarter-century about how "to improve services acquisition policy." For example, in his Rand monograph "Expanding Private Production of Defense Services," Camm opines that "Current DOD contracting practice severely limits DOD's ability to follow the commercial move toward increased outsourcing. Contracting reform could help DOD overcome a number of important barriers to expanded outsourcing." Interestingly, in the comprehensive 55-page pro-contractor paper, Camm wrote virtually nothing at all about public-private competition. When he did mention the prospect of allowing DOD civilian employees to compete in defense of their jobs, however briefly, he quickly dismissed public-private competition as "a tricky game (which) often fails."

Mr. Chairman, AFGE has never contended that the 7 pro-contractor panelists appointed by Mr. Walker to the 12 member-CAP, only 2 of whom were specifically required by statute, were unqualified, failed to conduct themselves honorably, or neglected to aggressively represent pro-contractor interests. Nor has AFGE contended that Mr. Walker was prevented by statute from exercising his discretion to impose a pro-contractor majority on the panel. Reasonable people can disagree about whether the use of discretion was consistent with the statute's requirement to ensure "fair representation." There is, however, one point on which reasonable people absolutely cannot disagree: that discretion was used to impose a pro-contractor majority on the panel. Consequently, nobody should be surprised that the CAP produced a pro-contractor recommendation.

B. How the CAP report should be characterized

At a House hearing last year, the CAP Chairman said that there were only two "primary differences" between the panel's majority and minority. However, of the two differences mentioned, one is misstated and the other is minimized. As for all of the differences omitted, more later.

1st "Primary Difference": ". . . the recommendation as to whether or not cost should be the driver for all competitive sourcing decisions. The cost is important, but cost is not everything."

This is not now nor has it ever been the position of the minority. Any well managed cost-based competitive process, including OMB Circular A–76, explicitly takes into account quality and reliability. AFGE has contended that agencies should be able to decide what services they want, determine whether the offerors can provide the services they want, and then decide in favor of the offeror who can do that work for the least cost to the taxpayers. This allows agencies to secure the highest quality services at the lowest possible prices. It is not making "cost everything."

2nd "Primary Difference": "Second, the number of times that Congress should be required to act in order to deal with this issue."

This is a misleading reference to the fact that the minority insisted that any alternatives to the traditional public-private competition process be tested and evaluated before being implemented, preferably with the involvement of Congress. The majority demanded that the controversial and unprecedented FAR-based "best value" process be implemented "immediately" for every single agency other than DOD—without any involvement on the part of Congress—and that Congress "immediately" pass legislation for DOD to implement a FAR-based "best value" process, which has been repeatedly rejected by Republican and Democratic administrations as well as Republicans and Democratic Congresses. Well, that's a rather significant difference.

We would also like to take the opportunity to review the proposals formally submitted by AFGE during the panel's deliberations.

1. Ensure the rigorous application of cost accounting standards. Result: Included in Principles, but not the Recommendation.
2. Allow agencies to use capital budgeting, like businesses and many state governments. Result: Rejected.
3. Forbid the use of privatization-in-place, a controversial mechanism that has even been criticized by GAO. Result: Rejected.
4. Expand the Army contractor inventory to include all of DOD, given the principle ostensibly designed to ensure that inherently governmental work is performed by Federal employees. Result: Rejected.
5. Ensure the viability of an effective in-house workforce, using the 50/50 depot maintenance safeguard as a precedent, given the failure to prevent DOD from managing its workforce with arbitrary personnel ceilings, which has resulted in what GAO calls a "human capital crisis." Result: Rejected.
6. End the abuse of arbitrary personnel ceilings. Result: Included in Principles, but not the Recommendation.
7. End the Native American direct conversion authority, given the majority's ostensible opposition to contracting out without competition. Result: Rejected.

8. Actually treat agencies like businesses and allow Federal employees to bargain over wages and benefits. Result: Rejected.

9. Strengthen the requirement to consult with bargaining unit employees during a competition, conversion, or privatization situation. Result: Accepted, but only in the context of a competition, despite the fact that much contracting out occurs without the work actually being competed.

10. Enforce the law requiring DOD to consider bringing work back in-house. Result: Rejected.

11. Repudiate the use of the OMB outsourcing quotas. Result: Accepted in Principles, but not the Recommendation; already repudiated by the administration and its contractor allies.

12. Eliminate the use of direct conversions. Result: Rejected, notwithstanding much rhetoric about the importance of public-private competition.

13. Strengthen the civilian acquisition workforce. Result: Rejected.

14. Ensure that contractors are as accountable to the American people as Federal employees (e.g., Freedom of Information Act). Result: Rejected.

15. Borrow the TRAC Act's comprehensive and reliable cost-tracking processes, given GAO's assertion, as part of its "high risk" series, that "DOD continues to experience significant challenges relating to contract management, including improving oversight and accountability in the acquisition of services. . ." Result: Rejected.

16. Fix the holes in the Service Contract Act, which have nothing to do with its enforcement, that leave more than two-thirds of the Federal contractor workforce unprotected. Result: Rejected.

17. Provide Federal employees and their unions with standing, just like contractors. Result: Explicitly accepted only for Federal employees, not their unions.

18. Exclude wages and benefits from the competition process so that it concentrates on staffing levels and delivery methods. Result: Rejected.

In summary, 13 of AFGE's common-sense recommendations were rejected, period. Two AFGE recommendations were accepted, albeit very incompletely. Two other recommendations were included only in the principles, but not the report's all-important recommendation. One recommendation was included in the principles, but not the report's recommendation, and has already been repudiated by the administration and the contractors.

It was said by the chairman at last year's House Readiness Subcommittee hearing that "the one thing I can tell you for sure is that the A–76 process does not meet the principles agreed to by the panel. It does not meet it."

While AFGE's testimony deals with this in much greater detail later on, we are compelled to correct this contention in an abbreviated fashion at this point of our testimony. First, the majority claimed that A–76 was too complicated. However, as proof, they could only point to a higher sustain rate for A–76 proposal protest decisions than for proposal protests generally. Unfortunately, that conveniently ignores the fact that the circular, as an objective process, is eminently easier to litigate against than the FAR because the latter process' subjectivity places most agencies' decisionmaking beyond judicial review.

Then the majority contended that A–76 was unequal and unfair. Again, however, they could only point to one example of the circular being inequitable and then admitted that the problem, to the extent it actually was one, could easily be corrected, and, indeed, included such a fix in the report's recommendation.

Finally, they turned their attention to A–76's "best value" process. Unable to produce even a single example of how the circular's "best value" process had kept an agency from improving the quality of its services, the majority nonetheless insisted that the process was an abomination because it had been litigated—even though the replacement process it was recommending had also been litigated. So, after giving the majority its best shot and making the one minor change included in the report, A–76 does in fact meet the principles because it easily qualifies as a "clear, transparent, and consistently applied process."

During the House Readiness hearing, the argument in favor of a FAR-based "best value" process was summed up as follows: "You've got to have a process that everybody knows what the rules of the ballgame are before you get started, including what the weighting is going to be on various factors. You need to have appropriate appeals processes to qualified, independent third parties who don't have a vested interest in the result. Now, the panel recommendation, in conjunction with the integrated FAR-based process, among other things, would say that since Federal employees would be competing heads up with private sector entities that they should have, not only know what the rules are up-front, know what the criteria up-front, they should have the right to appeal the GAO if for some reason they believe they have been harmed. Now, we are a qualified independent third party. They don't have that right now."

Although the problems with the FAR-based "best value" process are dealt with later in AFGE's testimony, we are compelled to offer several corrections to the contentions made in those remarks. Offerors do not in fact "know the rules of the ballgame" when the offers are submitted. That's not the way the FAR-based "best value" process works. Moreover, litigation cannot control the subjectivity inherent in the FAR-based "best value" process.

1. By its very nature, the FAR-based "best value" is an improvisational process. Judges need not decide on the specific weights of the technical/cost factors until after the offerors have submitted their proposals. That is, while they do have to reveal whether cost or technical factors will predominate, they do not have to reveal how much more important technical (or cost) factors will count, or how much specific technical (or cost) factors will count until after proposals have been submitted. Moreover, the judges are not obligated to reveal all subfactors related to the solicitation if they can argue that the offerors should have known of their existence.

2. By its very nature, the FAR-based "best value" process is a subjective process and judges include explicitly subjective and even unnecessary factors. Moreover, the FAR-based "best value" process includes no rules, standards, or guidelines for the use of subjective factors.

3. By its very nature, the FAR-based "best value" process encourages doubt and uncertainty as to what the agency is attempting to buy until after the offers have been submitted. In fact, judges actually award points to offerors for exceeding the requirements set forth in the solicitation, which is why a FAR-based "best value" process has historically been a burden on taxpayers.

4. By its very nature, the FAR-based "best value" process gives judges extensive discretion over the process, from beginning to end, and the standards of review established by the Comptroller General are difficult to overcome. That's the principle reason why the GAO's docket has been more than halved in less than a decade. Consequently, litigation cannot control the subjectivity in the FAR-based "best value" process. Moreover, the CAP report explicitly endorsed standing only for Federal employees, not their unions. It is unrealistic to think that the working and middle class Americans who make up the Federal employee workforce could pool sufficient resources to take on the corporate contractors, without the coordination of their unions.

C. The case made by the CAP's majority

The essence of the CAP report is the recommendation that OMB Circular A–76 be replaced by an unprecedented FAR-based "best value" public-private competition process. Rather than make an enthusiastic case for a FAR-based "best value" process, or to address the multitude of criticisms that have been leveled against the FAR-based "best value" process (because of how it has been used and abused in private-private competitions), the panel's majority contented itself with merely bashing A–76.

As the OMB witness noted at the House Readiness hearing, "There needs to be some recognition that there are problems in the private-private system for competition and FAR based competitions. It's not a perfect system and we may be exacerbating some of the problems when we try to apply the FAR based system private-private competitions to public-private competition."

This blinkered approach was obviously to the advantage of the majority. Although the essentially unchecked subjectivity that is intrinsic to the FAR-based "best value" process has been as documented as it has been criticized, that process has not been used for public-private competitions. Such cannot be said of OMB Circular A–76. Of course, any public-private competition process would be a lightning rod for criticism because so much is at stake with respect to Federal employee jobs and contractor profits, whether it is called A–76, Z–67, or "best value".

Let us examine the criticisms, one by one, leveled against OMB Circular A–76 by the panel's majority.

1. "Complicated Process"

The majority insists that A–76 is an unduly complicated process. Only one "fact" is offered in support of this assertion: although the vast majority of A–76 decisions are not protested, the GAO's sustain rate for the handful of A–76 decisions that are actually contested is higher than the GAO's sustain rate for protests overall.

However, that is an apples-to-oranges comparison. Because it is an intrinsically subjective process, it is difficult to successfully challenge agencies' decisions in the context of the FAR. As noted by Mr. Marshall Doke, Jr., the distinguished conservative legal scholar,

> "The discretion granted to agencies in the selection process precludes an effective policing system. The Comptroller General, for example, generally reviews agency decisions in the source selection process only to see if they have any reasonable basis and are consistent with the solicitation. This standard of review applies to determining requirements, minimum needs, evaluation of proposals, cost/technical tradeoffs, the source selection decision, and conflicts of interest. The Comptroller General's standards of review are even more difficult to overcome in decisions involving other issues. . ."

GAO has a higher sustain rate for A–76 proposal protests because it is a more objective process, and, thus more accountable to offerors—as long as you're a contractor, of course.

After offering that misleading comparison, the majority insists that the FAR would be an improvement on A–76 because the former constitutes a "common language." But then the majority acknowledges that several significant chunks of A–76 would have to be added to the FAR in order to allow this unprecedented regulatory hybrid to actually work. That must mean that the FAR is not such a "common language" after all, or that A–76 is more of a "common language" than the majority is willing to admit. Either way, the majority's argument clearly cannot withstand scrutiny.

There is, however, no question that agencies need to do a better job of conducting public-private competitions. There are two ways to make sure that happens: a) ensure that public-private competition before work is given to contractors actually occurs, instead of leaving it as an option, so that agencies have an institutional investment in developing the capacities to conduct efficient, effective, and expeditious competitions; and b) provide agencies' acquisition workforces with sufficient staff and training to better manage their competitions.

Unfortunately, the majority refused to close loopholes allowing work to be contracted out without any public-private competition, even the notorious loophole that allows for the direct conversions of hundreds of jobs at a time without public-private competition to any firm claiming to be 51 percent Native American owned. Moreover, the majority stubbornly opposed efforts to strengthen the Federal Government's acquisition workforce. That is, when presented with opportunities to undertake measures that would actually improve sourcing practices, the majority ran in the other direction.

2. "Inconsistent Application"

This is nothing more than a shorter version of the first point. In fact, the first sentence in the first point asks whether A–76 is a "consistently applied process." Owing to the flimsiness of its arguments, perhaps the majority felt the need to pad its case by making some of its points more than once.

3. "Unequal and Unfair"

After acknowledging that differences are not necessarily inequities, the majority insists that in some A–76 competitions one set of evaluators reviews the private-sector offerors while another set of evaluators reviews the in-house proposal, and that this might result in the inequitable application of standards.

The majority offers no evidence to suggest that a protest is more likely to be sustained when two different sets of evaluators are used on an A–76 competition. Therefore, it cannot even be said that this difference is actually an inequity. Moreover, GAO has not required agencies to use the same evaluators to review both proposals and on more than one occasion specifically upheld the use of different evaluators (in the absence of a showing that any of the evaluators' conclusions were unreasonable or inconsistent with the solicitation).

Among the majority's recommendations for reforming A–76 is one that calls for ensuring that "at least one individual" review "both the MEO (Most Efficient Organization) and private-sector proposals." That is, correcting the single example identified by the panel's majority of how A–76 is "unfair and unequal"—although in truth it can't be said that it is an inequity at all—is that simple.

4. "Inadequate Support for Employees"

That DOD civilians feel beleaguered has nothing to do with the circular and everything to do with the Pentagon being staffed by officials who are determined to divest hundreds of thousands of their jobs, regardless of the cost and regardless of the impact on military readiness. Even worse, the majority's sympathy for Federal employees is being used to justify replacing A–76 with an even more pro-contractor process.

5. "Conflicts of Interest"

This point is almost as disingenuous as the previous point. Here's a news flash for our friends who make up the panel's majority: conflict of interest is a part of

Federal service contracting, period. To single out OMB Circular A–76 for criticism because there is a possibility for conflicts of interest is like saying that only politicians from Idaho like to hear the sound of their own voices, or that only journalists from the print media prefer colorful controversy to complicated substance.

GAO attorneys know this very well, as the Comptroller General has had to adjudicate conflict of interest cases in the FAR involving, among other issues, the composition of evaluation boards, bias, and bad faith. To his credit, even Mr. Mark Filteau, a member of the majority, acknowledged, in his additional remarks, that "Public-private competitions under a FAR-type process, that allow for negotiated "best value" decisions open new dangers for conflicts of interest for source selection personnel."

In contrast, the only conflict of interest scenario cited by the majority in the panel's report specific to OMB Circular A–76, where employees whose positions were under study were also participating in the evaluation process, has, according to the majority, already been corrected.

If only it were so easy to fix the conflict of interest problems that are intrinsic to the FAR. Because Government agencies enjoy broad discretion in the selection of evaluation factors and in the determination of the relative weight of those evaluation factors and in the use of subjective and unnecessary evaluation factors, and because, as noted earlier, the intrinsic subjectivity of the FAR leaves agencies' broad discretion beyond judicial review, the possibility for conflicts of interest are dramatically multiplied.

6. Cost/Technical Tradeoffs

The majority insists, repeatedly and stridently, that agencies cannot make qualitative improvements in services without resorting to a FAR-based "best value" process. Interestingly, in the report itself and in the additional remarks of all eight members of the majority, no instances were cited where an agency was deprived of the opportunity to make the qualitative improvements it sought—as opposed to those being touted by contractors' salespersons—because of OMB Circular A–76.

Even in the absence of a reliable and comprehensive system to track the cost and quality of individual contracting efforts, we all know of service contracts that have gone horribly wrong, through poor performance or increased costs. The absence of even a single A–76 quality "horror story," despite the combined resources of OMB, DOD, and the contractors leaves the objective reader to draw just one conclusion: the shift to a FAR-based "best value" process is based on the majority's determination to impose a more pro-contractor process, rather than an effort to improve the quality of Government services.

The only documented objection to the A–76 "best value" process included in the report by the majority was that "GAO has sustained protests where it was alleged that an agency failed to implement it fairly (or at all)." (Indeed, in Appendix D, a review of recent A–76 litigation, a handful of cases were identified in which GAO sustained a protest against the use of the A–76 "best value" process. In other words, the errors were rectified in the few instances when the A–76 "best value" process was used incorrectly.) This is a particularly weak and unenlightening criticism. Unlike in the first point, the majority is not contending that the sustain rate for A–76 "best value" proposal protests is higher than the GAO's sustain rate for proposal protests overall. For all we know, the use of A–76 "best value" may better withstand appellate scrutiny than the FAR, which would be quite an accomplishment considering that the subjectivity in the FAR leaves most agency decisionmaking beyond judicial review.

AFGE would like to single this point out as a particularly unfortunate example of the "Alice in Wonderland" reasoning employed so often in the report by the majority. As mentioned earlier, the A–76 "best value" process is portrayed as vaguely suspect because the GAO has sustained protests related to its use. In the preceding paragraph, the majority blithely asserts that protests related to the use of the FAR which had been sustained are testimony to the strength of the FAR. In other words, when the FAR is found by GAO to have been used in error it is good; but when the A–76 "best value" process is found by GAO to have been used in error it is bad. Curiouser and curiouser, indeed.

The majority writes that "Tradeoffs are widely credited with getting the Federal Government past the 'low proposal' mentality of the past, and with increasing consideration of factors such as quality and past performance."

AFGE cannot let this canard pass without comment, especially given the inability of the majority to provide a single example of an agency being denied an opportunity to improve the quality of its service through an OMB Circular A–76 "best value" competition. Under any well-managed cost-based process, any agency can conduct a competition that leads to qualitative improvements while still being decided on the basis of costs—without opening up the process to the corrupting subjec-

tivity of FAR-based "best value". An agency can simply identify the standards it needs by including them in the solicitation. If the offerors can realistically perform the work, then they are allowed to compete on the basis of costs. This is an objective process that is driven by agencies' actual needs, not whatever gold-plated bells and whistles are being touted that day by contractors' sales staff.

Mr. Doke puts it far more pithily and pungently:

> "It is a popular misconception that a low price means low quality. If you are buying or selling gold and specify 98 percent purity, the price is irrelevant to quality if you specify the purity required, inspect to assure the product conforms, and reject any nonconforming products." (Emphasis original)

What Mr. Doke says about products is equally true of services.

7. "Protest Rights"

This is yet another disingenuous gripe about the circular, particularly so in that it uses the obvious inequity of Federal employees and their unions being denied the same legal standing enjoyed by contractors as an excuse to recommend replacing A–76 with a more pro-contractor public-private competition process. There is nothing in OMB Circular A–76 that would prevent Congress from taking action that would give Federal employees and their unions legal standing. That Federal employees and their unions don't have such standing cannot be attributed to the circular itself.

8. "Time and Money"

The panel's majority criticizes the circular because the competitions conducted under its rules take too long. Only after a protracted behind-the-scenes struggle did the majority relent and reluctantly, very reluctantly, agree to include this admission in its report: "Whether and to what extent FAR-based public-private competitions would be faster than A–76 cost comparisons is unknown." (Historically, FAR-based "best value" competitions take longer, sometimes significantly so, than FAR cost-based competitions.)

In other words, after all of this effort, the majority has served up a recommendation that is not an improvement—indeed, it may well be a step backwards—on the one widely-acknowledged flaw in OMB Circular A–76. Even at its debut when its advocates are in full flack mode and it is unsullied by experience, the majority cannot deny that the FAR-based "best value" competition process may take longer and thus cost more than competitions currently conducted under the circular.

As discussed earlier, the key to conducting more expeditious public-private competitions, regardless of what process is used, is by making competition prior to conversion to contractor performance a sure thing instead of an option, as it is today, and by strengthening the acquisition workforce through increased staffing and the provision of training.

The majority makes two points here that deserve responses.

Concern is expressed over the money required to complete an A–76 competition. What the majority does not address here or elsewhere in the report is that contracts entered into under a FAR-based "best value" competition process historically cost more for the taxpayers than if the contracts had been undertaken as part of a FAR-based cost competition process. I know I wasn't asked, but I have, all modesty aside, crafted the perfect advertising slogan for the introduction of a new competition process:

FAR-BASED "BEST VALUE"—COSTS MORE/TAKES LONGER

No wonder the majority didn't want to see their controversial recommendation tested before it was implemented!

The majority also expressed concern about the impact of A–76 on small businesses. What the majority does not address here or elsewhere in the report is that small businesses have historically had very strong objections to the use of the FAR. As Mr. Doke writes:

> "One of the most serious erosions of competition (and perhaps the most subtle) has been the adverse impact of current procurement practices on small business concerns and minority enterprises. . . It is relatively easy to eliminate small business concerns from competition merely by including responsibility-type evaluation factors in the solicitation and then comparing the small business concern's capabilities with much larger, more experienced companies (even if the greater capabilities or resources of the large businesses exceed the Government's actual needs). . . The effective elimination of small business concerns from competition excludes numerous qualified competitors and creates a subtle restriction on competition to larger, over-qualified competitors without justifying that such a restriction is necessary to meet the Government's actual needs. . ."

That is, the majority's recommendation would disadvantage both Federal employees and small contractors in order to advance the already considerable interests of the large contractors.

"Other Concerns"

It is difficult to know what to make of this section, an unfocused stream-of-consciousness-style discussion by the majority of issues and concerns that are actually unrelated to OMB Circular A–76.

". . . (O)ne concern raised by several witnesses before the panel, as well as by a number of panelists, was that an agency should always strive to be the most efficient organization possible, and not wait until an A–76 cost comparison to begin those efforts." AFGE would heartily agree that agencies should strive every day to hit their MEOs—without having to wait for an A–76 competition. That some don't because they lack enlightened management or sufficient resources cannot be blamed on the circular.

The majority asserts that the Federal Government should employ human capital strategies necessary to recruit and retain a "high-performing workforce." Of course, the imposition of a subjective FAR-based public-private competition process that makes it easier to contract out work for reasons other than merit will only make it harder for the Government to recruit and retain a qualified workforce.

The only work done by the majority in relation to "human capital" is the High Performing Organization (HPO) concept, which was reportedly important to the panel's chairman. Of course, the HPO part of the recommendation had to be scaled back significantly in the face of strong opposition from the contractor and the OMB panelists. As mentioned earlier, the administration has expressed no interest in following up on the part of the majority's recommendation to establish HPOs, even on the very "limited" basis called for in the report. Therefore, it can be said that the CAP report does next to nothing to improve the Government's ability to recruit and retain a capable workforce; and in exacerbating the crisis in Federal contracting by recommending the imposition of a more pro-contractor public-private competition process, the panel will only worsen the related "human capital crisis."

The section ends with a wordy tribute to the "innovative (human capital) initiatives that are common today in the commercial sector." Unfortunately, the very last time sustained attention was paid to the status of the contractor workforce in a particular industry Congress and the President found the situation so abhorrent and contrary to the public interest that they effectively nationalized the industry. I am referring, of course, to the federalization of airport screening. Virtually all participants in that debate, regardless of their political affiliation or position on the ideological spectrum, agreed that the failure of contractors to provide workers with decent pay, benefits, protections, and advancement opportunities constituted an intolerable contractor "human capital crisis." It is highly unlikely that the "human capital crisis" in the contractor workforce is limited to airport screening. Unfortunately, the extent of the "human capital crisis" in the contractor workforce is shrouded in secrecy because of poor contract administration and contractors' opposition to even the most basic efforts to determine what work contractors are performing and how much they cost. It should be noted that the majority opposed any effort to document the "human capital crisis" in the contractor workforce and take remedial measures to correct this crisis.

Summary: As the foregoing made clear, the majority was unable to make a case for junking OMB Circular A–76, let alone for replacing it with a controversial, unproven, and subjective FAR-based "best value" public-private competition process.

1. "Complicated Process": This argument is flawed in that it relies on a misleading apples-to-oranges comparison.

2. "Inconsistent Application": This redundant argument is merely a restatement of the flawed first argument.

3. "Unequal and Unfair": The majority identified only one concern, although no documentation was provided to show that it actually is a problem. To the extent it is a problem, the majority acknowledged elsewhere in the report that it could easily be corrected.

4. "Inadequate Support for Employees": This is indeed a problem, but it has everything to do with the service contracting process being stacked against Federal employees, rather than a flaw intrinsic to A–76.

5. "Conflicts of Interest": This is a problem for the entire Federal service contracting process. Singling A–76 out for criticism on this score is manifestly mindless. Indeed, the majority acknowledged that the one identified conflict of interest problem related to A–76 has already been corrected.

6. "Cost/Technical Tradeoffs": The majority never bothered to demonstrate how the A–76 "best value" process had denied agencies opportunities to improve the

quality of their services. The majority could identify only one concern with the A–76 "best value" process: that the GAO had sustained protests against its use. However, the majority could not say that the sustain rate for A–76 "best value" protests is higher than the sustain rate for protests generally, i.e., that it actually is a problem. Moreover, the majority used disingenuous reasoning in insisting that sustained protests against the FAR were a sign of strength whereas sustained protests against A–76s "best value" process were a sign of weakness.

7. "Protest Rights": There is nothing in OMB Circular A–76 that would prevent Congress from providing Federal employees with the same legal standing that is possessed by contractors. The problem is that Congress has not passed the necessary legislation.

8. "Time and Money": The majority acknowledged that its recommended alternative may be slower and thus cost more than A–76.

It must also be noted that in most cases the imposition of a FAR-based public-private competition process would exacerbate most of the concerns identified by the majority, particularly with respect to conflicts of interest. Moreover, with respect to efforts to address concerns identified by the majority that were actually common to Federal service contracting generally, instead of A–76 specifically, the majority ignored efforts by the minority to recommend genuinely remedial measures, even including such seemingly non-controversial recommendations as improving the acquisition workforce, strengthening conflict of interest rules, and ensuring that public-private competitions are always conducted before work is given to contractors.

D. The CAPs 10 sourcing principles

Much is made by the panel's majority of the fact that one part of the CAP report—indeed, the only part of the CAP report—received unanimous support from the panel: the so-called sourcing principles. Unfortunately, there is much less to this unanimity than meets the eye. In some instances, the principles are so bland and soporific as to be almost meaningless. In other instances, the principles were not incorporated into the recommendations. That is, the majority played a classic game of bait-and-switch, asking the minority to support certain principles in order to provide the panel with a respectable air of unanimity while crafting a narrow and parochial recommendation that failed to pay even lip service to the principles. In still other instances, the majority's recommendation flatly contradicts the principles. In several cases, the administration has already indicated that it will defy the principles that its representatives on the panel supposedly supported.

1."Support agency missions, goals, and objectives."

This is almost too bland to bother discussing. How a narrowly-focused recommendation to replace OMB Circular A–76 with a subjective FAR-based "best value" process can even be remotely construed to "support agency missions, goals, and objectives" is unclear.

For example, does a recommendation that would greatly increase contracting out of services without in any way enhancing agencies' abilities to track the cost and quality of the services performed by the Federal Government's ever-increasing contractor workforce "support agency missions, goals, and objectives?" Does a recommendation that does nothing to keep agencies from managing their in-house workforces by arbitrary personnel ceilings "support agency missions, goals, and objectives?" Does a recommendation that does nothing to ensure that Federal employees will actually be allowed to compete for new work or contractor work "support agency missions, goals, and objectives?" Of course not. Those are just three examples.

2. "Be consistent with human capital practices designed to attract, motivate, retain a high-performing Federal workforce."

A small part of this principle was actually incorporated into the report's recommendation, specifically the call for agencies to provide Federal employees with assistance from and access to management during the competition process. Of course, 10 U.S.C. 2467 already deals with such matters in large part, and, unlike the panel's approach, explicitly allows for the involvement of the employees' union representatives.

For the most part, however, this principle was not incorporated by the majority into the report's recommendation. The commentary to this principle insists that agencies should consider the impact of outsourcing on recruitment and retention and that the workforce should be treated as "valuable assets." In light of the Pentagon's adoption of a policy of divestiture of non-core work, i.e., giving it to contractors without any consideration of the impact on cost or readiness, can it be said that DOD civilian employees are viewed as "valuable assets?" Clearly, the Pentagon's acquisition executives, the vast majority of whom come from the contractor commu-

nity, view the department's civilian employees as thoroughly dispensable and couldn't care less about the impact of wholesale privatization on the department's ability to recruit and retain employees. In fact, the department has no interest in recruiting and retaining civilian employees, period. Mr. Ray Dubois, the Deputy Defense Under Secretary, in an article in the March 4, 2002, edition of Federal Times, said that "When public employees retire, they're [going to be] replaced with private sector employees. . ." DOD has no intention of even replacing the part of the workforce that leaves through normal attrition, let alone recruiting new employees.

While the policies of divestiture and no additional in-house hiring are too outrageous to even be endorsed in the CAP report, the panel's majority knows that DOD is pursuing these policies—and refused any effort to use the report to address them, let alone call unambiguously for their reversal. In fact, the majority refused to include in the panel's recommendation any reference to ending the use of the arbitrary personnel ceilings that were so instrumental in bringing on the "human capital crisis" although a foundation for such easy and obvious language was provided by Principle #6.

It is surely self-evident that enlightened human capital practices are fundamentally in conflict with the widespread practice of privatizing work performed by Federal employees in order to lower workers' wages and reduce their benefits.

It is well-established that contracting out has been used in the private sector and in the non-Federal public sector to shortchange workers on their pay and benefits. It is likely that this pernicious practice exists at the Federal level as well. In 1998, at the request of AFGE, Representatives Steve Horn (R–CA) and Dennis Kucinich (D–OH) asked the GAO to examine the pay and benefits of the Federal service contractor workforce. Congressional auditors, however, came back empty-handed: agencies couldn't be helpful because they did not keep the relevant information and contractors did not respond to surveys. A survey conducted by GAO in 1985 of Federal employees who were involuntarily separated after their jobs were contracted out revealed that over half "said that they had received lower wages, and most reported that contractor benefits were not as good as their Government benefits."

The Economic Policy Institute (EPI), in a ground-breaking 2000 study, has determined that more than 1 in 10 Federal contractor employees earn less than the "living wage" of $17,000 per annum, i.e., the amount of money necessary to keep a family of four out of poverty.

> "The Federal Government saves money by contracting work to employers who pay less than a living wage ($8.20 per hour). Even the Federal Government jobs at the low end of the pay scale have historically paid better and have had more generous benefits than comparable private sector jobs. As a result, workers who work indirectly for the Federal Government through contracts with private industry are not likely to receive wages and benefits comparable to Federal workers. . ."

Contractors ritualistically invoke the Service Contract Act whenever the human toll from service contracting is raised. However, EPI's research reveals the very limited reach of prevailing wage laws.

> "In 1999, only 32 percent of Federal contract workers were covered by some sort of law requiring that they be paid at least a prevailing wage. . . But even this minority of covered workers is not guaranteed a living wage under current laws. For example, the Department of Labor has set its minimum pay rate at a level below $8.20 an hour for the workers covered by the Service Contract Act in 201 job classifications."

GAO has been unable to determine the extent to which contracting out undercuts workers on their wages and benefits. Despite its pioneering work in this area, EPI acknowledges that:

> "Further research, such as a survey of contracting firms, is needed in order to know more about these workers and their economic circumstances."

The majority refused to address this issue in any meaningful way, whether conducting a study to determine the extent to which contractors provided their workers with inferior compensation or removing wages and benefits from the competition process so that the Federal and private sectors could compete on the basis of staffing levels and service delivery techniques, instead of how fast the contractors could transform the working and middle-class Americans in the Federal workforce into a poorly-paid contingent workforce with few if any benefits or protections. The majority never challenged the reliability of the EPI report. However, the only concession the majority would make is to call on agencies, in Principle #10, to make sure that the Service Contract Act is enforced. Of course, as the EPI report made clear, that law is irrelevant to the vast majority of contract workers.

3. "Recognize that inherently governmental and certain other functions should be performed by Federal workers."

So what? It is commonly acknowledged by even senior administration officials that inherently governmental work has been privatized. In a December 26, 2001, memo to OMB asking for relief from the onerous outsourcing quotas, Under Secretary for Acquisition, Technology, and Logistics Pete Aldridge, also a CAP member, wrote that "a reassessment may very well show we have already contracted out capabilities to the private sector that are essential to our mission. . ."

It was reported in a November 5, 2001, posting on GovExec.com that "certain agencies have outsourced too many jobs and should consider bringing work currently done by contractors back in-house, the Bush administration's top procurement official said last week. Angela Styles, Administrator of the Office of Federal Procurement Policy in the Office of Management and Budget, (also a CAP member,) said that some agencies have sent so much work to the private sector that they are unable to provide effective oversight of the contracted work."

Of course, Federal agencies don't know how much they spend on service contracting, how many service contractor employees are indirectly on their payrolls, or even what work these contractors are actually performing. What we do know is that agencies have contracted out inherently governmental work. The absence of a reliable and comprehensive tracking process prevents us from knowing which inherently governmental work has been contracted out.

Moreover, as times change, so do perspectives. Just as work that had once been considered inherently governmental can become commercial, work that had once been considered commercial can become inherently governmental. Indeed, airport screening is an excellent example of work that had once been considered commercial but has since become inherently governmental. Again, however, there is no comprehensive and reliable process—indeed, there is no process at all, let alone one that is comprehensive and reliable—to track work performed by contractors to determine whether changing times demand that it be redesignated as inherently governmental so that it can be performed by reliable and experienced Federal employees.

In the panel's commentary for this principle, it is said that "(c)ertain other capabilities . . . or other competencies such as those directly linked to national security, also must be retained in-house to help ensure effective mission execution." Although far too narrowly stated, this is an excellent point. That is, commercial functions can be contracted out to such an excessive extent that it undermines the Government's ability to perform its work. However, if agencies aren't tracking contractors' work, how do they know when too much commercial work has been contracted out?

Therefore, it is meaningless to say that Federal employees ought to be performing inherently governmental work and certain other work if there is no mechanism for determining whether inherently governmental work is being performed by contractors or whether commercial functions have been given to contractors to an excessive extent.

AFGE and other members of the minority repeatedly recommended borrowing the methodology perfected by the Army to track the cost and size of its workforce, both specifically and globally. As the panel noted, "the FAIR Act has helped to identify commercial work being performed by the Government." Surely, any panelist who was motivated by a determination to actually fulfill the promise of this principle would have supported our efforts to provide for a comparable inventory of work performed by contractors.

In fact, the only actual contractor in the panel's majority, in an article posted on the GovExec.com website, on April 5, 2002, said that the Army inventory was both manageable and valuable. According to:

> "Mark Filteau, president of Johnson Controls, a Florida-based contractor, the changes should make it fairly easy for contractors to comply with the study. 'So long as the Army doesn't invent new categories or require cross-correlation from old contract categories to some new set of definitions, then there won't be a significant cost impact on new bids or current contracts,' he said. While noting that contractors already report on a variety of topics to the Government, Filteau praised the concept behind the study. 'Frankly, the Army ought to know what it is paying for contract labor,' he said. 'As a citizen, a taxpayer, and an all-around fan of good management practice, I support what the Army is trying to do here.'"

However, the majority not only rejected any attempt to track the cost and size of the Federal Government's massive contractor workforce, it also refused to address the important principle of what's inherently governmental, period.

But aren't inherently governmental issues the sort that a panel chaired by the Comptroller General should be considering, especially given the comments made to GovExec.com before the panel began its work? According to a June 8, 2001, posting:

> "A high-level panel reviewing Federal outsourcing policy is working to better define when and why Federal jobs can be considered inherently governmental, Comptroller General David Walker said this week.
>
> "Walker is chair of the Commercial Activities Panel, a 12-member working group that is reviewing Federal outsourcing issues. In an interview with GovExec.com, he addressed one of the most difficult aspects of outsourcing decisions: how to determine what functions must remain in-house to provide effective government. . . 'One question that has to be on the table is what is a reasonable way to go about defining inherently governmental,' he said. 'It's not well-defined today, and arguably not being consistently applied [by agencies] today.'"

On May 1, 2002, less than a year later, the GovExec.com reporter followed up on this issue, and the situation had changed:

> "Some observers were disappointed that the panel did not spend more time studying broader contracting issues, such as the rules that govern what Federal jobs are eligible for outsourcing. 'The hope is that with this process issue now out of the way we can get to the big picture,' said Dan Guttman, a fellow with the National Academy of Public Administration. 'The [panel report] looks more like an interest group battle than a discussion of issues of great public consequence.'
>
> "But most panel members weren't interested in studying the definition of 'inherently governmental' work, which by law is off-limits to outsourcing, according to Walker. 'That was not something that people felt we needed to spend a lot of time on,' he said."

Actually, members of the minority repeatedly pressed the panel to consider this issue, but met with failure. Of course, it would be foolish to expect otherwise.

With a panel overwhelmingly comprised of representatives that are either part of, or beholden to, a special interest group that is dedicated to substituting its own interest for the public interest, why would there be any interest in dealing with important questions, such as what work is inherently governmental and should always be performed by reliable and experienced Federal employees? Contrary to a contention made at a hearing last year, this dereliction was not a result of too little time; rather it was because there was no interest on the part of the majority.

4. "Create incentives to foster high-performing, efficient, and effective organizations throughout the Federal Government."

As discussed earlier, the Comptroller General attempted to incorporate this principle into the recommendation with his HPO proposal. However, due to strong opposition from other members of the majority, this proposal was significantly watered down. Moreover, the administration has no interest in HPOs. Neither the DOD nor the OPM panelists mentioned HPOs in their additional remarks. The OMB panelist did—but only to denounce them. Consequently, it can be written that although this principle was incorporated into the recommendation to a very limited extent, that part of the recommendation is already being ignored by the administration.

That's being polite, however. Actually, the majority refused efforts that would have created real "incentives for its employees, its managers, and its contractors to seek constantly to improve the economy, efficiency, and effectiveness of the delivery of Government services through a variety of means. . ." The only way to ensure that agencies actually have such incentives is by eliminating the easy out of privatization. Rather than take the time and expend the effort to reform and streamline operations internally, it's all too easy for agencies to contract out that work (along with the inefficiencies) without public-private competition, which ill serves taxpayer interests in the short-term as well as the long-term. The panel refused to eliminate the easy out of noncompetitive outsourcing, even to the point, as discussed earlier, of staunchly defending the ridiculous yet notorious direct conversion loophole for large contractors who claim to be 51 percent Native American-owned.

5. "Be based on a clear, transparent, and consistently applied process."

As we discussed earlier, the majority, in its lengthy attack on OMB Circular A–76, was unable to land even a single punch.

The majority claimed that it was too complicated. However, as proof, it could only point to a higher sustain rate for A–76 proposal protest decisions than for proposal protests generally. Unfortunately, that conveniently ignores the fact that the circular, as an objective process, is eminently easier to litigate against than the FAR

because the latter process' subjectivity places most agencies' decisionmaking beyond judicial review.

Then the majority said that A–76 was unequal and unfair. Again, however, it could only point to one example of the circular being inequitable and then admitted that the problem could be easily corrected, and, indeed, included that fix in its recommendation.

Finally, the majority turned its attention to A–76's "best value" process. Unable to produce even a single example of how the circular's "best value" process had kept an agency from improving the quality of its services, the majority nonetheless insisted that the process was an utter abomination because it had been litigated—even though the replacement process it was recommending had also been litigated. However, the majority could not say if the number of sustained A–76 "best value" process protests was proportionately greater than the number of protests sustained generally or under a FAR-based "best value" process.

So, after giving the majority its best shot and making the one minor change included in the report, A–76 easily qualifies as a "clear, transparent, and consistently applied process."

Is that true of a FAR-based "best value" process? As discussed earlier, agencies have extensive discretion over that process, from beginning to end, and the standards of review established by the Comptroller General are difficult to overcome. The subjective scoring that is intrinsic to FAR-based "best value", as Mr. Doke notes, "permits the judges to postpone deciding what they want until after the competitors have completed their participation." For example, a solicitation might indicate that the award was going to be based on technical and cost factors, and that technical factors would be more important than cost factors. However, judges are permitted to wait until after the proposals are submitted to decide how much more important technical factors will be. That is, they decide after submission of proposals to assign the specific relative weights of the technical/cost split, be they 55/45, 70/30, or some other subjectively determined ratio. That's hardly a "clear, transparent, and consistently applied process." Moreover, while agencies are required to identify all "significant" evaluation factors and subfactors in a solicitation, they are not required to identify all "areas of each factor" which may be taken into account, provided that the agency can contend that the unidentified areas are reasonably related to or encompassed by the stated criteria.

In his comments at the House Readiness hearing, the Comptroller General said, "(F)irst, if you look at the recommendations that we're talking about and come back and say that transparency is the key. I mean if you want to minimize the possibility of abuse you've got to have clearly defined criteria that are set out front. . . You've got to have a process that everybody knows what the rules of the ball game are before you get started, included what the weighting is going to be on various factors." (Emphasis added.) However, as the foregoing makes abundantly clear, the actual weighting is not made known in advance; nor are all of the subfactors which will be assigned weight identified in advance.

As Mr. Doke reports, the use of subjective or even unnecessary factors in the FAR-based "best value" process has been extensively litigated. Eyebrow-arching examples include: "creative or innovative thoughts", "visionary" approaches, the importance of the contract to the offeror, "aesthetics", "employee appearance," and the deeply strange "availability of pop-up dispensers for paper towels." Moreover, the FAR includes no rules, standards, or guidelines for the use of subjective standards. Consequently, how can the majority contend that its FAR-based "best value" recommendation would ensure that agencies use a "clear, transparent, and consistently applied process?"

Similarly, small businesses have pointed out repeatedly that competition under a FAR-based "best value" process is, reports Mr. Doke, "prejudiced because there is no statutory or regulatory guidance to limit the evaluation of responsibility factors (e.g., corporate experience, risk) to the level that is adequate for the performance of the contract." (Emphasis original.) Is that what we should expect of a "clear, transparent, and consistently applied process?"

Under a FAR-based "best value" process, agencies never actually decide what they want until after the proposals have been submitted. In fact, agencies actually award points to offerors who exceed the requirements set forth in the solicitation. This is why a FAR-based "best value" process has historically been a burden on taxpayers. Instead of agencies telling contractors what they want, a FAR-based "best value" process has contractors telling agencies what they need. With the tail wagging the dog, is it any wonder contract administration is such a mess? Mr. Chairman, if you're at all like me, I doubt you've ever walked into an automobile dealer's showroom, walked up to the salesperson with the predatory smile, and blurted out: "Tell

me everything you think I need—and I mean everything! Don't scrimp on those expensive optional extras!"

Should acquisition personnel follow developments in the private sector so they can take advantage of those elusive opportunities to improve the quality of their services? Of course. That's why AFGE and other members of the minority strongly urged the panel to recommend bolstering the acquisition workforce with additional staff and training, so that agencies can decide what they need, based on what's best for the taxpayers, as opposed to what's best for the commissions of contractors' sales staff. However, even with sufficient staff and training, there will, of course, be times when an offeror will include in its proposal additional services or features that, although not required in the solicitation, are desirable to the agency. Under the A–76 "best value" process, the agency allows the other offeror an opportunity to match the competitor's proposal, ensuring that the agency secures all of the quality it needs at the lowest possible prices. Under the FAR-based "best value" process, however, taxpayers are out of luck—as is that other offeror, even if it had submitted the lower-cost, more responsive proposal. . .

As Mr. Doke writes:

> "Competitive evaluations that award points for exceeding the Government's requirements raise real questions as to whether there is genuine competition at all. It is difficult to compete to meet the requirements, but with undisclosed evaluation plans, undisclosed and subjective evaluation factors, etc., how can there be any meaningful competition to exceed the requirements? How much more than the requirements is desired (and will be awarded points)? In what areas are additional performance or capabilities desired? What will you be competing against? Finally, how can the Government justify paying a higher price for something that exceeds its actual needs as reflected by the specification requirements?" (Emphasis original.)

Moreover, agencies need not identify the "price premiums" that are paid for contracts awarded to other than the low offeror and the specific factors for which those premiums are paid. Although the agency's negotiating memorandum normally will discuss the relative position of the proposals with respect to various factors, there is no requirement specifically to identify the reasons the evaluators considered that the higher priced proposal should be accepted. Frequently, the documentation merely reflects that the higher priced offer was rated more highly. How much of a price premium (as a percentage over the low offer) should be permitted? Similarly, there is no government reporting requirement to disclose such information under any of the many contract reports required by law and regulation. Therefore, there is no way that anyone knows how much money the agency is spending under FAR-based "best value" procurements for contracts awarded to offerors that do not have the lowest price proposal.

Clearly, the FAR-based "best value" process is not more "clear, transparent, and consistently applied process" than A–76. In his remarks at the House Readiness hearing, the Comptroller General conceded that "there's discretion in every process." Of course, the problem is that the majority recommends replacing an objective competition process that minimizes the role of discretion with an explicitly subjective process that maximizes the role of discretion.

6. "Avoid arbitrary full-time equivalent (FTE) or other arbitrary numerical goals."

This principle was never incorporated by the majority into the report's recommendation. For example, the recommendation includes no provision to abolish the infamous OMB outsourcing quotas. In fact, there is not even a reference in the recommendation to elimination of the pernicious practice of managing the in-house workforce by personnel ceilings. Although illegal in DOD the practice persists, both in DOD and in most other agencies. In fact, as discussed earlier, senior DOD officials are openly acknowledging their intention to let attrition take its inexorable toll by refusing to hire any additional staff. In other words, the backwards personnel policy of arbitrary personnel ceilings that did so much to bring about the "human capital crisis" will now be pursued with an unchecked vengeance. As mentioned earlier, the panel's majority knows of DOD's policy, but refused to use the report to draw attention to this outrage or call for its repudiation. Moreover, OMB did not even wait until the ink was dry before defying this principle. Although the OMB panelist said in her additional remarks that the agency was "revising (its) criteria for success," agencies are still being directed to convert and compete the jobs of at least 425,000 Federal employees by the end of 2004.

7. "Establish a process that, for activities that may be performed by either the public or the private sector, would permit public and private sources to participate in competitions for work currently performed in-house, work currently contracted to the private sector, and new work, consistent with these guiding principles."

This is another principle that the majority didn't incorporate into the report's recommendation. For example, that DOD civilian employees should be allowed to compete for new work and contractor work is not an option; it's the law. 10 U.S.C. 129a requires DOD to shift work between its civilian, military, and contractor workforces, depending on what's best for the taxpayers. Nevertheless, DOD almost never reviews work performed by contractors to see if the public sector performance is appropriate and continues to systematically starve the civilian workforce of opportunities to take on new work.

This principle is also an example of the majority's bait-and-switch tactics. In the commentary for Principle #7, it was written that "Criteria would need to be developed, consistent with these principles, to determine when sources in either sector will participate in competitions." (Emphasis added.) However, the only reference in the recommendation to the development of participation "criteria" related to instances in which Federal employees would be competing for work. Why should such criteria only apply "where there is no in-house workforce currently performing the work?" (Emphasis added.) It is well-known that contractors, usually the smaller ones but often the larger ones as well, regularly bid on work for which they have no "excess capacity."

Why shouldn't agencies be allowed to undertake the same "make-or-buy" decisions that are made every day by firms, including contractors, in the private sector, without having to jump through arbitrary hoops established by the panel's majority? Sometimes the agency will have excess capacity, sometimes the agency will be performing similar work, sometimes the agency will be able to make arrangements for performance by employees in another agency, and sometimes the agency will start from scratch as the Transportation Security Administration is doing right now with airport security screening. Agencies should vigorously consider all such options because that's what would best serve taxpayers and the people who depend on agencies for important services.

However, while the majority talks the talk of competition, it could never walk the walk, and the report's recommendation preserves new work and contractor work as no competition zones.

8. "Ensure that, when competitions are held, they are conducted as fairly, effectively, and efficiently as possible." .

This principle raises essentially the same issues as Principle #6; and my concerns over the failure of the majority to actually incorporate this principle in the recommendation are essentially the same.

I would like to address one point. The commentary for this point insists that "Fairness requires that competing parties, both public and private, or their representatives, receive comparable treatment throughout the competition regarding, for example, access to relevant information and legal standing to challenge the way a competition has been conducted at all appropriate forums, including the General Accounting Office and the United States Court of Federal Claims." (Emphasis added.) Because of the nature of discussions surrounding what should have been an open-and-shut issue, we had asked that the word "union" be inserted before the word "representative." Even this ambiguous language was not incorporated into the majority's recommendation, which gave standing only to offerors.

In comments at the House Readiness hearing the importance of litigation in keeping decisionmakers in a FAR-based "best value" process on the straight and narrow path was emphasized: "(Y)ou need to have appropriate appeals processes to qualified, independent third parties who don't have a vested interest in the result." We find this invocation of litigation to be puzzling.

First of all, an emphasis on litigation as a policing mechanism is wholly contrary to the most fundamental precepts of the acquisition reform movement, for which GAO has been a consistent advocate. More importantly, the onset of acquisition reform has resulted in a drastic decrease in the use of procurement litigation, both protests and disputes, as Professor Steven Schooner demonstrated in a groundbreaking article in the American University Law Review. Professor Schooner points out that the GAO's docket has been more than halved in less than a decade.

As discussed earlier, giving agencies much greater discretion is the principal cause in the reduction of procurement litigation. In light of that important piece of information, the litigation argument can be scrutinized more carefully. GAO is arguing that the ill effects of shifting to a more subjective process can be made accountable by increased litigation when, in fact, litigation in the increasingly subjective private-private competition process has already decreased significantly precisely because the increased use of subjectivity undermines the threat of litigation.

9. "Ensure that competitions involve a process that considers both quality and cost factors."

That's obvious. Of course, the Federal Government already has such a process that considers both quality and cost factors. It is called OMB Circular A–76, which allows agencies to secure the highest quality services at the lowest possible prices, i.e., the best of both worlds for taxpayers and agencies. That is, the circular or any other well-managed cost-based process allows agencies "to take into account the Government's need for high-quality, reliable, and sustained performance, as well as cost efficiencies."

No panelist, whether part of the majority or the pro-taxpayer faction, ever recommended that the Government "buy whatever services are least expensive, regardless of quality." That is clearly not the way Federal sourcing should work and it is clearly not the way Federal sourcing under the circular works.

As Mr. Doke reminds us, "It is a popular misconception that a low price means low quality." Agencies should decide what services they want with the features they want, determine that the offerors can provide the services they want with the features they want, and then decide in favor of the offeror who can do that work for the least cost to the taxpayers. That's how it works under OMB Circular A–76 or any other well-managed cost-based competition process.

Unfortunately, that common sense isn't part of the majority's recommendation. Although unwilling or unable to make the case that agencies have been deprived of opportunities to improve the quality of their services because of OMB Circular A–76, except for a tiny handful of cases that were rectified on appeal, the majority recommends that A–76 be junked in favor of an explicitly subjective process that historically has cost taxpayers more for the same services than if they had been acquired under a cost-based process. A FAR-based "best value" process is not needed to take into account quality, undermines the integrity of the sourcing process by introducing bias and subjectivity in a way that cannot be corrected by the appellate process, and undermines taxpayer interests.

10. "Provide for accountability in connection with all sourcing decisions."

This is another occasion when the majority was all talk and no action. The commentary for this point insists that "accountability requires that all service providers, irrespective of whether functions are performed by Federal workers or by contractors, adhere to procedures designed to track and control costs. . ." Yet, the part of the majority's recommendation dealing with the FAR-based "best value" process does not address the tracking of costs, period. Not one word.

With respect to the part of the report's recommendation relating to OMB Circular A–76, the majority offered four specific proposals dealing with tracking costs—all of them dealing with in-house costs. The only time the majority addressed the tracking of contractor costs was at the very end of the A–76 section when it included vague and meaningless boilerplate language that called on agencies to ensure "that all contracts are properly administered."

It would be instructive to review what the Comptroller General's own staff had written just last year about the ability of DOD, the agency with the most experience with service contracting, to track its service contracting costs. They reported that DOD has chosen not to keep its commitment to Congress to improve its system for reporting the costs of contract services:

> "The Department of Defense (DOD) spends tens of billions annually on contract services—ranging from services for repairing and maintaining equipment; to services for medical care; to advisory and assistance services such as providing management and technical support, performing studies, and providing technical assistance. In fiscal year 1999, DOD reportedly spent $96.5 billion for contract services—more than it spent on supplies and equipment. Nevertheless there have been longstanding concerns regarding the accuracy and reliability of DOD's reporting on the costs related to contract services—particularly that expenditures were being improperly justified and classified and accounting systems used to track expenditures were inadequate. . .
>
> ". . . DOD has not developed a proposal to revise and improve the accuracy of the reporting of contract service costs. DOD officials told us that various internal options were under consideration; however, these officials did not provide any details on these options. DOD officials stated that the momentum to develop a proposal to improve the reporting of contract services costs had subsided. Without improving this situation, DOD's report on the costs of contract services will still be inaccurate and likely understate what DOD is paying for certain types of services." (Emphasis added.)

But that's only the beginning. The majority has insisted that the replacement of A–76 with a FAR-based "best value" public-private competition process was necessary to improve the quality of Government services. However, not only does the

majority's recommendation include no specific provisions to track contractor costs, the majority's recommendation includes no specific provisions to track the quality of services performed by contractors. Apparently, actually reducing costs and actually improving quality is not what's really important to the majority.

E. The CAP's recommendation

Let's not be distracted from the real reason the majority rammed through its FAR-based "best value" recommendation: pro-contractors can't compete on the basis of costs. Contractors are confounded that, despite all of their advantages, they lose almost 60 percent of all public-private competitions. Contractors simply can't win regularly enough when they compete on the basis of costs, the standard that is best for taxpayers. Rather than improve their efficiency, contractors have decided to change the rules of the game. They want to replace the current system with one that increases the role of bias and politics. This effort has been rejected repeatedly by both Republican and Democratic administrations over the last 50 years. Indeed, thanks to the vigilance of successive Congresses, Title 10 is replete with requirements that ensures the Government's service decisions are cost-based.

The majority often reminds us that the FAR-based "best value" process is used by agencies for conducting competitions between contractors. As discussed, the subjectivity of the FAR-based "best value" process often benefits one contractor at the expense of another contractor. Indeed, contractors are not reluctant to litigate when they think agencies are showing favoritism towards their competitors.

However, the subjectivity in a FAR-based "best value" process can not be used systematically to favor one group of contractors over another because private-private competition is non-ideological. As we know, that is not the case with public-private competition, which is essentially politics by other means. When agency officials are indisputably predisposed towards the private sector, increasing the subjectivity of the service contracting process will provide those agency officials with opportunities to show their favoritism by skewing the outcomes of competitions in favor of contractors. As stacked as the deck is against Federal employees, the situation could become even worse by allowing agency officials already predisposed towards outsourcing to employ an openly subjective public-private competition process that permits them even more opportunities to favor the private sector.

The four members of the pro-taxpayer faction crafted an alternative proposal to that offered by the majority that would have allowed for alternatives to OMB Circular A–76 to be thoroughly tested, including FAR-based, "best value" and FAR-based low-cost/technically acceptable. Given that the majority acknowledges that competitions conducted under FAR-based "best value" could take longer than those conducted under the circular, no time would be lost by continuing to use the circular or a reformed version thereof until the desirability of the alternatives had been determined. Given that the majority is unable to show that agencies are being deprived of opportunities to improve the quality of their services because of A–76, nothing substantive would be lost. Given that the history of acquisition, particularly during the last 10 years, is littered with serious mistakes, it is just common sense to look before we leap.

The majority was uninterested in this more thoughtful approach. While acknowledging that its untested and unproven FAR-based "best value" process should be evaluated, an evaluation under its recommendation would not occur until after the recommendation had been implemented and widely used. At a time when the administration has unleashed a tidal wave of outsourcing, demanding that agencies compete or convert at least 425,000 Federal employee jobs by the end of 2004, now is clearly not the time to be making radical, unprecedented, and highly controversial changes to the public-private competition process. That is surely self-evident. However, the members of the faction understand that their recommendation cannot stand scrutiny, and therefore insist on its immediate implementation.

The changes recommended by the majority to OMB Circular A–76 are typically one-sided. Four changes are recommended to the circular to improve tracking of in-house costs. No specific changes are proposed dealing with tracking contractor costs. In fact, tracking contractor costs goes unmentioned, except for a throw-away line at the end about "ensuring that all contracts are properly administered." There is no mention of providing legal standing for Federal employees and their union representatives. OMB has said that there are "obstacles" to using the circular to contract in work in non-DOD agencies. No proposal is offered to surmount those alleged obstacles.

The HPO part of the recommendation has been discussed earlier. In light of the administration's, at best, ambivalent attitude towards labor-management cooperation and investments in the workforce, even for purposes of training, the future for HPOs is not bright. Because of the subjectivity intrinsic to the process—with respect

to determining the performance benchmarks and then determining compliance with those benchmarks—HPOs should first be tested and evaluated.

CONCLUSION

Chairman Ensign, I thank you again for holding this morning's hearing and inviting AFGE to testify about the important issues raised in your invitation letter as well as those important to rank-and-file DOD employees. Please let me know if AFGE can be of any service as you prepare your subcommittee's portion of this year's defense authorization bill. I look forward to attempting to answer any questions that you and your colleagues might ask.

APPENDIX I—COMPETITION WITH OVERSIGHT, RESPONSIBILITY, AND EQUITY (CORE) PROPOSAL

The authors of the CORE Proposal have attempted to draft a set of proposals that supports the mission statement and the ten principles of the Commercial Activities Panel (CAP). We believe that the CORE Proposal makes improvements in the current system to better serve the taxpayers, while satisfying the needs of agencies, employees, and contractors.

COMPETITION

1. Proposal:

Absent compelling national security rationales, Federal employees should be allowed to compete in defense of their jobs before their work is transferred to contractors.

2. Proposal:

A limited pilot project should be developed to experiment with new procedures for carrying out public-private cost comparisons as a means of assessing the viability of alternatives to the current OMB Circular A–76 system.

Details:

Any public-private competition process is bound to generate controversy because Federal employee jobs and contractor profits are at stake. However, A–76 circular remains the only tested and proven competition process. While agencies should always strive to reform and improve the process, it would be ill advised to abolish OMB Circular A–76, or even relegate it to a secondary role, in favor of an untried and untested replacement.

Consequently, before instituting untested Government-wide changes, OMB should establish a limited pilot project to examine the various alternatives to OMB Circular A–76, including dollarization, "best value," and low-cost/technical tradeoff on work performed by Federal employees, new work, and work performed by contractors. Alternatives to OMB Circular A–76 should include requirements to evaluate bids on the basis of cost, allow a cost differential for an incumbent service provider, ensure that an incumbent has the opportunity to reformulate its bid in response to a challenger's submission, allow Federal employees to compete as part of a most efficient organization, and utilize OMB Circular A–76 Handbook guidance with respect to the calculation of in-house personnel costs, in-house non-personnel costs, and in-house overhead costs.

The alternatives explored in the pilot project should be evaluated by OMB, GAO, as well as an impartial independent review panel. Should any of these variations or alternatives prove to be consistently more efficient, expeditious, and equitable, consideration should be given to using these alternatives in more situations. Given that the proposal endorsed by GAO and private contractors is no more expeditious than OMB Circular A–76, time will not be lost waiting for the impartial review of the results from a "limited pilot project."

3. Proposal:

Federal employees should be allowed opportunities to compete for new work as well as work performed by contractors.

OVERSIGHT

1. Proposal:

Agencies should implement reliable systems to track the costs and quality of services provided to the Government by contractors.

Details:

Agency managers and policymakers alike need reliable and comprehensive methods for tracking the cost and size of the contractor workforce and the quality of the work they perform.

2. Proposal:

Strengthen the civilian acquisition workforce.

Details:

The size of the acquisition workforce should be increased, the acquisition workforce should receive increased training, agencies should avoid contracting out work related to contract administration, and agencies should determine the appropriateness of returning to in-house performance any contract administration work currently performed in the private sector.

3. Proposal:

Establish an equitable appeals process.

Details:

Federal employees and their union representatives should be given rights to appeal service contracting decisions to the Court of Federal Claims and to the General Accounting Office.

RESPONSIBILITY

1. Proposal:

Agencies should not use arbitrary personnel ceilings.

Details:

Agencies should be allowed to manage their workforce by budgets and workloads. Like contractors, agencies should be allowed to "staff up" when appropriate to assume additional responsibilities, whether that is new work or work that had previously been performed by contractors. Agencies should be allowed to engage in make-or-buy decisionmaking processes similar to those undertaken by private sector firms.

EQUITY

1. Proposal:

Agencies should avoid undertaking service contracting that undercuts the pay and benefits of workers, whether in the public sector or the private sector.

NOTE

Signatories to the CORE Proposal agree to disagree among ourselves about the appropriateness of using conversion, competition, and privatization goals.

Details:

Please see the Appendix to the CORE Proposal for brief, 100-word summaries of the two competing perspectives held by the CORE Proposal signatories on the use of conversion, competition, and privatization goals.

Senator ENSIGN. I thank both of you for your testimony.

I think it is interesting when you are trying to figure out sometimes what the best policies are as lawmakers, and you hear testimony from people, sometimes the more objective that they sound, the more credibility that they have, at least with this lawmaker, in their testimony. I think that it is obvious that sometimes there are things that the private sector can do, and sometimes it is obvious that there are things that only the Government can do.

Striking that balance, having come from the private sector, there are times when lowest cost, which is what the A–76 does today, that lowest cost is not lowest cost. Lowest cost is, as a matter of fact, what Ms. Styles said about cutting lawns is cutting lawns. If anybody has ever had a business where you hire out your landscaping, the lowest cost on cutting lawns sometimes is not lowest cost because they end up not taking care of things and you end up

paying a lot more in the long run to have somebody else come in and clean it up.

I think that is the idea of the new process, is to make sure that the value is there. It is never going to be a perfect process. I think that is something we all have to realize. It is difficult to measure, but you have to try to measure it. You have to have as objective of measures as possible.

What the administration is attempting to do, I am sure is not going to be perfect. Nothing ever is when we do this, but we have to work together as Republicans, Democrats, as Americans basically, to try to get the best value for the taxpayer. To make sure our military has what they need, the best resources, and to use those resources in the best way to provide our men and women with the absolute finest technologies and finest services that they can have so they can continue to be the most dominant military in the world.

Having said that, I want to start with a question for you, Mr. Soloway, about this. It has to do with contracting out a lot more overseas, especially at this time. There are questions about what protections that those or what some of those contractors need to maintain that.

First is that some of them, I guess, are having problems. Their insurance companies are dropping them. It is difficult for some of those employees to get the insurance. I do not know if you are aware of some of these things.

Maybe getting to, Mr. Harnage, some of your concerns, all those kinds of costs should be taken into account. In other words, if the Federal Government ends up holding the bag for some of those insurance costs in the bidding process or whatever, those kinds of things would seem to me to be very fair to take into account, because the indemnification if that comes to the Federal Government, then that is, obviously, a very or could be a very significant cost.

So what other kinds of help do some of those people need when they are in danger zones, like what they are in over there right now in the Middle East. How does that affect basically the new integrated process?

Mr. SOLOWAY. Well, most of the work you are talking about is not related to the A–76, because this was work that was principally done by the military that the military is now no longer doing, has brought in contractor support to fulfill those roles.

I went to the Balkans after the Kosovo conflict, when I was at the Department of Defense, to do an assessment of the contractor support. This issue that you raise about the costs of—the surge cost, if you will—and there are a number of issues associated with surge. Some of it had to do with the protection of the combatants and non-combatants. Some of it has to do with the numbers of people you suddenly need in theater and so forth.

One point that was made to me by the warfighting side, as opposed to the business side, was that the alternative to them was going to be additional Reserve call ups, because there simply are not enough soldiers in uniform to do all of that day-to-day work. You do not get soldiers 24/7. You get them for a few hours. They have other duties as assigned.

That is, we have to, if we are going to really do the assessment you are talking about, which DOD I believe has done periodically over the last several years as more contractor support has been used, you have to look not just at the immediate costs, but also all of the trailing costs associated with it, whether it is Reserve call ups and the economic impact of that, whether it is maintaining a permanent force of either civil service or uniformed personnel to do work that is temporary by nature in a conflict and so on.

So those issues are appropriate. DOD has continued to look at them, and continued to conclude, as I believe the Fortune article that Senator Pryor mentioned earlier, that it has become part of that partnership.

In terms of liability and indemnification insurance, any time there is a conflict when you have civilians in harm's way, there are issues associated with that. There are a number of provisions in the Defense Base Act that are designed to help deal with those issues.

These are not all—to be very clear, these are not all contractors who have been deployed to support the fight. We have people working overseas for the U.S. Agency for International Development, whether they are NGOs or contractor employees who are also covered by the Defense Base Act.

We have contractor workers at bases around the world providing critical technology support that are not there directly related to the operation in Iraq, but are there on an ongoing basis. As where they become encompassed by a zone of risk, if you will, these issues begin to arise, and they have to be dealt with.

There may well be some costs. There always are some costs associated with it. But if you go back to the Gulf War, while the numbers may have been slightly lower, there were all kinds of commercial tankers being used to provide and move material into the Gulf. There were lots of contractors in the zone of conflict or in the theater of operations.

This is an issue. It is something that continually has to be looked at. For the commercial insurance industry that you mentioned, it becomes a question of risk analysis, and you have to assess that.

But, again, when you do that, it has to be balanced against the full set of costs, and the full set of challenges, and the full set of realities in terms of human capital, military manpower, and so forth.

As we have talked with the Joint Staff and others over the last several months and the build up of the current conflict, and as I experienced it through the Balkans conflicts, there is a balancing and a constant thinking in the military about how to do this best and how to do it right.

Senator ENSIGN. Well, thank you. I wish we had more time. Unfortunately, my time has expired, and I want to give Senator Akaka time for questions.

Senator AKAKA. Thank you very much, Mr. Chairman.

Mr. Soloway, you were a member, as you stated, of the GAO Commercial Activities Panel and endorsed the panel's recommendations. I would like to explore your council's or organization's, which is PSC, position on three aspects of the panel's recommendations.

One is the bid protests. First, the CAP report recommended that both the public and private sectors have equal access to the bid protest process. You have testified that PSC agreed with this recommendation. Would you support legislation to provide employee unions and other representatives of Federal employees the same protest rights that the private sector has?

Mr. SOLOWAY. Senator Akaka, the Commercial Activities Panel recommendations relative to the rights to be accrued to any individual parties involved in a competition are tied directly to the full set of 10 principles that we were unanimously agreed to.

Those are my views and, I believe, in the view of the majority of the panel, those recommendations amount to a FAR-based process. Then, in the revisions that the administration has proposed, the piece that most closely aligns with that recommendation is what is called the integrated process that I mentioned in my testimony.

I am speaking for myself here, because we were all members of the panel as individuals under that process. I believe under that process that it is likely that the public sector would have the same rights to protest that are currently available to the private sector.

Two caveats to that statement, though, that I think are very important: From a strictly legal perspective, moving the same rights to the public sector does not, in my view, appropriately or legally allow the movement of those rights to a labor union or to an individual. Those rights do not exist for individuals or labor unions in the private sector.

They are based on the Competition in Contracting Act. They are given to the parties legally responsible for the performance. In the case of a private sector bidder, it is the company, because the company is the signer of the contract, or the signer or certifier of the bid.

In the case of the Government, what the administration has tried to do by creating what they call an agency tender official, and by creating in the Government side the same kind of contractual framework that they now have on the contractor side—as Ms. Styles said, contractors typically recompete every 3 to 5 years.

Building that same structure on the public side, you now have an official called the agency tender official, who I believe, under the integrated process, would likely have the ability to protest a decision. But it would not, for both legal and other reasons, ever, I believe, nor should it, accrue to a union or an individual. That right does not exist in the private sector either.

Senator AKAKA. Mr. Harnage, do you have any comment on Mr. Soloway's answer?

Mr. HARNAGE. The reason for it is pretty obvious. If you put responsibility for the protest on an individual with limited resources it is not likely to happen. There is no justification for placing this responsibility solely on a tender who placed the bid, made the mistake to start with, and is now going to appeal their own decision.

I believe that for this to be a fair competition a lot of things have to be changed, including that the same appellate process rights that the contractors enjoy be provided to Federal employees or their representatives.

Senator AKAKA. Mr. Harnage, like Mr. Soloway, you participated in the Commercial Activities Panel. You did not support the panel's final report and recommendations. I understand that AFGE has filed extensive comments on the administration's proposed revisions to OMB's Circular A–76. Are you concerned about the proposed revisions to OMB Circular A–76 because these revisions would implement recommendations of the CAP report with which you disagree, or because these revisions are inconsistent with their recommendations of the CAP report, or both?

Mr. HARNAGE. Let me say if it was wrong in the CAP, it is certainly wrong in the revision of A–76. The fact that the two might be related is simply recognizing a mistake of both entities.

I did participate in the A–76, and there is a lot to be or is being said about this super majority. When you stack the deck eight to four, and in the end the vote comes out eight to four, there are no surprises there. The super majority was designed at the beginning of the process to achieve this biased conclusion.

Now, I was encouraged during the process that we might be making some headway. I found it very educational. But though we moved in what I considered a more positive way, in the final debates everything reverted back to the initial debates. Things turned out as predicted at the beginning.

Mr. SOLOWAY. Senator, may I make a brief comment?

Senator AKAKA. In a moment. Mr. Harnage, can you point to any specific areas in which the proposed revision to OMB's Circular A–76 are inconsistent with the recommendations of the CAP report?

Mr. HARNAGE. I believe the CAP report recommended that Federal employees have the right to appeal. I believe the CAP report also provided a much stronger language on insourcing. You noticed a while ago in Comptroller Walker's comments in response to a question was that insourcing is when things fail. Now, if he had thought a little bit longer about that, he probably would not have said that.

But that is the mentality of this administration and many people in the contractor communities. I believe that when the contractor fails there is an opportunity to consider bringing work back in-house.

But it is not a failure of the Federal employees that prompted the competition to start with. So why does a contractor have to fail for there to be recompetition? Why is that the only time private sector functions can be competed? But the Federal employee's job can always be competed. If competition provides savings, then why do we not have competitions to bring work back in-house?

Pete Aldridge, the Under Secretary of Defense for Acquisition, Technology, and Logistics, who also served on that panel, came in late on a conversation we were having about bringing work back in-house if it saves money. Compete it, if it saves money. In a vast majority of the contracts that are already let to the private sector (you notice Ms. Styles said "subject to competition," she did not say "competition.") There is no competition. The contracts are subject to competition, but there is no initial competition on recompeting of that contract.

So if the Federal workforce is included in that competition, it may drive the same savings that you had in the beginning. So it

is not a matter of the contractor failing. It ought to be a matter of policy that competition is where the savings are, not privatization, but competition. Therefore we ought to be able to compete work to bring it back in-house.

What Pete Aldridge said was, "Why in the world would you do that?" To save money. The question was obvious, but the fact that he could not even think of an appropriate response was alarming.

Then he said, "You cannot do that. We do not have the capability of hiring the workforce." Well, Transportation Security Administration (TSA) just proved him wrong on that. They hired over 60,000 people in less than a year. Surely, DOD can hire 200 or 300 in less than a year.

Senator AKAKA. Mr. Chairman, my time has expired, but let me ask Mr. Soloway for his comment.

Mr. SOLOWAY. Thank you, Senator. I appreciate it. I just wanted to make a couple of brief comments to clarify a few points. As we parse through this—and, Senator Ensign, you made the point that there are widely divergent points of view when you hear this, knowledgeable people saying exactly different things, but exactly the same subject. Just to be clear about what we are talking about private sector employees are competing every day for their work, because if their company does not perform, and the contract is recompeted, as it routinely is, their company loses the work and they have absolutely no follow-on rights to go with that work.

Under A–76, we do have public/private competitions, but from a management standpoint, if the decision is made to outsource something, you cannot afford to retain all of that infrastructure internally, once you have made a decision to move out to contract. So it is easy enough to say we should always have Federal employees competing for their jobs later on, but, in fact, the infrastructure has been moved. Usually most of those employees have gone with the work.

But if we are really concerned about Federal employees—and I think we should be, because somebody made a comment earlier on—it may have been Senator Chambliss—about Federal employees being an asset. A–76 does not treat either private or public sector employees as assets. It is really a numbers game. It is a low-bid, how-cheap-can-I-do-this kind of process.

There are numerous cases that I would encourage you to look at where agencies have made smart strategic decisions that they cannot compete well for the work because they are way behind in terms of technology, and we know that is a problem across the Government, that they do not have the skill set. They do not have the budgetary resources. So they have avoided a public/private competition.

But in doing that, they have treated the employees, the incumbent employees, as major assets in the process. In those cases, they have required the bidders in the private sector to compete to do better by the employees.

There are great opportunities to do more of that, where it clearly makes no sense for the Government to continue to perform the work. Unfortunately, by mandating public/private competitions in every circumstance, you make that impossible.

Finally, you made the point earlier about concerns relative to whether or not the administration's competitive sourcing agenda actually is going to inhibit the ability of the Government to attract and retain people in light of the retirement wave that is coming. Clearly in any organization and in the private sector, outsourcing or competitive sourcing or whatever term you want to use, is a constant. It is always going on. It always creates a certain degree of turbulence.

But if we look across the board today, it is very clear that the Government is not competing effectively for a lot of the critical skill sets we need. Those skills are going to the private sector.

As Mr. Harnage has testified on many occasions, there is a pay gap between the public and private sector that is part of the reason for that. But there is also a whole set of other issues in terms of development and support of the workforce and so forth. The Government does not match up well.

But if the Government is today losing the people to the private sector, where competition is a day-to-day experience, why do we think that competition in Government is an inhibitor to people coming into Government? Because people are already voting with their feet, to go to an environment where fierce competition is part of the day-to-day process.

Clearly, there are other human resource strategies and capabilities in the private sector from which the Government can learn, but that are driving the balance of employment. I think that is a very important factor to keep in mind, so we do not assume that the existence of competition is somehow an inhibitor or discouragement to people to coming to work in an organization.

Senator ENSIGN. I thank both of you. We have a briefing over in the Capitol so, unfortunately, we are going to have to cut this short.

This subcommittee stands in adjournment.

[Questions for the record with answers supplied follow:]

QUESTIONS SUBMITTED BY SENATOR DANIEL K. AKAKA

GOVERNMENT CONTRACTS

1. Senator AKAKA. Ms. Styles, I agree with your statement that morale will be affected unless there are adequate resources for training and hiring when it comes to outsourcing. You also mentioned that the proposed changes to A–76 acknowledge this need. However, given the deficit and the impact of the war on the budget, how is the administration ensuring that adequate funding is made available?

Ms. STYLES. I did not make a statement about "outsourcing", which presumes an outcome. OMB is committed to seeing that progress is made with each of the five initiatives contained in the President's management agenda including competitive sourcing. Where an agency makes a compelling case for resources to achieve those goals, OMB will discuss and consider the appropriate level of resource allocation.

2. Senator AKAKA. Secretary Aldridge, I am concerned about the continued rise in operation and maintenance costs for many of our existing weapon systems. While these may be costs we are forced to bear until we can bring replacements on line, I worry that we may not be paying enough attention to total life-cycle costs as part of the acquisition process of these replacement systems. If we focus on the issue early in the acquisition process, there is a lot we can do to minimize long-term logistics and maintenance costs, build training enablers into new weapon systems, and include instrumentation that allows for more effective testing. I am also concerned about reports that DOD fails to consider spectrum supportability until late in the development and fielding cycle, when problems are more difficult to address. I believe that the ongoing revision of DOD Directive 5000, governing the acquisition of

major systems, provides an opportunity to address these issues. Do you agree that life-cycle costs and spectrum supportability are key issues that must be addressed early in the acquisition process?

Secretary ALDRIDGE. I agree that total life-cycle cost and spectrum supportability are important issues that must be addressed early in the acquisition process. Our new DOD acquisition policies require life-cycle cost and, where feasible, total ownership cost to be addressed during the requirements generation process, even before we initiate an acquisition program. Spectrum supportability is also considered during the requirements process, and staff activities to meet certification requirements must be in progress before a program can be initiated. At program initiation, our acquisition policies require a detailed and comprehensive review of the entire planned program. This review includes specific consideration of both total life-cycle cost and spectrum supportability.

3. Senator AKAKA. Secretary Aldridge, will you ensure that the revised Directive 5000 addresses these issues and includes some kind of enforcement mechanism to ensure that they are fully considered?

Secretary ALDRIDGE. Yes, the discussion centers on total life-cycle cost and spectrum supportability. Both issues are tracked closely, and our new acquisition policies include the necessary enforcement mechanisms.

4. Senator AKAKA. Ms. Styles, the GAO CAP recommended that Federal outsourcing policy be fair to both the public and private sectors, allowing comparable appeal rights to both sides. The panel stated, "Fairness is critical to protecting the integrity of the process and to creating and maintaining the trust of those most affected. Fairness requires that competing parties, both public and private, or their representatives, receive comparable treatment throughout the competition regarding, for example, access to relevant information and legal standing to challenge the way a competition has been conducted at all appropriate forums, including the GAO and the United States Court of Federal Claims." The administration proposes to amend Title 10 to allow DOD to implement "best value" competitions—implementing one of the CAP report's recommendations. However, we have not received any proposal from the administration to implement the report's recommendation on bid protests, which would also require legislation. You approved the CAP report on behalf of the administration. Do you agree that fairness dictates that the public and private sectors receive comparable treatment in the bid protest process?

Ms. STYLES. We are addressing appeal rights in the new circular with the goal of treating directly interested parties with fairness allowing them right to contest an agency's performance decision. GAO will determine whether a directly interested party has standing to protest.

5. Senator AKAKA. Mr. Walker, do you view the CAP recommendations as the menu from which it is appropriate to pick and choose recommendations to implement on a piecemeal basis, or as a cohesive set of principles, which should be considered on a comprehensive basis?

Mr. WALKER. The 12-member CAP produced two sets of recommendations for improving the way Federal agencies make sourcing decisions. The first set, which the panel unanimously agreed to, consisted of a set of principles to guide sourcing policy for the Federal Government. The panel specifically noted that while each principle is important, no single principle stands alone and that the principles were adopted as a package. The second set of recommendations was adopted by a two-thirds super majority of the panel. These recommendations involved use of the Federal Acquisition Regulation to conduct public-private competitions, limited changes to Circular A–76, and the promotion of high-performing organizations across the Federal Government. This set of recommendations was also intended to be adopted as a package, rather than on a piecemeal basis.

6. Senator AKAKA. Secretary Aldridge, I have a copy of a memorandum to the Secretary of Defense from Joseph E. Schmitz, the Inspector General of the Department of Defense, in which Mr. Schmitz states that his office has determined that a "consultant's error in a public/private competition . . . resulted in the award of an A–76 contract with potential 10 year value of $346 million to the contractor rather than to the lower in-house bid." The memorandum indicates that the error inflated the in-house cost estimate by $31.8 million, resulting in an incorrect conclusion that it would cost $1.9 million more to keep the work in-house (when it would actually have cost almost $30 million less). Can you tell me what steps the Department has taken to address this problem?

Secretary ALDRIDGE. Your question is in reference to an Office of Management and Budget (OMB) Circular A–76 study conducted by the Defense Finance and Accounting Service (DFAS) in 2001. The error occurred because the anticipated annual salary increases in the Government bid were not correctly computed. The computation was performed by a DFAS contractor, and the certification of the computation by Government officials overlooked the erroneous computation. The Government certifications of the computation were performed by DFAS and the Department of Defense (DOD) Inspector General (the Independent Review Official under Circular A–76). The directly affected Government employees (and their representatives) were offered an opportunity to appeal the decision under the A–76 administrative appeal process but they did not identify the error. DOD is taking the following actions to address this problem:

1. The Deputy Under Secretary of Defense (Installations and Environment) has updated the DOD A–76 costing software (win.COMPARE^2) to include four separate features, or checkpoints, for flagging, or assisting a user in avoiding, errors of this type. In response to recommendations from DOD, OMB has clarified its guidance on this subject in the proposed revision to Circular A–76.
2. DFAS reviewed its entire competitive sourcing process, and, specifically, how the error occurred. DFAS is upgrading A–76 training to ensure that future proposals undergo a rigorous quality check.
3. DFAS will put more emphasis on the A–76 independent review process and use a new Independent Review Official.

7. Senator AKAKA. Secretary Aldridge, what has happened to the Federal employees who lost their jobs to a higher bidder because of this "consultant's error"?

Secretary ALDRIDGE. No permanent Federal employees lost their jobs. All of the affected permanent Federal employees had the option of accepting another position within DFAS, taking advantage of retirement or separation incentives, and/or accepting a position with the contractor. Everyone who wanted employment was given that opportunity. Twenty-nine employees were asked to accept jobs at a lower grade. None of those placed in lower graded positions suffered any loss of pay. Twenty-six of the employees have been placed in new positions, which will lead to re-promotion when the employees are fully qualified. The remaining three employees have been afforded grade retention and priority consideration for re-promotion through the DOD Priority Placement Program. They will become eligible for indefinite pay retention in January 2004. DFAS will continue to extend priority re-promotion consideration to these employees indefinitely, and will consider seeking legislative relief to extend grade retention beyond the legally permitted 2 years if necessary.

8. Senator AKAKA. Mr. Walker, doesn't this episode reinforce the recommendation of the CAP that all parties to a public-private competition, including representatives of Federal employees, should have the same access to the bid protest process to challenge the way a competition has been conducted?

Mr. WALKER. It is quite appropriate for both sides to be able to challenge the results of public-private competitions. In fact, public employees, like private-sector vendors, have long had the right under Circular A–76 to file an appeal at their agency challenging the results of a public-private cost comparison. It is true, though, that only private-sector vendors can go on—if they lose an agency-level appeal—to file a bid protest at GAO or in court. As your question notes, the Commercial Activities Panel recommended that all parties to a public-private competition should have rights as nearly equal as possible to challenge the way the competition was conducted, including protest rights. The panel noted, however, that granting protest rights should be part of an effort to address the full range of issues related to competing for and performing Government contracts. The panel also recognized that, if a decision were made to permit public-sector bid protests of the results of public-private competitions, the question of who would have representational capacity to file such a protest would have to be carefully considered.

9. Senator AKAKA. Secretary Aldridge, over the last 2 years, this committee has enacted a series of provisions directed at improving the management of the Department's $66 billion per year in contracts for services. Section 801 of the National Defense Authorization Act for Fiscal Year 2002 required the Department to establish a management structure for services contracts. Under this section, each of the military departments was required to designate an official responsible for managing the service contracts of that department; DOD was responsible for designating a responsible senior official for the defense agencies. These officials, and subordinate officials in the management structure, were to be responsible for implementing requirements

for performance-based service contracting, compliance with competition requirements, and the appropriate use of inter-agency contracts. As far as I am aware, the Air Force is the only one of the three military departments that has taken specific steps to comply with this requirement. Will you take steps to ensure that the other two military departments comply?

Secretary ALDRIDGE. On May 31, 2002, I issued policy to all of the military components, which implemented the requirements of Section 801 of the National Defense Authorization Act for Fiscal Year 2002. This policy required that each component develop and institutionalize a process for the management and oversight of the acquisition of services. In October 2002, all three of the military departments provided their processes to me for my review and approval. Working with each of their designated acquisition officials, we refined their processes, and on February 7, 2003, I approved each of the three military department's Management and Oversight of Acquisition of Services processes. My staff has also been working with representatives from the General Accounting Office (GAO), who are currently auditing our compliance with the provisions of Section 801.

10. Senator AKAKA. Secretary Aldridge, I do not believe that DOD has yet taken the action required to designate a single official responsible for managing the service contracts of the defense agencies. Can you tell us when the Department will comply with this requirement?

Secretary ALDRIDGE. As I have stated, I issued policy on May 31, 2002 that implemented the provisions of Section 801 of the National Defense Authorization Act of Fiscal Year 2002 across the Department. That policy was addressed to all military components, including all defense agencies and DOD field activities. To date, in addition to approving the management and oversight processes of the three military departments, I have received certification memorandums from over 20 combatant commands, defense agencies, and DOD field activities. These memorandums certify to me that they have designated a responsible management and oversight official, and have developed and put in place adequate processes that comply with the May 31 policy for the management and oversight of acquisition of services.

11. Senator AKAKA. Mr. Walker, in your January 16, 2003, letter to OMB Director Mitch Daniels, you characterized the required timeframes in the proposed revision to OMB Circular A–76 as "unrealistic" and questioned whether aggressive, fixed deadlines were the right approach to expedite the process. You stated that "additional training, technical resources, or other support for agency officials in preparing for and participating in public-private competitions may be needed" and recommended that "OMB ensure that agencies provide sufficient resources to comply with the new A–76 requirements." I said much the same in my comments of December 19, 2002 in response to OMB's proposed revisions to A–76. GAO's "high risk" report on DOD programs notes that the Department has downsized its acquisition workforce by almost half over the last decade. This subcommittee has been concerned for several years now that this downsizing process may have gone too far. Would you agree that the challenges of meeting the administration's goals for public-private competition, and of managing services contracts that result from such competition, are more likely to require an increase in acquisition resources than a decrease?

Mr. WALKER. The administration's goals for conducting public-private competitions could have a significant impact on the acquisition workforce in a number of ways. First, as noted by the Commercial Activities Panel, the current process for conducting these competitions is complicated, and therefore requires a skilled acquisition workforce to support the studies. Any changes to the process will require additional resources for training and perhaps additional personnel. Second, the number of positions proposed for study in the coming years is significantly higher than in the past, greatly increasing the competitive sourcing workload at many agencies. At DOD, for example, the number of positions proposed for study during the next 5 years is double what the department has been able to review between fiscal years 1997 and 2002. Civilian agencies, which have not conducted nearly as many public-private competitions as DOD, will face even greater challenges in building the necessary infrastructure to conduct these competitions.[1] Finally, to the extent that an increase in competitive sourcing studies results in an increase in the award of service contracts to the private sector, agencies will need to ensure that they have a sufficient acquisition workforce in numbers and abilities to administer those contracts

[1] The costs for additional training or personnel needed to conduct public-private competitions could be offset, of course, through the savings realized from conducting the competitions.

effectively. In this regard, the private sector historically has won half the public-private competitions.

12. Senator AKAKA. Secretary Aldridge, your predecessor wrote a memorandum in August 2000, in which he said that the acquisition workforce had been reduced far enough and that further reductions were likely to have "significant adverse impacts on the DOD acquisition system." Your prepared statement indicates you agree. Will you work with us to oppose legislation that would mandate such reductions?

Secretary ALDRIDGE. We are eager to work with you to oppose legislated reductions that are not carefully synchronized with DOD's management streamlining efforts. In my letter dated March 27, 2003 to Senator Ensign on this matter, I emphasized that workforce reductions not driven by our strategic planning and efficiency improvements have the potential for exposing the Department to significant risk. I also referred to the DOD Inspector General ("DOD Acquisition Workforce Reduction Trends and Impacts") and the General Accounting Office ("Acquisition Workforce: Department of Defense's Plans to Address Workforce Size and Structure Challenges") warnings that DOD is experiencing risk in contracting and program management as a result of past workforce reductions.

We are continuing to examine opportunities to gain further efficiencies and will adjust our workforce to reflect the results of our human capital strategic planning and those efficiencies.

13. Senator AKAKA. Ms. Styles, what is your reaction to my recommendation, and that of the Comptroller General's, that you lengthen the periods provided for competition and provide agencies with additional resources to run these competitions?

Ms. STYLES. We believe that one of the biggest problems with the implementation of the old circular was that it often took agencies many years to complete the process. A 3- to 4-year process benefits no one. We plan to include timeframes with sufficient flexibility where appropriate.

14. Senator AKAKA. Secretary Aldridge, please provide information on the assumptions made in the fiscal year 2004 budget request for each of the military services and defense agencies (through fiscal year 2009) for savings as a result of outsourcing and competitions. Please include the percentage of jobs expected to be competed, as well as the total dollar amount of savings expected to be realized.

Secretary ALDRIDGE. The assumptions made in DOD's fiscal year 2004 budget request (through fiscal year 2009) for savings attributed to A–76 competitions are as follows:

- Projected savings are a function of number of positions saved and average burden cost per position.
- The average "burden" cost (i.e. total cost to the Government including salary and benefits) is $65,000 per position.
- A minimum of 20 percent of the positions are eliminated beginning the second year following the completion of the A–76 initiative. The first year after the study is completed reflects a half-year of savings, or 10 percent (note: the actual budget-assumption varies by military service).
- Completion of initiatives occurs 2 to 3 years after initiatives are announced (depending on the complexity of the study).
- Any anticipated savings are realigned to meet other Service requirements.

Within the Future Years Defense Program (fiscal year 2004–2009), the Department plans to initiate competitions under Circular A–76 with respect to 84,590 positions. Assuming that all positions are competed, total cumulative savings are estimated at $3 billion, offset by $500 million in cost to conduct the initiatives.

The estimated savings attributed to "alternatives to A–76" will vary and be unique to the business tool used. The Department is in the process of developing plans for these alternatives, for submission in the fiscal year 2005 President's budget.

15. Senator AKAKA. Mr. Soloway, the CAP report endorsed competition as the mechanism for determining whether to outsource work currently performed by Federal employees. The report states: "Competitions, including public-private competitions, have been shown to produce significant cost savings for the Government, regardless of whether a public or private entity is selected. Competition also may encourage innovation and is key to continuously improving the quality of service delivery." Does the Professional Services Council (PSC) endorse competition as the appropriate mechanism for determining whether to outsource work currently performed

by Federal employees, or does PSC believe that it is appropriate to use "direct conversions" in which work is transferred to the private sector without even giving Federal employees an opportunity to compete for their own jobs?

Mr. SOLOWAY. The PSC believes strongly in the use of competition to drive higher efficiency and performance in the provision of Government services. Indeed, competition is a constant in the Government procurement arena and contractors not only compete for new work but also must continually compete for work they currently have. As such, as acknowledged in the CAP report, the advent of a Government "bidder" does not create competition—competition is already robust.

In terms of determining whether to outsource work currently being performed by Federal employees, PSC believes that the extent to which public-private competitions are held should not be dictated by law or regulation but by the mission needs and strategic goals of the agency involved. The first principle of the 10 overarching principles to guide sourcing policy agreed to unanimously by the CAP states that sourcing must be viewed and approached as a strategic exercise which focuses first and foremost on agency mission execution. Thus, in cases where the agency management believes its incumbent activities have the appropriate mix of skills, resources, management innovation, and technology, a competition involving the incumbent Federal workforce may well be appropriate.

Consistent with Principle One of the CAP report, in cases where the agency is performing commercial activities that it determines are not core to its mission, or for which the agency does not have the requisite mix of skills, technology, resources, and management innovation with which to ensure optimal performance, it is entirely appropriate for an agency to decide not to conduct a public-private competition and to instead compete the work among private offerors only.

Finally, it is PSC's position that in cases where a strategic decision is made not to conduct a public-private competition, the interests and importance of the incumbent Federal workforce must be an essential element of the process. Indeed, there are a number of examples of Government agencies making the decision to not conduct a public-private competition while also ensuring that the incumbent workforce is actually advantaged in the process. In those cases, the offerors commitments to the incumbent workforce were a significant evaluation criteria, thus creating a significant incentive for companies to provide benefits and opportunities for that workforce that far exceed anything that could have been offered by the Government or under a competition in which the incumbent workforce was a participant. This focus on the Federal workforce and recognition that they are a major asset is impossible under the construct of OMB Circular A–76 but is possible in those cases where a thoughtful management decision has been made to not conduct a public-private competition.

In summary, public-private competitions have their place but they should not be mandated by laws or regulations; rather, their role is an outgrowth of strategic and performance-driven management decisions, as the very first principle of the CAP report clearly suggests. To mandate them across the board would be to create far less effective competitions, waste significant amounts of precious resources, and create unnecessary chaos and turbulence among the workforce. Outsourcing need not and should not be viewed as a "life or death" decision. Unfortunately, those who continue to battle against strategic, performance-focused management, and outsourcing, refuse to acknowledge this reality and instead continue to sow fear and trepidation among the affected Federal workforce.

16. Senator AKAKA. Mr. Soloway, the CAP report endorsed competition giving Federal employees an opportunity to compete for work that is not currently performed in the public sector. The report states that both public and private sectors should have an opportunity to compete "for work that is currently performed in-house, work currently contracted to the private sector, and new work." Does PSC support public-private competition as a two-way street, or does PSC believe that only work currently performed by Federal employees should be subject to public-private competition?

Mr. SOLOWAY. The CAP report endorses giving Federal employees an opportunity to compete for some new work and/or work currently contracted to the private sector. But the unanimously agreed to principle under which that statement is made also intentionally includes the phrase "consistent with these principles", and it is within that phrase that the real meaning of the recommendation is found. As with the answer to Question 15 above, one must return to the remaining principles unanimously adopted by the CAP (since those principles were explicitly designed to be taken as a single, integrated recommendation), the first one of which states that sourcing is a strategic, not arbitrary process. As such, the answer to this question is, in part, very similar to the answer to the above Question 15.

Further, the question of whether the Federal Government should expend resources competing for work currently contracted to the private sector implies that only by doing so does competition remain vibrant. This is not the case. The vast majority of service contracts entered into by the government are subject to constant competitive pressures. The existence, or lack thereof, of a Government bidder is rarely, if ever, the determinant of whether meaningful competition already exists. As such, the very premise of the question, that "competition is a two-way street" must be changed. Competition is a constant in the marketplace; it is only with the vast bulk of commercial activities currently performed by the Government that competition remains a rarity. Thus, if a decision has been made previously that the work involved is: (1) commercial in nature; and (2) suitable for performance by the private sector, then the ongoing competitions that take place in the government marketplace are more than adequate to ensure continued performance and efficiency by contractors.

In addition, for work already contracted to the private sector, there is no incumbent Federal workforce affected by the continuing outsourcing of that work. Thus, not only is competition already present, but the question of "fairness" for Federal employees is not in play either.

Public-private competitions for work currently contracted to the private sector should, therefore, be very limited to circumstances in which the competitive marketplace for the work being performed no longer exists and where the Government has such significant excess capacity it can legitimately afford to dedicate resources to the requirements involved. Otherwise, there is no justification for conducting public-private competitions for already contracted work. The continued presence of ongoing competition is the best guarantor that performance and efficiency will continue to be improved and there is no issue of "fairness" for Federal employees since there are no incumbent, affected Federal employees. This is entirely consistent with the CAP report, and its focus on the strategic nature of sourcing.

QUESTIONS SUBMITTED BY SENATOR HILLARY RODHAM CLINTON

GOVERNMENT CONTRACTS

17. Senator CLINTON. Secretary Aldridge, I have a few questions regarding recent news articles, including a recent article in the Wall Street Journal, indicating that multimillion dollar contracts for rebuilding Iraq are in the process of being awarded. According to the Wall Street Journal, "the Bush plan, as detailed in more than 100 pages of confidential contract documents, would sideline United Nations development agencies and other multilateral organizations that have long directed reconstruction efforts in places such as Afghanistan and Kosovo. The plan also would leave big nongovernmental organizations largely in the lurch: With more than $1.5 billion in Iraq work being offered to private U.S. companies under the plan, just $50 million is so far earmarked for a small number of groups such as CARE and Save the Children." Can you tell me what, if any, firms have already been awarded reconstruction contracts and how were these contracts solicited?

Secretary ALDRIDGE. These questions deal with contracting done by the U.S. Agency for International Development (USAID). I am not in a position to answer the questions since they do not involve Department of Defense contracting actions. General information about the contracting being done by USAID to support Iraq reconstruction is available at http://www.usaid.gov/iraq/about—reconstruction.html.

18. Senator CLINTON. Secretary Aldridge, the Wall Street Journal article states that "a 10-page USAID contract proposal went out to companies last month." How were firms identified to receive the USAID contract proposal?

Secretary ALDRIDGE. Please see question #17.

19. Senator CLINTON. Secretary Aldridge, will you be making these contract documents publicly available?

Secretary ALDRIDGE. Please see question #17.

20. Senator CLINTON. Secretary Aldridge, according to the Wall Street Journal article, "USAID is expected this week to pick the prime contractor for a $900 million job rebuilding Iraq's infrastructure, including highways, bridges, airports, and Government buildings." Has that contract been awarded yet? If so, who received the contract?

Secretary ALDRIDGE. Please see question #17.

21. Senator CLINTON. Secretary Aldridge, can you tell me what steps are being taken to avoid any conflicts of interest when these contracts are awarded?
Secretary ALDRIDGE. Please see question #17.

22. Senator CLINTON. Secretary Aldridge, what type of data is provided to the firms to enable them to bid on the reconstruction work?
Secretary ALDRIDGE. Please see question #17.

23. Senator CLINTON. Secretary Aldridge, were any estimates given to these firms as to how long their services might be necessary?
Secretary ALDRIDGE. Please see question #17.

24. Senator CLINTON. Secretary Aldridge, will non-governmental organizations be allowed to bid on contracts regarding Iraq's reconstruction? If not, why not?
Secretary ALDRIDGE. Please see question #17.

[Whereupon, at 11:56 a.m., the subcommittee adjourned.]

DEPARTMENT OF DEFENSE AUTHORIZATION FOR APPROPRIATIONS FOR FISCAL YEAR 2004

TUESDAY, APRIL 1, 2003

U.S. SENATE,
SUBCOMMITTEE ON READINESS
AND MANAGEMENT SUPPORT,
COMMITTEE ON ARMED SERVICES,
Washington, DC.

IMPACTS OF ENVIRONMENTAL LAWS ON READINESS AND THE RELATED ADMINISTRATION LEGISLATIVE PROPOSAL

The subcommittee met, pursuant to notice, at 9:04 a.m., in room SD–106, Dirksen Senate Office Building, Senator John Ensign (chairman of the subcommittee) presiding.

Committee members present: Senators Ensign, Warner, McCain, Inhofe, Akaka, and Pryor.

Committee staff members present: Judith A. Ansley, staff director; and Cindy Pearson, assistant chief clerk and security manager.

Majority staff members present: William C. Greenwalt, professional staff member; and Ann M. Mittermeyer, counsel.

Minority staff member present: Peter K. Levine, minority counsel.

Staff assistants present: Leah C. Brewer, Andrew W. Florell, and Sara R. Mareno.

Committee members' assistants present: Christopher J. Paul and Dan Twining, assistants to Senator McCain; John A. Bonsell, assistant to Senator Inhofe; Douglas Flanders, assistant to Senator Allard; Arch Galloway II, assistant to Senator Sessions; D'Arcy Grisier, assistant to Senator Ensign; James W. Irwin and Clyde A. Taylor IV, assistants to Senator Chambliss; Russell J. Thomasson, assistant to Senator Cornyn; Davelyn Noelani Kalipi, assistant to Senator Akaka; William K. Sutey, assistant to Senator Bill Nelson; Mark Phillip Jones, assistant to Senator Dayton; and Terri Glaze, assistant to Senator Pryor.

OPENING STATEMENT OF SENATOR JOHN ENSIGN, CHAIRMAN

Senator ENSIGN. The Subcommittee on Readiness and Management Support is meeting to review the administration's fiscal year 2004 Readiness Range Preservation Initiative, which addresses legislation clarifications on the management of endangered species, marine mammals, air pollution, and munitions on active ranges.

In this subcommittee's March 13 hearing on this subject, the Vice Chiefs testified about the cumulative adverse impacts of urban sprawl and environmental regulation. Their testimony highlighted the fact that efforts to provide training flexibility have been curtailed by litigation. This subcommittee meets again on this subject to hear testimony from the regulatory agencies and various public policy and State witnesses.

This is not a new issue. In a series of hearings held in the House and the Senate over the last 3 years, senior military witnesses alerted Congress to diminishing training and increased risk to readiness due to pressures from urban encroachment and environmental restrictions. The military departments have endeavored to ease the pressure by working with the regulators and communities. Unfortunately, efforts to ensure military testing and training flexibility have been successfully challenged in court.

With the ongoing war in Iraq, I am very concerned about how the pressures of urban encroachment and environmental restrictions may continuously diminish the quality of military testing and training. Diminished training will eventually erode readiness and that is unacceptable.

The Department of Defense (DOD) maintains that the administration's legislative proposal strikes a balance between environmental protection and the readiness of our men and women in uniform. I believe some of the witnesses who will appear before the subcommittee today will agree that that balance has been achieved, while others will disagree.

I want to know how we solve the problem. That is our goal here. I also want to know if there are concerns related to the administration's proposals. For example, perchlorate is present in the public drinking water supply in several areas in California and in my own State in Lake Mead. I want to ensure that the administration's proposals do not affect cleanup efforts related to drinking water sources such as Lake Mead.

Conversely, I am aware that some opponents of these proposals assert that under current law, national security exemptions and exclusions are available to address any threat to the military testing and training. I question whether these claimed mechanisms for relief could serve to comprehensively preserve ongoing military training regimens or to safeguard the environment. Where is the balance?

If there are concerns or issues related to the legislative proposals, please raise them and explain your position. Then I would like to hear productive and meaningful testimony about the proposed compromises and creative solutions. Congress cannot afford to embrace the notion that the administration's proposals roll back environmental laws and respond by doing nothing for fear of controversy.

I believe we are beyond that point. Based on the testimony of the Vice Chiefs, it is evident that the status quo is no longer the answer. I fundamentally believe that finding this balance is both necessary and possible here. That said, I hope that Congress, the administration, and other stakeholders will work together to address these issues in a responsible, meaningful way.

Senator Akaka, who is not here today, and I believe we share particular interest in the valuable perspectives of the environmental interest groups and States represented here today. I also believe that the hearings held by our subcommittee and other committees of jurisdiction will facilitate meaningful Senate review and action on the administration's legislative proposals.

As soon as Senator Akaka gets here, we will have him make an opening statement. We do have a long hearing today and I would ask that each of the witnesses summarize their testimony, try to keep it under 5 minutes, and your full statements will be made part of the record.

I would like to welcome our first panel: John Peter Suarez, Assistant Administrator, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency; Julie MacDonald, Special Assistant to the Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior; and Dr. Rebecca Lent, Deputy Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration.

Senator INHOFE. Mr. Chairman?

Senator ENSIGN. Yes. Senator Inhofe has done yeoman's work and we welcome any opening statement.

Senator INHOFE. Having chaired this subcommittee for a number of years and gone down this road before, I am quite sure now that we are in the middle of a war people are going to look at this a little differently than they have in the past. It is not that we do not have the very finest men and women out there fighting and the very best-trained right now, but certainly that training is in jeopardy.

I can remember going over a very serious thing that you were interested in at one time, Mr. Chairman, on Vieques. We have lost a range there, a live range. That loss has directly contributed to the loss of four American lives on the Dara Range in Kuwait. So we are talking about something very serious, life and death matters. We look at Camp Pendleton that has some 17 miles of shoreline; they are down to about 2,000 yards of the beach that are available for amphibious landings. The gnatcatcher could cause us to lose about 57 percent of the base as critical habitat.

I think it is important to realize that some of the things that we are trying to do actually started in a Democratic administration, in the Clinton administration. I think we have to keep saying that, because allowing the military to use the integrated natural resource management plans (INRMP) in place of critical habitat, that was a key component of the Pentagon's proposal during the Clinton administration.

So these things that we are dealing with are very serious, Mr. Chairman. I believe we should get all four of these legislative proposals passed and it is the very least we can do for our fighting troops over there now and those who will be going over there.

Now, Mr. Chairman, I chair the Environment and Public Works Committee. I have to go up for a nomination hearing at 9:30. Then I am going to come right back down, because I plan to stay here all the way through this hearing.

Thank you.

Senator ENSIGN. We welcome your participation, especially with all of your experience on this issue.

Mr. Suarez.

STATEMENT OF HON. JOHN PETER SUAREZ, ASSISTANT ADMINISTRATOR, OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE, U.S. ENVIRONMENTAL PROTECTION AGENCY

Mr. SUAREZ. Thank you, Mr. Chairman, members of the subcommittee, Senator Inhofe. Thank you for inviting me here to speak to you today on behalf of the United States Environmental Protection Agency (EPA) about the administration's proposed National Defense Authorization Act for Fiscal Year 2004.

We believe the administration's proposal appropriately addresses two equally compelling national priorities, military readiness and the protection of human health and the environment. These priorities can both be achieved at the same time, and we appreciate the DOD's willingness to work with us to craft the proposals before you today.

The administration's proposal would make changes to certain pollution control laws that EPA administers and to laws concerning wildlife protection and habitat preservation, which are the province of other Federal agencies. I will confine my remarks here today to the laws under EPA's jurisdiction.

EPA and the DOD share an important mission, especially in light of September 11, and that is the protection of both our national and environmental security. One holds little value without the other, and we believe neither mission should be sacrificed at the other's expense. Toward that end, EPA and DOD have for years worked cooperatively towards achieving these goals with tangible benefits to the American people.

The bill before this committee is the result of just such collaboration. I would like to highlight for the subcommittee some of the proposed statutory changes that the agencies have developed to facilitate our twin missions that are vital to the health and security of our Nation. First, EPA recognizes that military readiness depends on DOD's ability to move assets and material around the Nation, perhaps on short notice. Such large-scale movements of people and machines may have impacts on State implementation plans, or SIPs, for air quality. Accordingly, EPA and DOD developed proposed changes to the Clean Air Act to allow the Armed Forces to engage in such activities while working toward ensuring that its actions are consistent with the plan's air quality standards. Under the administration's proposal, the military would still be obligated to quantify and report its impacts on air quality prior to initiating the readiness activity, but would be given 3 years to comply.

Second, the administration's bill proposes two changes to the Resource Conservation and Recovery Act (RCRA), the Nation's solid and hazardous waste law. The bill contains language that would change the statutory definition of solid waste under RCRA to provide flexibility from DOD regarding the firing of munitions on operational ranges, while clarifying that the definitional changes are not applicable once the range ceases to be operational.

This change is compatible with existing EPA policy and the military missions rule that has defined EPA's oversight of fired munitions at operational ranges since 1997. The bill specifically maintains the ability of EPA, the States, and citizens to take actions against the Government in the event that munitions or their constituents migrate off-range and may pose an imminent and substantial endangerment to human health or the environment.

The agencies also worked together to craft a clear common sense definition of range. Under the revised definitions of solid waste and range, the military will have statutory assurance that EPA will not intervene in the firing or training with munitions while the public may rest secure in the knowledge that EPA, States, and citizens have authority to take action against the U.S. Government if munitions pose a threat off-range or after a range is closed.

Third, the administration's bill proposes analogous changes to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) also known as the Superfund law. It would exempt from the definition of release under CERCLA explosives and munitions deposited during normal use while on an operational range. It is important to note that EPA would retain authority to take action to abate an imminent and substantial endangerment to public health and the environment due to the deposit or presence of munitions on an operational range while still affording the military the flexibility they need in handling munitions at these ranges.

Indeed, the administration has recently developed language clarifying that the proposed changes to solid waste and Superfund laws apply only to operational ranges under the jurisdiction and control of military services.

In conclusion, we believe that the administration's proposed bill accommodates the concerns of the military, the EPA, and the public. I want to assure the subcommittee that both Administrator Whitman and I support this bill and believe that the bill's provisions will ensure that America's Armed Forces are able to carry out their national security mission and to train the way they fight, and that the agency is able to carry out its mission of protecting human health and the environment at the same time.

This concludes my prepared remarks and I will be happy to answer any questions that the subcommittee may have.

[The prepared statement of Mr. Suarez follows:]

PREPARED STATEMENT BY JOHN PETER SUAREZ

Mr. Chairman and members of the subcommittee: Thank you for inviting me to speak with you today on behalf of the U.S. Environmental Protection Agency (EPA) about the administration's proposed National Defense Authorization Act of Fiscal Year 2004. We believe the proposed bill appropriately addresses two important national priorities: military readiness and the protection of human health and the environment. These priorities can both be achieved at the same time, and we appreciate the Defense Department's willingness to work with us to craft the proposals before you today.

The proposed bill would make changes to certain pollution control laws that EPA administers and to laws concerning wildlife protection and habitat preservation, which are the province of other Federal agencies. I'll confine my remarks here today to the laws under EPA's jurisdiction.

In the wake of September 11, we understand more than ever the importance of military readiness in combating traditional and emerging foes. Both EPA and DOD leadership recognize the vital importance of both the mission of protecting human

health and the environment and the mission of protecting national security. Both believe that neither mission should be sacrificed at the expense of the other. Toward that end, EPA and DOD have for years worked cooperatively toward achieving these goals, with tangible benefits to the American people. The bill before this subcommittee is the result of just such collaboration. Together, the two agencies resolved key issues in a way that allows the Services to continue to "train the way they fight," while protecting the health of our citizens and safeguarding our natural resources. Indeed, we have recently reached agreement with DOD on language clarifying that the proposed changes to solid waste and Superfund laws apply only to operational ranges under the jurisdiction and control of the military services. The administration has cleared this language and intends to send it to Congress in the near future. This action underscores the administration's interest in keeping any changes limited and sharply focused.

Today, I would like to highlight for the subcommittee several of these proposed statutory changes the two agencies developed to facilitate our twin missions.

PROPOSED CHANGES TO THE CLEAN AIR ACT PROVIDE THE ARMED FORCES WITH NEEDED FLEXIBILITY, WHILE PROTECTING AIR QUALITY

EPA recognizes that military readiness depends on DOD's ability to move assets and materiel around the Nation—perhaps on short notice. Such large-scale movements of people and machines may have impacts on State Implementation Plans (SIPs) for air quality.

Accordingly, EPA and DOD developed proposed changes to the Clean Air Act's SIP provisions to allow the Armed Forces to engage in such activities while working toward ensuring that its actions are consistent with a SIP's air quality standards. Under the proposed bill, the Armed Forces would still be obliged to quantify and report their impacts on air quality prior to initiating the readiness activity, but would be given 3 years to ensure that their actions are consistent with a given State's SIP. We believe this compromise effectively addresses military readiness concerns, while ensuring timely compliance with air quality standards.

PROPOSED CHANGES TO RCRA WILL ALLOW FLEXIBLE AND APPROPRIATE MUNITIONS OVERSIGHT

The administration's bill also proposes two changes to the Resource Conservation and Recovery Act (RCRA), the Nation's solid and hazardous waste law. First, the bill contains language that would change the statutory definition of "solid waste" under RCRA to provide flexibility for DOD regarding the firing of munitions on operational ranges, while clarifying that the definitional exemptions are not applicable once the range ceases to be operational. This change comports with existing EPA policy and the Military Munitions Rule that have defined EPA's oversight of fired munitions at operational ranges since 1997. The bill specifically maintains the ability of EPA, the States, and citizens to take actions against the U.S. Government in accordance with the law in the event that munitions or their constituents migrate off-range and may pose an imminent and substantial endangerment to human health or the environment, if such materials are not addressed under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

Second, the agencies worked together to craft a clear, common-sense definition of "range." Under the revised definitions of "solid waste" and "range," the Armed Forces will have statutory assurance that EPA will not intervene in the firing of or training with munitions, while the public may rest secure in the knowledge that EPA, States, and citizens have authority to take action against the U.S. Government in accordance with the law if munitions pose a threat off-range or after a range is closed.

The history of interaction between EPA and DOD demonstrates that the two can work together effectively to achieve their respective missions, and this should instill confidence that the two agencies will continue to work together well to carry out those missions under the proposed legislation. EPA has in only one instance found it necessary to take an enforcement action that resulted in the cessation of live-fire training at a military base—namely, at the Massachusetts Military Reservation (MMR) on Cape Cod, Massachusetts. There, EPA took action under the Safe Drinking Water Act when it determined that the groundwater aquifer underlying MMR, the sole source of drinking water for hundreds of thousands of Cape Cod residents, was threatened with contamination—and only after efforts to support voluntary action failed to stop the spread of contamination. Today at MMR, EPA is overseeing cleanup work to ensure that the drinking water supply for Cape Cod residents meets all relevant standards now and in the future. In response to EPA's decisions, the Defense Department shifted some of this training to another facility and limited

its training at MMR to using small arms, as well as other training without using explosives, propellants, and pyrotechnics.

ANALOGOUS CHANGES TO CERCLA WILL PRESERVE THE AGENCY'S SUPERFUND AUTHORITY TO ADDRESS CONTAMINATION WHICH PRESENTS AN IMMINENT AND SUBSTANTIAL ENDANGERMENT

The administration's bill proposes analogous changes to the CERCLA, also known as the Superfund law. It would exempt from the definition of "release" under CERCLA explosives and munitions deposited during normal use while on an operational range. It is important to note that EPA would retain authority to take action to abate an imminent and substantial endangerment to public health and the environment due to the deposit or presence of explosives and munitions on an operational range. As with the proposed changes to RCRA, the change to CERCLA affords flexibility to the Armed Forces in handling munitions at operational ranges, but ensures that EPA has the ability to act when necessary to address the most important public health and environmental concerns.

ONGOING COLLABORATION ON MUNITIONS

Meanwhile, EPA continues to collaborate with DOD and State and tribal regulators to develop a new approach to cleaning up ordnance, explosives, and munitions at nonoperational ranges throughout the United States. This new approach, an expected product of the Munitions Response Committee (MRC), is designed to work within the framework of existing Federal and State authorities. Under the new process, military departments, EPA, Federal Land Managers, and the States and tribes will coordinate, where appropriate, and integrate their respective statutory and administrative authorities under Federal and State environmental laws. The development of Federal, State, and tribal partnerships and public participation will be key characteristics of the new process. We believe that the proposed bill complements the partnerships we are building through the MRC and will help the Agency ensure that munitions at both operational and nonoperational ranges are subject to sound environmental management.

THE NEW PROPOSAL WOULD AUTHORIZE THE TRANSFER OF OBSOLETE VESSELS FOR USE AS ARTIFICIAL REEFS

The bill would also authorize the Secretary of the Navy to transfer certain vessels for use as artificial reefs, but retain key environmental safeguards under CERCLA, RCRA, and the Toxic Substances Control Act (TSCA). These ships are often contaminated with asbestos and polychlorinated biphenyls (PCBs). EPA is working closely with the Maritime Administration to determine if and when reefing is appropriate, and to find suitable ship-scrapping facilities at home or abroad to dispose of obsolete ships in a safe and environmentally sound manner.

PROPOSED CHANGES IN WETLANDS MITIGATION BANKING

One other environmental provision of the bill deserves mention here. It would allow military departments to use military construction funds to make payments to wetlands mitigation banking programs and consolidated user sites when the Department is engaged in an activity that may adversely affect a wetland. A wetlands mitigation bank is typically a privately-owned site—in many instances, prior converted crop land—where wetlands are restored. Wetlands mitigation banks have enjoyed increasing acceptance and success since the mid-1990s, and the new bill would simply clarify that military funds could be used for this purpose.

CONCLUSION

Working together, EPA and DOD have developed a legislative proposal that addresses the concerns of the Armed Forces about future applications of EPA's statutes and regulations, while at the same time preserving the Agency's ability to protect public health and the environment. In the context of MMR, for example, EPA would still have the authority to protect the drinking water from imminent and substantial endangerment under the provisions of the proposed bill.

Similarly, the proposed legislation would codify the so-called "munitions rule" under RCRA—an existing EPA regulation that sets forth the conditions under which EPA and the States can respond under RCRA to environmental threats at both operating and closed military ranges. The proposed legislation also states clearly that EPA is authorized under CERCLA section 106 to address imminent and substantial environmental threats at both operating and closed ranges.

In conclusion, both the Administrator and I support this bill. We believe that it appropriately takes account of the interests of the American people in military readiness and in environmental protection. I am confident that DOD and EPA can work together within the framework of the proposed law to ensure that America's Armed Forces are able to train to carry out their national security mission and that the Agency is able to carry out its mission of protecting human health and the environment.

This concludes my prepared remarks. Thank you for the opportunity to present EPA's views. At this time, I would be happy to answer any questions you may have.

Senator ENSIGN. Ms. MacDonald.

STATEMENT OF JULIE A. MACDONALD, SPECIAL ASSISTANT TO THE ASSISTANT SECRETARY FOR FISH, WILDLIFE, AND PARKS, DEPARTMENT OF THE INTERIOR

Ms. MACDONALD. Good morning, Mr. Chairman and members of the subcommittee. I appreciate the opportunity to testify on the role of the Department of the Interior on this important subject.

Secretary Norton and Assistant Secretary Manson understand the unique nature of the duties and missions of the military and the need to train effectively for military activities. This is particularly true for Assistant Secretary Manson, who is a graduate of the Air Force Academy and a colonel in the Air National Guard. The Fish and Wildlife Service (FWS) has actively sought to work with the DOD to achieve a balance between meeting the requirements of the various natural resource laws without impacting the military's ability to train.

I would like to focus my testimony on the proposals set forth by the DOD with regard to the Endangered Species Act (ESA) and the creation of INRMP. At least 300 listed species occur on the DOD managed lands and access limitations due to increased security, the necessity for buffer zones, and good military stewardship has resulted in some of the finest remaining habitats occurring on military land.

The ESA requires the FWS to designate critical habitat for listed species if it is prudent and determinable. We recognize that critical habitat designations on DOD lands can impact the ability of the military to prepare and train. INRMPs serve as an effective vehicle through which the DOD can comprehensively plan for the conservation of fish and wildlife species. This planning can address important needs for endangered and other species of fish and wildlife, including the protection of habitat.

The Department of the Interior's policy is to exclude military facilities from critical habitat designations if the facility has an approved INRMP which addresses the species in question. We support the efforts of the administration to codify this policy in the Range Readiness and Preservation Initiative.

The ability of the Department of the Interior to exclude areas covered by an INRMP has allowed us to address a number of the DOD concerns over critical habitat designations. For example, critical habitat proposed for the purple amole, a plant in California, included significant portions of Camp Roberts and Fort Hunter Ligett. We excluded Fort Roberts from the final designation because it had a completed INRMP which addressed conservation of the plant. Working with the DOD, we were also able to remove Fort Hunter Ligett from the designation, although the INRMP to

address the protection of the plant had not yet been approved. The DOD was able to provide us detailed information on the impact of the proposed designation on the military readiness activities. The benefits of those military readiness activities to our national defense exceeded the benefit of including the area in a designation and we therefore excluded the property.

I have included additional examples of the excellent cooperation between the FWS and the DOD in my written testimony. However, a recent court case in the district of Arizona has cast doubts on our ability to continue to exclude military lands from critical habitat based on an INRMP which addresses the needs of the species in question. The FWS excluded lands covered by a national forest management plan from critical habitat proposed for the Mexican spotted owl and the court ruled that the FWS could not exclude lands from critical habitat designations based on the existence of a management plan.

We felt it important to advise the committee of the decision and the cloud it casts over our continued ability to exclude military lands with approved INRMPs from critical habitat. The decision adds additional weight to the administration's proposal for statutory exclusion. Codifying the Department of the Interior's policy on excluding military lands from critical habitat based on the existence of INRMPs would likely reduce future litigation and challenges and provide more certainty to the DOD that their lands will continue to be excluded from designation if they have an approved INRMP which provides for the conservation of the species in question.

In closing, Mr. Chairman and subcommittee members, I believe both the Interior Department and the DOD have acted cooperatively to implement the natural resource conservation laws passed by Congress. We are aware of the challenges that have arisen during this endeavor. The Interior Department is prepared to explore and craft creative solutions to balance our conservation mandates with military readiness. We look forward to continued work with the DOD on this vitally important matter.

This concludes my testimony. I appreciate the opportunity to appear today and I would be pleased to answer any questions you may have.

[The prepared statement of Ms. MacDonald follows:]

PREPARED STATEMENT BY JULIE MACDONALD

Mr. Chairman and members of the subcommittee, I am Julie MacDonald, Special Assistant to the Assistant Secretary for Fish and Wildlife and Parks in the Department of the Interior. I am pleased to appear before you today to discuss the role of the Department of the Interior in implementing Federal natural resource laws and our continuing working relationship with the Department of Defense (DOD) on natural resource issues. My statement will address the Fish and Wildlife Service's responsibilities and authorities under the Endangered Species Act (ESA), the Sikes Act, and the Marine Mammal Protection Act (MMPA). These laws reflect our Nation's long-standing commitment to the conservation of our natural resources for the benefit of future generations.

The Department interacts with DOD activities through its bureaus, including the U.S. Fish and Wildlife Service, the Bureau of Land Management, and the National Park Service. The Fish and Wildlife Service strives to ensure flexibility in meeting our joint responsibilities under the various natural resource laws without impacting the military's ability to train its personnel. I believe that the Fish and Wildlife Service and the military have done a commendable job at working together to strike a

balance between our legal responsibilities and the Armed Forces' duty to be both protectors of our national security and stewards of our natural heritage. I also acknowledge that more can be done. I will address both our successes and challenges as I discuss issues associated with the applicable laws.

ENDANGERED SPECIES ACT

The ESA was passed in 1973 to conserve vulnerable plant and animal species that, despite other conservation laws, were in danger of extinction.

DOD has a critically important role to play in the conservation of many rare plants and animals. At least 300 species listed as threatened or endangered occur on DOD-managed lands. DOD manages approximately 25 million acres on more than 425 major military installations throughout the United States. Access limitations due to security considerations and the need for safety buffer zones have sheltered many military lands from development pressures and large-scale habitat loss. As a result, some of the finest remaining examples of rare wildlife habitats exist on military lands.

The Fish and Wildlife Service has strived to establish good relationships with DOD that enable the military to carry out its mission of protecting our country while also ensuring the conservation of ESA-listed species on land it manages. Some outstanding examples of these partnerships are included at the end of my testimony.

Candidate Conservation

Conserving species before they need protection under the ESA is easier, more efficient, and poses fewer challenges to Federal agencies, including the military. In partnership with DOD and NatureServe, the Fish and Wildlife Service is developing a list of all at risk, non-federally listed species that may be found on or near military lands. This partnership project was developed by the military agencies, and demonstrates their interest in working with the Fish and Wildlife Service to benefit species.

The term "species at risk" is a term used by NatureServe for a native species that is either a candidate for listing or is considered by NatureServe and the Network of Natural Heritage Programs to be "imperiled" or "critically imperiled." In NatureServe's use of the term, "species at risk" refers to species that are presumed extinct, historical, critically imperiled, imperiled, and vulnerable (GX, GH, G1, G2, G3 ranks, respectively). Although the Fish and Wildlife Service generally means the same thing when we use the term "species at risk," we use the term as a descriptive, illustrative term for those species that may warrant conservation to prevent the need to list under the ESA. A ranking of G1, G2, or G3 indicates those kind of species. "Imperiled" and "critically imperiled" are defined by NatureServe as terms referring to G1 and G2 ranked species.

Once a species at risk is identified based on a mutual priority between the DOD installation and the FWS office, the Fish and Wildlife Service works with DOD to develop and implement conservation recommendations for the relevant activity. DOD working on a particular "species at risk" is based on a mutual priority between the DOD installation and FWS office.

In addition to this local and regional cooperation, Fish and Wildlife Service and DOD personnel have been meeting quarterly for several years in an "Endangered Species Roundtable." This informal session allows for open discussion and can lead to the referral of particularly difficult issues to headquarters for guidance or resolution. The group also reviews the Sikes Act and Integrated Natural Resource Management Plan (INRMP) development and implementation as they pertain to endangered species management.

Challenges

Even with these successful partnerships, we acknowledge that there have been challenges in resolving endangered species conservation and the military mission at some DOD bases and facilities. For example, 18 threatened or endangered species occur on Camp Pendleton, a Marine Corps Base in California. For some of these species, like the tidewater goby, the base harbors the only known remaining populations. Preventing potential conflicts between endangered species conservation and Camp Pendleton's primary military mission continually challenges the creativity of both the Fish and Wildlife Service and the base leadership.

Section 7(j) of the ESA provides a national security exemption that DOD can invoke in cases where national security would be unacceptably compromised by conservation responsibilities. This exemption has never been invoked by DOD, a fact that speaks very well to the creativity of our military and natural resource professionals. However, it is apparent that we must avoid penalizing the military for hav-

ing done positive things for conservation of species and we must not unfairly shift the burden of species protection to the military. Additionally, in some cases, issues arise because of differing perceptions between our respective agencies about the effects of the provisions of the ESA. Finally, I must note that many of the challenges presented to the military under the ESA are similarly faced by other Federal agencies and private landowners. We look forward to continuing to work with the DOD to clarify these issues and build upon the relationship we have established.

RECENT COURT DECISION ON DEFINITIONAL EXCLUSIONS FROM CRITICAL HABITAT

Integrated Natural Resource Management Plans (INRMPs) are planning documents that allow the military to implement landscape-level management of its natural resources while coordinating with various stakeholders. The Department of the Interior initiated a policy in the previous administration, which we have continued, to exclude military facilities from critical habitat if there was an approved INRMP for that facility which addressed the species in question. However, a recent court case has cast doubt on our ability to continue this practice.

The policy is based on the definition of critical habitat which states, in part:

> . . . the specific areas within the geographical area occupied by the species . . . on which are found those physical or biological features—(I) essential to the conservation of the species and (II) which may require special management considerations or protection;

The exclusion policy was based on a decision that military lands with an approved INRMP, and other types of land with approved management policies, did not require special management consideration because they already had adequate management and, thus, by definition would not be considered critical habitat.

However, the U.S. District Court in Arizona has ruled, in a case relating to Forest Service lands (Center for Biological Diversity v Norton), that this interpretation is wrong, and the fact that lands require special management necessitates their inclusion in, not exclusion from, critical habitat. The Court went on to say that the Government's interpretation amounted to our inserting the word "additional" into the statute (between "require" and "management"), and that only Congress can so revise the definition.

While the implications of this decision go far beyond military lands, we felt it important to advise the committee of it and the cloud it casts over our continued ability to exclude military lands with approved INRMPs from critical habitat. We believe this adds additional weight to the administration's proposal for a statutory exclusion.

To avoid possible confusion in light of the Court's ruling, we would suggest striking the words "provides the 'special management considerations or protection' required under the Endangered Species Act (16 U.S.C. 1532(5)(A)) and" from the proposed new section 2017(a). While that phrase is consistent with our interpretation of the law, it could cause future litigation problems due to the Court's ruling that the necessity for "special management considerations or protection" requires that land to be included, not excluded, from critical habitat. This change would leave the section with an unambiguous statement that completion of an INRMP for the species in question precludes designation of critical habitat at that facility.

RECENT CRITICAL HABITAT ACTIONS

The ESA portion of the administration's proposal addresses critical habitat designations. The Department has been able to address a number of DOD concerns over critical habitat designations.

Critical habitat proposed for the purple amole, a plant, in California included significant portions of Camp Roberts and Fort Hunter Liggett. Camp Roberts had a completed INRMP which addressed conservation of this plant, and we excluded it from the critical habitat designation on this basis.

While Fort Hunter Liggett was developing an INRMP to address the plant, it did not have the plan completed at the time we had to make the decision on the critical habitat designation. However, the DOD had provided us with detailed comments on the adverse impacts to military readiness that would result from the proposed designation, and these justified removing the fort from the critical habitat under section 4(b)(2) of the ESA. We determined that the benefits of excluding the area exceeded the benefits of inclusion, in that the adverse impacts to national defense exceeded the benefits that would result from designating the area as critical habitat.

Although not the basis for our decision, the fact that Fort Hunter Liggett had a statutory obligation to complete its INRMP, and to include the plant within that plan, provided us with an additional comfort level for that exclusion.

SIKES ACT AND INTEGRATED NATURAL RESOURCE MANAGEMENT PLANS

In fiscal year 2002, the Fish and Wildlife Service and State fish and wildlife agencies assisted in development, review, and/or implementation of INRMPs for 225 military installations in the United States.

INRMPs serve as an effective vehicle through which DOD and the Military Services can comprehensively plan for conservation of fish and wildlife species. This planning has the potential to address important needs for resident endangered species, including the protection of habitat.

We are committed to improving and expanding our existing partnerships with DOD, the Army, the Navy, the Air Force, and the Marine Corps. We look forward to opportunities to increase the utility of INRMPs as tools to maximize the potential benefits of DOD lands to fish and wildlife conservation while ensuring effective training of our troops.

MARINE MAMMAL PROTECTION ACT

The Marine Mammal Protection Act of 1972 established a Federal responsibility, shared by the Secretaries of the Interior and Commerce, for the management and conservation of marine mammals. The Department of the Interior is responsible for sea otters, walrus, polar bears, dugongs, and manatees, while the Department of Commerce is responsible for cetaceans and pinnipeds, other than walrus, including seals, whales, and dolphins. In 1994, Congress enacted a number of amendments to the statute. One of the provisions, with broad applicability throughout the act, added the definition of "harassment" as an element of the act's take provisions.

Over the last several years, the Fish and Wildlife Service has worked diligently with the National Marine Fisheries Service (NMFS), the Marine Mammal Commission (MMC), the United States Navy, and Alaska Natives to develop proposals that enhance marine mammal conservation, and provide greater certainty to the regulated public regarding certain areas of the existing law. During this process, revisions to the definition of harassment were considered to address a number of concerns, including those expressed by the Navy. The text of this proposed amendment to the definition of harassment is contained in administration's Range Readiness and Preservation Initiative in a way that only applies to DOD military readiness activities. We note that this same language applying to all entities, in addition to other important proposals related to the MMPA, are contained in the administration's comprehensive legislative proposal to reauthorize and amend the MMPA. This MMPA reauthorization proposal was transmitted to Congress at the end of last month. The Department strongly supports enacting this comprehensive legislative proposal, which will address the concerns of the Navy regarding harassment.

The administration's Range Readiness and Preservation Initiative contains two other provisions related to the MMPA—an incidental take provision related to military readiness activities, and a national defense exemption. Because the Department of Commerce has the most interaction with DOD regarding these particular MMPA issues, we will defer to their comments on these provisions.

CONCLUSION

In closing, Mr. Chairman, I believe both the Department of the Interior and DOD have acted cooperatively to implement natural resource conservation laws passed by Congress. We are aware of the challenges that have arisen during this endeavor. The Department is prepared to explore and craft creative solutions to balance our conservation mandates with military readiness. We look forward to continue work with the DOD on this vitally important matter.

This concludes my testimony. I appreciate the opportunity to appear today before the subcommittee, and I would be pleased to answer any questions you have.

EXAMPLES: FWS–DOI COOPERATION IN ENDANGERED SPECIES CONSERVATION

United States Air Force Academy, Colorado. The U.S. Air Force Academy recognized the value of long-range planning when it commissioned a baseline study of small mammals in 1994. The survey aided the Air Force in identifying the presence of the Preble's meadow jumping mouse, which at the time was a candidate for listing. A species receives protection under the ESA when it is listed as endangered or threatened. In order to help DOD agencies plan their activities, the Fish and Wildlife Service shares information on listing candidates and upcoming listing actions. As a result, the Academy entered into a partnership with the Colorado Natural Heritage Program to study the mouse and provide information for management and conservation strategies.

When the jumping mouse was listed as threatened in 1998, the Fish and Wildlife Service took steps to ensure that the Academy would be a full partner in the species' management and recovery. The Academy's natural resources manager is a member of the Science Advisory Team, a group of scientists and managers dedicated to compiling the best science available to support the conservation of the mouse throughout its range. An Academy representative also holds a position on the executive committee for a habitat conservation plan (HCP) under development for El Paso County, Colorado. Through the HCP process, the Academy will coordinate with non-Federal entities in the development of regional conservation strategies for the mouse. In addition, at the request of the Fish and Wildlife Service, the Academy's natural resources manager is representing the Air Force on the Preble's Meadow Jumping Mouse Recovery Team, which is charged with developing a plan to restore the species to a secure status. The Air Force also initiated a programmatic formal consultation under section 7 of the ESA for its Preble's meadow jumping mouse conservation management plan and conservation agreement. The biological opinion provided by the Fish and Wildlife Service on the Academy's conservation management plan significantly reduced the regulatory burden on both the Academy and the Fish and Wildlife Service by removing the need for section 7 consultations for each instance of regular maintenance.

Camp Pendleton, California. In 1999, substantial areas of Camp Pendleton were included in proposed designations of critical habitat for 5 of the 18 listed species that are present on the base. The Fish and Wildlife Service was able to work within the provisions of the ESA to avoid designating critical habitat on the training areas within Camp Pendleton.

The ESA requires the Fish and Wildlife Service to determine whether designation of critical habitat is prudent and determinable. Under sections 4(b)(2) of the ESA, the Secretary of the Interior can exclude areas from critical habitat designations when economic or policy interests outweigh the expected benefits of designation. The Fish and Wildlife Service has used military readiness as a reason to exclude training areas from critical habitat designations many times now.

For example, the 1999 proposals for critical habitat on Camp Pendleton would have designated over 50 percent of the base as critical habitat for listed species, including the California gnatcatcher, the Tidewater goby, the Riverside fairy shrimp, the San Diego fairy shrimp, and the arroyo toad. As a result of the exclusion process discussed above, the Fish and Wildlife Service was able to exclude most of Camp Pendleton from the designated critical habitat due to Marine Corps concerns about the effects the designations could have on military training critical to national security. The land area currently designated as critical habitat on Camp Pendleton encompasses less than 4 percent of the 125,000 acre, over half of which is located on land leased by the State, rather than the base proper.

Fort Hood, Texas. Under the section 7(a)(2) of the ESA, Federal agencies are required to consult with the Fish and Wildlife Service to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of listed species or adversely modify designated critical habitats. A good example of this process occurred recently at Fort Hood. As one of the largest heavy artillery training sites in the country, it conducts live-weapons fire and aviation training and houses more than 500 tanks. Much of the 220,000-acre base resembles barren, scorched battlefields with ruts as deep as trenches. However, it also contains essential nesting habitat for two endangered songbirds, the golden-cheeked warbler and black-capped vireo. Fort Hood is balancing its military mission with environmental stewardship.

As part of its responsibility under the ESA, the post manages 66,000 acres, more than 25 percent of the land on base, for the recovery of these two endangered species. The post also provides a haven to wintering bald eagles, occasional visiting whooping cranes, peregrine falcons, and other rare plant and animal species.

The Army entered into an interagency consultation with the Fish and Wildlife Service under section 7 of the ESA. In 1993, the Fish and Wildlife Service issued a "no jeopardy" biological opinion (BO). Following the issuance of the BO, Fort Hood contracted with the Nature Conservancy of Texas for further research and monitoring of the birds. In conjunction with Fish and Wildlife Service and Army biologists, conservancy researchers are compiling the most comprehensive body of information on the birds to date. Fort Hood has followed the requirements of the 1993 BO (including a version amended in 2000) and has funded valuable research and management strategies that can be applied to warbler and vireo issues range-wide. The birds are benefiting from our partnership with the Garrison Commander and base natural resources staff.

Fort Bragg, North Carolina. For listed species, recovery is the ultimate goal. Section 7(a)(1) of the ESA directs Federal agencies to use their statutory authorities

to fulfill this goal. The Sandhills region of North and South Carolina supports the largest population of red-cockaded woodpeckers (RCW) in the United States. Fort Bragg is the only Federal authority managing lands in that region for the recovery of RCWs. The area around Fort Bragg is being rapidly developed, and if critical tracts are not protected soon, they will be lost to the woodpecker. Loss of these lands due to development also would limit Fort Bragg's ability to sustain current and future military training. In response, the Army launched a Private Lands Initiative with The Nature Conservancy and other partners to purchase land or conservation easements from willing sellers. The lands will not only become available for red-cockaded woodpecker recovery, but also for compatible military training activities and recreation.

Fort McCoy, Wisconsin. Fort McCoy encompasses 59,750 acres and is home to a diversity of vegetation, including wild lupine, which is the only known food plant for larvae of the endangered Karner blue butterfly. Since 1990, when the installation discovered Karner blues on its land, military training and the butterflies have coexisted and thrived. Fort McCoy officials began coordinating with the Fish and Wildlife Service on the impact of both military and non-military activities affecting the Karner blue butterfly in 1992. In early 1994, the Fish and Wildlife Service issued Fort McCoy a no-jeopardy BO that included "reasonable and prudent measures" and "terms and conditions," both as provided under the ESA. As part of an effort to fulfill those terms, Fort McCoy submitted a draft Karner Blue Butterfly Conservation Plan to the Fish and Wildlife Service in 1995. The plan outlined the direction Fort McCoy would take to manage its lands for the butterfly while allowing for the successful completion of the installation's military training mission. The final conservation plan was completed in 1997. Fort McCoy has been able to comply with the ESA while having only minimal impact on military training.

Pearl Harbor, Hawaii. A Navy team recently created some critical mudflat habitats for endangered waterbirds on the shores of Pearl Harbor. These mudflats are home to a number of Hawaiian waterbirds, including four endangered species and a variety of migratory birds. The site is a small pond within a unit of the Pearl Harbor National Wildlife Refuge. While the underlying land and water is owned by the Navy, the refuge is managed by the Fish and Wildlife Service. Over the years, the pond has provided decreasing value to waterbirds because of the increasing growth of invasive plants and weeds. Fish and Wildlife Service staff had attempted to create clear spaces by changing the water levels, but it wasn't enough to make the area suitable habitat for waterbirds. Additional work with heavy equipment was needed to create conditions favorable for wildlife.

In August 2000, a Navy Seabee unit answered the Refuge Manager's request for help and at the same time benefited from some real-life training. Two Seabee heavy equipment operators maneuvered a bulldozer and grader to sculpt the bottom of the pond. Putting their Navy engineering skills to work in this training exercise, they reshaped mudflats for endangered Hawaiian stilts and constructed a drainage system according to a refuge restoration plan. This project was just one example of the Navy's strong partnership with the Fish and Wildlife Service's national wildlife refuge in Pearl Harbor. For years, sailors and their families also have volunteered numerous weekend hours creating new habitats and clearing away trash and excess vegetation at the refuge.

Air Force in Alaska and Peregrine Falcon Recovery. Since the early 1980s, the Air Force has worked with the Fish and Wildlife Service to minimize or eliminate impacts of Air Force activities on peregrine falcons in Alaska. Through the section 7 consultation process, the Air Force and the Fish and Wildlife Service identified major peregrine nesting areas in proposed Air Force training locations. Much of this training involves very low-level and high-speed flights, a combination with the potential to disturb many wildlife species, including nesting peregrine falcons. The Air Force agreed to a protective "no-fly" zone of 2 miles horizontal distance and 2,000 feet above the nest level in these dense nesting areas. Additionally, the Air Force is monitoring several nearby peregrine populations that fall outside the protected areas. This monitoring effort, which has continued since 1995, shows that the protective zones appear to provide adequate protection in the densest nesting areas and that the incidental loss of nestlings outside these zones is below the levels originally anticipated. Rather than making a minimal effort to comply with the ESA, the Air Force actively pursued programs to promote peregrine recovery, which helped make it possible to remove this magnificent bird from the threatened and endangered species list in 1999.

Senator ENSIGN. Thank you.

Dr. Lent.

STATEMENT OF DR. REBECCA LENT, DEPUTY ASSISTANT ADMINISTRATOR FOR FISHERIES, NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Dr. LENT. Thank you, Mr. Chair. I appreciate this opportunity to address issues of environmental protection in the context of military operations and readiness. National Oceanic and Atmospheric Administration (NOAA) fisheries is responsible for the management of nearly 150 stocks of marine mammals under the Marine Mammal Protection Act (MMPA).

I am happy to report that over the past few years NOAA has been working very closely with our partners at the DOD, particularly the Navy since we have a shared responsibility for the oceans. We have developed a productive relationship. We have worked on efforts to improve coordination between agencies working on the process, research coordination, and strategic planning.

The DOD bill proposes changes to three areas of the MMPA. First of all, the definition of harassment; second, the incidental take authorization language; and third, a national defense exemption to the MMPA.

The change in the definition of harassment, not a surprise, it is the same as the definition that we have proposed. That is because we have been working closely with our partners at the DOD. This change in the case of the DOD bill is only for military operations. In our bill that we sent to Congress in February of this year, it would be for all activities.

The purpose of the change in the definition is to focus on those activities that truly have an impact on the marine mammals and not insignificant impacts. The proposed change is also consistent with the National Research Council recommendations.

Also included in the DOD bill, the second area are changes to permitting legislative requirements. These are for incidental take permits, takes that happen that are unintentional, but not unexpected, during activities that are otherwise lawful. NOAA Fisheries can authorize such takes as long as the takings have no more than a negligible impact on the stocks and will not have an unmitigable impact on the subsistence harvest of these species.

A couple points about these changes to the permitting process. First of all, in order to get this permit, the DOD will still have to show that these activities are having a negligible impact on the marine mammals species. Also, military readiness activities small take authorizations will still have to abide by the processes under the ESA, the National Environmental Policy Act, the Administrative Procedures Act, et cetera, these acts which provide for analyses of options, public hearings, public comment, and input.

Also, in terms of these changes in permits, it would be necessary for us to know in order to make this negligible impact determination what activities are taking place by the military as well as when and where. So the changes in the legislation do not change the type of analyses that we will have to do to authorize the activities.

Finally, the third area of change to the MMPA is an exemption clause for actions necessary for national defense. This exemption clause already exists in the ESA. It does require or recommend a

consultation with the Secretaries of Commerce and Interior and this exemption can last for up to 2 years.

In conclusion, NOAA and the Department of Commerce support the DOD authorization bill. We are confident that DOD and NOAA can continue to work together within the framework of the proposed law to ensure that our Armed Forces are able to train to carry out their national security mission while we can carry out our mission of marine conservation. We will continue to work with the Navy to make sure this happens.

Thank you very much.

[The prepared statement of Dr. Lent follows:]

PREPARED STATEMENT BY REBECCA LENT, PH.D.

Mr. Chairman and members of the subcommittee, thank you for inviting me to testify today regarding the fiscal year 2004 Department of Defense Readiness and Range Preservation Initiative (RRPI). I am Dr. Rebecca Lent, Deputy Assistant Administrator for Fisheries at the National Oceanic and Atmospheric Administration (NOAA).

I appreciate the opportunity to address issues of environmental protection in the context of military operations and readiness. NOAA Fisheries' strategic goals regarding environmental stewardship are to build sustainable fisheries, recover protected species, and sustain healthy coastal ecosystems. Our stewardship of living marine resources is conducted for the benefit of the Nation through science-based conservation and management. NOAA Fisheries' role in environmental stewardship is defined legislatively through the Marine Mammal Protection Act (MMPA), the Endangered Species Act (ESA), the Magnuson-Stevens Fishery Conservation and Management Act, and other statutes.

MARINE MAMMALS

With regard to marine mammals, NOAA Fisheries is responsible for the conservation and management of 147 marine mammal stocks of cetaceans and pinnipeds under the MMPA. NOAA cannot fulfill this mission by itself. We must work with our constituents, other resource management agencies, such as the Fish and Wildlife Service and the Environmental Protection Agency, and agencies such as the Department of Defense (DOD) to help us fulfill these stewardship responsibilities.

Over the last few years, NOAA has been working more closely with our Federal partners at DOD, particularly the Navy, due to our shared responsibilities for the oceans. We have developed a productive working relationship. NOAA Fisheries and the Navy have undertaken a number of efforts to improve coordination between the two agencies, including research coordination and strategic planning opportunities. Discussions have focused on the integration of agency processes under the ESA and the MMPA, as well as the concerns raised by the military in achieving its mission responsibilities.

To build on efforts at the staff level, NOAA Fisheries has been meeting with H.T. Johnson, Acting Secretary of the Navy, on ways to expand our partnership in achieving our distinct yet complementary missions. These meetings have focused on opportunities to expand coordination efforts for complying with applicable resource laws, and ways to continue to increase cooperative research and outreach on complex scientific issues.

Additionally, NOAA Fisheries is working hard to meet the increasing demands being placed on our regulatory program to process applications and authorizations under MMPA. The phenomenon of sound in the ocean has grown tremendously and, as with many scientific issues, the more questions you ask about its impacts on marine mammals, the more you find that are yet to be answered. Not only has the complexity of the analyses increased, but public scrutiny as well.

MMPA REAUTHORIZATION

In February of this year, the administration transmitted its proposed MMPA Amendments of 2003 to Congress. One important provision contained in the administration's MMPA bill relative to RRPI is a change to the definition of harassment. Although the existing regime under the MMPA and ESA is fairly flexible, the administration recognizes that the definition of harassment under the MMPA needs clarification. As a result, NOAA Fisheries worked closely with the DOD, the Department of the Interior, the Marine Mammal Commission, and others to develop a re-

vised definition as part of the administration's MMPA reauthorization package. We believe that a clearer definition of harassment would be beneficial to the regulated community as a whole.

We look forward to working with congressional members and staff to help provide any necessary information or assistance that will aid in the reauthorization of the MMPA in the current Congress.

DOD AUTHORIZATION: THE READINESS AND RANGE PRESERVATION INITIATIVE OF 2003

The National Defense Authorization Act for Fiscal Year 2004 contains a number of provisions that are relevant to NOAA Fisheries and the MMPA. The RRPI would make a number of amendments to the MMPA specifically for military readiness activities. These amendments would apply to both the DOD and the U.S. Coast Guard. NOAA Fisheries understands the timing issues relative to military readiness. Because these proposed amendments deal solely with military readiness activities and national security, they have been included in the draft National Defense Authorization Act for Fiscal Year 2004 and not the draft Marine Mammal Protection Act Amendments of 2003 that the administration transmitted to Congress on February 21, 2003.

The key points noted in the "Purposes" section of the RRPI legislation are: "To ensure military readiness by addressing problems created by encroachment on military readiness activities, marine areas, and airspace reserved, withdrawn, or designated for military use; reaffirm the principle that such lands, marine areas, and airspace exist to ensure military preparedness; shield military readiness activities and lands, marine areas . . . from encroachment, while ensuring that the DOD fulfills its environmental stewardship responsibilities . . . re-establish the appropriate balance between military readiness and environmental stewardship. . . ." The term "military readiness activities" is broadly defined and would include any training and operations that could be related to combat readiness.

Definition of Harassment: The RRPI includes a change to the definition of 'harassment' in section 3 of the MMPA. This definition is the same as the one contained in the administration's proposed MMPA Amendments; however, the RRPI definition only applies to military readiness activities, rather than all regulated activities.

Incidental Take Permits: Additional amendments to the MMPA that are contained in the RRPI include a group of changes to the current legislative requirements that govern applications for incidental take permits (section 101(a)(5)(A) in the MMPA). Incidental takes are those that are unintentional, but not unexpected. These takes occur during otherwise lawful activities. The MMPA established a moratorium on the taking of marine mammals in U.S. waters by any person, as well as by U.S. citizens in international waters.

In 1981, Congress amended the MMPA to provide for 'small take' authorizations for otherwise lawful activities. Under the present scheme, NOAA Fisheries will authorize the takes of small numbers of marine mammals if the takings will have no more than a negligible impact on those marine mammal species or stocks, and not have an unmitigable adverse impact on subsistence harvests of these species. Through regulation, NOAA Fisheries has defined "negligible impact" to be an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

These small take authorization regulations are implemented through letters of authorization (LOAs), can last for up to 5 years, and require notice and comment rulemaking. Navy and other DOD activities sometimes need authorization for the incidental take of marine mammals.

In 1986, Congress amended both the MMPA, under the small take program, and the Endangered Species Act, to authorize takings of depleted (and endangered or threatened) marine mammals, again provided that the taking (lethal, injurious, or harassment) was small in number and had a negligible impact on marine mammals.

In 1994, MMPA section 101(a)(5) was amended to establish an expedited process by which U.S. citizens can apply for authorization to incidentally take small numbers of marine mammals by harassment, referred to as Incidental Harassment Authorizations (IHAs). IHAs may only last up to 1 year in duration. However, this program allows authorizations to be issued within 120 days, instead of the 6–8 months required for LOAs issued under "small take" regulations. Most LOAs and IHAs to date have authorized the incidental harassment of marine mammals by noise.

The RRPI makes a number of changes to section 101(a)(5) of the MMPA, as it applies to military readiness activities. The RRPI would add the words "military readiness activities" after "other than commercial fishing" and adds a new para-

graph 7(A) to this section. This new paragraph, is similar to the current paragraph 5(A), with the following exceptions:

- (7)(A) does not contain the terms "specified activity," "specified geographical region," and "small numbers."
- (7)(A) does not contain (5)(A) language that requires publication of the proposed authorization in the Federal Register, public media, etc., to provide opportunity for public comment. This was inadvertently omitted in the drafting and there was no intention to limit the opportunity for public comment.

The important point in evaluating the impact of these proposed amendments to the MMPA small take program provisions on NOAA's trust resources and the MMPA is that DOD will still have to show that its activities are having a negligible impact on the marine mammal species and populations. Additionally, it will have to demonstrate that its activities will not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence uses pursuant to the MMPA. These are the key elements to maintaining the health of marine mammal species and are the premise for the integrity of the incidental take authorization section of the MMPA. Additionally, military readiness activity small take authorizations will have to abide by all ESA, National Environmental Policy Act, and Administrative Procedure Act requirements where they apply.

To make the requisite negligible impact determination and to comply with these other environmental laws, NOAA Fisheries would have to know what activities would be taking place—also, when and where they would occur. A substantive effect on more than a small proportion of a population would likely have more than a negligible impact; therefore, numbers are taken into account, based upon biological significance, which is how NOAA Fisheries has been implementing the program. Consequently, I predict that the proposed amendments to the MMPA would have no adverse impact on the protection of marine mammals.

Exemption Clause:

With regard to the exemptions clause for actions necessary for national defense, the language would allow the Secretary of Defense, after consulting with the Secretary of Commerce and the Secretary of the Interior, to exempt any action or category of actions undertaken by the DOD from compliance with any requirement of the MMPA. These exemptions may be granted for 2 years, with additional 2 year exemptions possible after further consultation between the Secretaries. This exemption is similar to the one found in the ESA.

CONCLUSION

We support the fiscal year 2004 DOD RRPI and believe that it takes account of the interests of the American people in military readiness and in environmental protection. I am confident that DOD and NOAA can work together within the framework of the proposed law to ensure that America's Armed Forces are able to train to carry out their national security mission and that the Agency is able to carry out its marine conservation responsibilities. NOAA will also continue to work with the Navy and the rest of the DOD to improve coordination between our programs. We look forward to continuing our partnership.

Senator ENSIGN. I want to thank all of the witnesses who are appearing before the subcommittee today.

I will start with my line of questioning. I offered Senator Akaka to do his opening statement and he would rather do that at the start of his questions, so we will have that occur at that time.

I want to start with Mr. Suarez. There were some reports in the news that we are all aware of about the Administrator's supposed comments and some controversy about those comments. Can you clarify for this subcommittee today what the Administrator's position is on these proposals that are before us today?

Mr. SUAREZ. Yes, I can, and thank you for that opportunity, Mr. Chairman. The Administrator wants to make it perfectly clear that she supports the bill. She believes the bill is a reasonable compromise to allow the military the flexibility that they need to conduct their readiness and training activities while at the same time remaining protective of public health and the environment.

We believe, and the Administrator believes, that the public will be sufficiently protected given these modest requested changes that the Defense Department has requested and she fully supports the bill.

Senator ENSIGN. I am glad you clarified that. I actually spoke to the Administrator last night just so I would hear with my own ears. Not that we did not trust you, Mr. Suarez.

Mr. SUAREZ. I had to hear it for my own ears, too.

Senator ENSIGN. Yes, I wanted to make sure that there was no question in case anybody brought something up or whatever today. It was fairly clear, it was actually abundantly clear, from her comments to me last night that she felt—and correct me if I am wrong in any of this statement—that she felt that with the administration's proposal that EPA had all the authority that they needed to enforce and protect the environmental laws and the environment for this country.

Mr. SUAREZ. Mr. Chairman, I think that exactly characterizes her position.

Senator ENSIGN. Very good.

I have another question, dealing with perchlorate. There have been some reports in my State that this proposal would somehow affect the cleanup of perchlorate in southern Nevada. I spoke to the Administrator last night, but I would like to hear it on the record from you. Would this proposal from the administration today, any of the proposals, affect any of the cleanup going on as far as perchlorate going into the Colorado River from southern Nevada?

Mr. SUAREZ. Mr. Chairman, it would not. A couple of things to keep in mind as to the proposal. First, the proposal does not affect at all any of our authorities under the Safe Drinking Water Act. The Safe Drinking Water Act remains untouched and any action that we would need to take to protect any threats or imminent threats to safe drinking water remains unaffected.

Second, we still retain the authority to take action on an operational range under the jurisdiction and control of the military if a release of a hazardous substance on that range poses an imminent and substantial endangerment to public health or the environment.

Third, we are working with DOD to clarify language to make perfectly clear that the proposed changes apply only to operational ranges in the jurisdiction and control of the DOD.

So I think across the board, we are comfortable that there is nothing that would change our ability and our efforts to address perchlorate contamination in drinking water supplies.

Senator ENSIGN. Thank you very much. That is obviously very important to the constituents of my State, as well as downriver in the State of California, and we appreciate that because I think it is very important for us to be able to clean that up in the future. As many people have said, we do not want to let the DOD off if they are indeed responsible, that they should be part of that cleanup.

Let me address Ms. MacDonald. Fish and Wildlife on these proposals going forward, if we did nothing, Fish and Wildlife, the proposals that have been put in place, you feel that they have been adequately protecting endangered species and plants, correct?

Ms. MACDONALD. Yes. The INRMPs are developed with the consultation of the FWS and they are not complete until the FWS has signed them as well as the DOD.

Senator ENSIGN. Some have said that if we go forward we are rolling back protections for these plants and animal species. What is your opinion and the Department's opinion on that type of a statement?

Ms. MACDONALD. Well, that is inaccurate because the FWS again participates in developing these plans, and does not sign off on them if they think they are inadequate.

Senator ENSIGN. In general, would you say that the people that work at the FWS are the kind of people that care or do not? In other words, do the kind of people that go to work for you, are they the kind of people that want to take care of the environment or are they the kind of people that just do not care about the environment?

Ms. MACDONALD. In my opinion, I have not met a group of people that care more for the environment than the FWS employees.

Senator ENSIGN. So you feel very comfortable speaking for the FWS and those employees at the FWS, that you are concerned and that you think that there is a balance here that can be maintained in the future, that can work well for the military and for the protection of those species covered under the ESA?

Ms. MACDONALD. Yes.

Senator ENSIGN. Thank you very much.

My time has expired, so I have to turn it over. I do have more questions and we may have to submit some of those questions for the record. But I would like to turn it over now to Senator Akaka for an opening statement, and that will not go against your questioning time, so make your opening statement and then you can start with your questions.

STATEMENT OF SENATOR DANIEL K. AKAKA

Senator AKAKA. Thank you very much, Mr. Chairman. You are very kind and it is good to be here this morning. I want to add my welcome to the panel.

In a sense, this is an unusual hearing because we are going to be hearing from the Government sector as well as the private sector and those who have interests. So we will be trying to bring together all of these views.

We began our review of the impacts of environmental laws on military readiness about 2 weeks ago with a hearing at which we heard the representatives from the four military services. Today we will be hearing from you and from outside experts and organizations as well as local and State governments.

Our subcommittee does not usually hear from witnesses like you because we do not have jurisdiction over the environmental laws or other statutes that impact the general public. This is a very difficult issue that we have before us, not only because of the competing interests of military readiness and environmental protection, but because of the complexity of some of the statutes and regulations involved. That is why I appreciate, Mr. Chairman, your decision to schedule this second hearing.

I believe that the members of the subcommittee will greatly benefit from hearing the diverse views and perspectives presented by the range of witnesses you have assembled for us today. I hope we will be able to hear the views and perspectives and work together to develop a common understanding and constructive approach to this difficult issue. So I look forward to the discussions, the testimonies, and the responses to the questions.

My first question, Mr. Chairman, is to Mr. Suarez. During the interagency coordination process last year, EPA was asked for its comments on the proposal to exempt certain DOD activities from the Clean Air Act (CAA). I have here a memorandum in which EPA senior staff recommends that the agency oppose the proposal and I will read the memorandum in part: "This proposal should have negative impact on the air quality"—let me read that again: "This proposal could have negative impact on the air quality in communities surrounding the military facility conducting the readiness activities and on the States' ability to attain and maintain the ambient air quality standards. Individuals living near the facilities could potentially be exposed to higher and more frequent pollutant concentrations which exceed the national ambient air quality standards.

"Since EPA's general conformity regulations already include exemptions for emergencies and for routine military activities that do not require the construction of new support facilities, the proposal legislation would basically affect only routine activities that require the construction of additional support facilities. Such activities could have significant adverse air quality impacts."

Now, my question to you is, do you either agree or disagree with the views presented by EPA's senior staff in this memorandum and why do you feel that way?

Mr. SUAREZ. Senator, I am not familiar with that particular memo or the opinion expressed therein. I can tell you that, much like Ms. MacDonald, my staff and our staff in our agency have a number of different views on environmental issues and we enjoy a fairly healthy dialogue about those views among our staff. It is without doubt, though, that we support the administration's bill and we believe that in the context of the CAA proposal the military is still required to report and quantify the impacts on air quality and their impacts on a State's ability to achieve the national ambient air quality standards and must come into compliance, but in a slightly extended period of 3 years rather than right away.

We believe that is an appropriate balance. Again, the view that is expressed there perhaps expresses a different view. I can tell you that we support, and the EPA supports, the administration's proposal as to this provision.

Senator AKAKA. Thank you for your response.

This legislation has been characterized as allowing DOD to construct facilities first and identify the necessary emissions reductions or offsets later. Do you believe that it is a sound compliance strategy to build first and address regulatory issues later?

Mr. SUAREZ. Senator, I believe that the provisions of the bill under the CAA actually exclude specifically those routine types of activities such as construction and transportation of, let us say, a power plant and relate only to military readiness activities and

combat activities that are necessary to support our fighting troops. We believe that exempting those activities and allowing the military 3 years to demonstrate compliance is an appropriate balance.

Senator AKAKA. Mr. Suarez, the EPA senior staff memorandum also recommends that the agency oppose DOD proposals to exempt certain activities from the requirements of RCRA and CERCLA. The memorandum notes that the provision would limit cleanup requirements under these statutes to munitions and munitions constituents that migrate off of an operational range.

It then raises a series of questions, and I am quoting: "What constitutes migration for the purposes of determining whether or not an imminent and substantial endangerment is posed by contamination from spent munitions on an operational range? Assuming DOD was unwilling to take action to start removing a plume of contaminated ground water, could EPA use its imminent hazard authority under CERCLA to address moving ground water contamination on an operational range, or would EPA be required to wait until an adjoining municipality's water supply indicated the presence of contamination originating from the range?"

Do you agree or disagree with the view that the legislation leaves these questions unanswered, as stated in the memorandum?

Mr. SUAREZ. Flatly disagree. It is clear that the legislation provides for the authority under section 106 of CERCLA for EPA to take action to abate an imminent and substantial endangerment on an operational range. The legislation also makes clear, Senator, that once a pollutant or contaminant migrates off-range that the regular authorities available to EPA become active. In other words, we can take action under CERCLA or RCRA.

Third, no authority is affected under the Safe Drinking Water Act, so that if a contaminant poses a threat or may pose a threat to drinking water, EPA retains the authority under the legislation to take action to prevent an imminent and substantial endangerment under the Safe Drinking Water Act.

Senator AKAKA. Thank you very much for your response.

Thank you, Mr. Chairman.

Senator ENSIGN. Thank you, Senator Akaka, and we will go for another round of questions. It sounds like you have more and I certainly do.

Dr. Lent, I would like to explore the term harassment when we are dealing with marine mammals. It is a big issue, obviously, for the Navy and I think it is an important issue all the way around for a lot of different purposes. People in your Department are very familiar, I know, with that term. You mention in your opening statement, some of the words that I heard you talk about, about the need for significant affect, or I do not remember exactly how you put it. But it seems to me to be very important that we—because harassment itself can mean almost anything, and because a fish or a dolphin had to turn because of something does that mean harassment, or are we talking about reproductive effects, are we talking about species decline, or what are we talking about here?

Because I think it is very important that those type of things be put where we can measure, and so it is not just some subjective thing that somebody is saying, well, I think that it may affect some kind of species down the line.

Can you just address the whole issue?

Dr. LENT. Thank you, Senator. Yes, indeed, this is something we have been struggling with ever since the term was in the act. The way we are struggling with it now, the way it is written, is that you have to go through a two-tier process to prove that someone is harassing. First you have to prove that someone is doing pursuit, torment, or annoyance, and then they have to prove that it has the potential to injure or disturb.

The way it is written now—and again I emphasize it is the same in our bill as it is in the DOD bill, only for DOD it is only for military activities—is that it is two levels. First of all, it injures or has a significant potential to injure a marine mammal. That is level A. Then level B is disturbing or is likely to disturb.

Now again, these are not words that provide numbers, but they clearly set a threshold that is higher, in the sense of what we want to focus on, those activities that can really make a difference. The way it is written now, you could argue that just someone out in their boat and if a dolphin rides in the ripples around the boat for easier swimming that that would be harassment, or if you are walking down a beach and a dolphin lifts its head to look at you, or a marine mammal, that that could be harassment.

We do not think we should be focusing on activities like that. We should be focusing on the activities that truly can affect the marine mammals. In particular, as you mentioned, affect their migration, their surfing behavior, breeding, feeding, or sheltering, to the point where these behavioral patterns are abandoned or significantly altered.

So again, we are trying to focus on where there is really an impact.

Senator ENSIGN. The basis for the change? In other words, can you just address, is it somebody's just willy-nilly opinion or how are we going to—how are we making this basis for change? Is it based on opinion or is it based on, I guess, studies, science?

Dr. LENT. It will be based on science, as we do base our decisions now. But we feel it is easier to address something like significant impact and particular behaviors of the animals rather than the vague and broad definition that is currently in place. It will allow us to focus our limited resources on where we can really make a difference in marine mammals.

Senator ENSIGN. Ms. MacDonald, on February 27, 2003, the FWS designated 177 acres—and this gets to your State, so I do not know if this is a question that you have, but I want to try to clear this up—on the Pacific Missile Range Facility in Hawaii critical habitat for an endangered dune grass. The Navy is concerned that this designation will adversely impact an irreplaceable training asset, particularly troubling given the fact that the grass, from what we have learned, has not been found anywhere on the range.

How might this problem be resolved through the administration's proposed legislative clarification?

Ms. MACDONALD. In this particular case, had there been an INRMP that addressed that particular grass, the administration would have been able to, and presuming the INRMP had been signed by both the DOD and the FWS, the administration would

have been able to exclude the military base from the critical habitat designation.

Senator ENSIGN. Going further on this particular, how does this range get designated like that without the grass being there?

Ms. MACDONALD. Critical habitat designations typically consist of those areas that are actually populated by the species of concern, in this case the grass. But we are allowed, where it is necessary, to include areas that are not inhabited. In this particular case, I think that grass only exists in one place. It lives on hillsides and the only appropriate hillside that it could ever grow in—and this is based on the information we get from our biologists—existed on this 177 acres, which is why it was designated.

Senator ENSIGN. So even though it was not there——

Ms. MACDONALD. Yes.

Senator ENSIGN.—it potentially could——

Ms. MACDONALD. Could have been there.

Senator ENSIGN.—have been there, because——

Ms. MACDONALD. It is a very specialized—it has very specialized growing requirements and those particular requirements only existed in that particular area.

Senator ENSIGN. Wow.

Senator Akaka.

Senator AKAKA. Thank you very much, Mr. Chairman. Thank you for your interest about an issue in Hawaii.

At our previous hearing we were told that the Navy talked to the FWS and offered to amend their INRMP to address the grass in question. It is my understanding that FWS officials in Hawaii worked closely with the Navy region Hawaii officials on this matter and discussed two opinions regarding critical habitat exclusion.

One option was for the Navy to support the State and Service in planting the species on nearby State-owned lands off the base to reduce extinction risk. Another option was to develop a viable INRMP amendment that included consideration of the potential reintroduction of some plants to the dune areas at the Pacific Missile Range Facility (PMRF).

It is my understanding that the field staff for the Service and the Navy tentatively agreed to reintroduce panasom into—panasom is the grass—into several areas on the base that would have a very low likelihood of ever encumbering Navy operations. It is my understanding that when officials in Washington refused to adhere to this agreement the area was designated as critical habitat. That is my understanding.

This seems to be a breakdown in what is an otherwise, I thought, reasonable process. Can you explain, Ms. MacDonald, what is an otherwise reasonable process?

Ms. MACDONALD. I think I would not want to presume to second-guess. I have no information on the process that occurred. I am assuming your information is accurate. I would not want to presume on the process, commenting on the process the Navy went through to make whatever determination they made.

For our part, we worked with the Navy to identify those acres that we did designate as critical habitat did not conflict with any existing or planned testing and training. So from our perspective, we designated those areas that we felt were necessary for the con-

servation of the plant and would not impede the Navy's ability to perform their training.

Senator AKAKA. Thank you.

Dr. Lent, two of the three administration proposals for changes to the Marine Mammal Protection Act appear to have a potential application outside the DOD: one, the change to the definition of, as was mentioned, of harassment; and two, the elimination of the requirement that small take permits be limited to small numbers and specific geographic regions.

Does NOAA believe that these changes should be limited to the DOD, or would you like to see them adopted across the board?

Dr. LENT. Thank you, Senator. As I mentioned, the change in the definition of harassment, our bill that went to the Hill in February of this year does propose that same definition for all potential harassment. So we have that in for all potential cases, not just Defense. The DOD bill has it just for Defense.

In the case of eliminating the requirement for small numbers and the specific geographical areas, that is in the DOD bill just for the military case. We have not evaluated the potential impact of that, of expanding that to all possible permittees. As I noted, even without those requirements on the small takes, small numbers, and specific geographical areas, in order to do the adequate National Environment Policy Act (NEPA) analyses and Administrative Procedures Act and public hearing and comment, we would still need to know what numbers of animals are involved so that we would know whether or not there is a negligible impact and we would need to know the specific geographical area so we could know which stocks or sub-stocks are affected.

So we do not believe it would change the type of analyses and science that underpin our decision on the permit.

Senator AKAKA. My time is expired, Mr. Chairman. I want to thank the witnesses for your responses. Thank you.

Senator ENSIGN. Senator Pryor.

Senator PRYOR. I do not have any questions right now. Thank you.

Senator ENSIGN. I want to address before we excuse the panel—if you have any other single questions, we could allow that as well. Just to the witnesses, because, Dr. Lent, you do not have an exemption, but the whole exemption issue is, some opponents of this legislation have said that the exemptions are there, you do not need this legislation. Could both of you just address that, the exemption issue and why that is or is not adequate?

Mr. SUAREZ. I would be happy to, Mr. Chairman. First, I would suspect that our colleagues at the DOD would probably be much better able to articulate exactly their difficulties that they have.

Senator ENSIGN. We have had their response on the record. I was just curious on yours.

Mr. SUAREZ. The difficulties I would imagine are, first, the statutory standard is it must be in the paramount interest of the United States, which I would imagine is a fairly high standard to need to be met. The second concern is getting to the President. I do not imagine that it is easy to get to the President on a regular basis to address these exemptions as they come up on a case-by-case basis in the various circumstances, and I imagine there is some dif-

ficulty in getting to him regularly to try to pursue these exemptions.

So it is my understanding that it is the cumbersome nature of the national security exemption that troubles DOD.

Senator ENSIGN. Ms. MacDonald?

Ms. MACDONALD. I think, as I noted in my testimony—it has been our policy to exclude the INRMPs under the section 3 exclusion of the ESA, which we have said that section 3 requires special management. So we say that these INRMPs are special management, therefore we are going to exclude these areas.

The recent court case has called that into question, our ability to do that, and while we will continue to exclude under the definitional exclusion, we think codifying our ability to do so would be a good thing.

Senator ENSIGN. Mr. Suarez, just a quick follow-up on that with the munitions rule and the RCRA exemption. Ms. MacDonald, what you just said about—the court case we are afraid is changing current law, and so under the old the exemptions as far as the FWS were considered adequate, but under the way that the courts are now changing law that does not seem to be adequate. Is that a fair characterization?

Ms. MACDONALD. We had an adverse decision on that and so, while we still have a 3(b), a 4(b)(2) exclusion, it requires more work without any additional benefit to the species. It is more a matter of creating a record that there is a benefit to exclusion that outweighs the benefit of including.

Senator ENSIGN. Mr. Suarez?

Mr. SUAREZ. I think that is right. I do not mean to be glib, but I think that the concern is the prospective application of the law and its prospective application by courts that maybe reach conclusions that would impair the military's ability to train and to prepare for actions, because, as I understand the military's concern, they are largely concerned about the direction in which it may go.

Senator ENSIGN. Does anybody else have anything for this panel?

Senator AKAKA. No.

Senator ENSIGN. I would once again like to thank you very much for your excellent testimony. We will proceed with this hearing by calling the second panel of witnesses: Dr. Robert Pirie, Senior Fellow, Center for Naval Analysis; Dr. Darlene Ketten, Senior Scientist, Department of Biology, Woods Hole Oceanographic Institution; Nina Young, Director of Marine Wildlife Conservation, the Ocean Conservancy; Jamie Rappaport Clark, Senior Vice President for Conservation Programs, National Wildlife Foundation; and Lenny Siegel, Executive Director, Center for Public Environmental Oversight. [Pause.]

I once again remind the panel that your entire testimony will be made part of the record and if you could try to summarize in under about 5 minutes we would sure appreciate that, so we can have plenty of time for questions. We will start with you, Doctor Pirie.

STATEMENT OF DR. ROBERT B. PIRIE, JR., SENIOR FELLOW, CENTER FOR NAVAL ANALYSIS

Dr. PIRIE. That is right, Mr. Chairman.

Senator ENSIGN. Very good. It was a complete guess, so I am glad it was right.

Dr. PIRIE. Thank you, Mr. Chairman, Senator Akaka, Senator Pryor. I am really honored to be called back to life to address the subcommittee on these issues.

I did not come easily to the decision to support the Defense Department's legislative initiatives. While I had responsibility for these matters in the Navy Department, we worked extremely hard with our fellow stakeholders in the regulatory agencies to hammer out agreements that would allow military training to go forward while still protecting the environment. So long as there was a hope that we could proceed in accordance with these agreements, I did not believe that asking for special legislative relief for the Defense Department was wise.

Developments in the past several years, however, have persuaded me that our attempts to achieve a balance between military needs and environmental protection under the existing legislation and regulatory system have failed. The reason is not lack of goodwill and effort by the Department or the regulators. It is the persistent drumfire of litigation from environmental activists.

When DOD is able to accommodate the concerns of and reach agreement with regulators, the regulators are in turn sued by nongovernment organizations (NGOs) alleging failure to enforce the statutes. Where the statutes are loosely drawn or ambiguous, the courts often find for the litigants, resulting in delays, uncertainty, and diversion of attention of military leaders from training to fighting legal battles.

I do not fault the NGOs or the courts in all this. They are doing what they should in a democratic society. What is needed is for Congress to clarify its intent in the specific cases in which DOD has asked for relief. Hence the proposed legislative fixes.

I would urge two more points for your consideration. First, the proposed changes are not broad and sweeping rollbacks. They are, rather, specific and limited measures that amount to clarification of congressional intent rather than major modification of important environmental laws.

Second, I have seen frequent allusions to the failure of DOD to document the interference with training caused by environmental regulation. There is, it is said, no smoking gun. With all respect, "smoking gun" is not the right metaphor. Rather, it is the death of a thousand cuts. It was not by a single stroke that the available beach front for amphibious landings at Camp Pendleton was cut from 17 miles to 500 yards. It was a long accretion of agreements, accommodations, and compromises. We see similar situations everywhere. They have come to be called encroachment.

The DOD needs some help in bounding this process so that it can continue to prepare its forces to fight for our country.

Thanks, Mr. Chairman.

[The prepared statement of Dr. Pirie follows:]

PREPARED STATEMENT BY DR. ROBERT B. PIRIE, JR.

Mr. Chairman and members of the subcommittee, I am Robert B. Pirie, Jr. I am grateful to the subcommittee for this opportunity to testify. I have been deeply involved in national defense issues for many years. During that time I have seen at close range the interaction between national defense needs and environmental pro-

tection. I served on active duty in the Navy for 20 years, and was privileged to command U.S.S. *Skipjack,* a nuclear attack submarine, for 3 years. I served in the Carter administration as the Assistant Secretary of Defense for Manpower, Reserve Affairs, and Logistics—the senior official in the Department of Defense with environmental protection as a primary duty. I served as a consultant and analyst on defense issues during the intervening years between the Carter and Clinton administrations. More recently, I was Assistant Secretary of the Navy (Installations and Environment) and Under Secretary of the Navy in the last administration, and am currently a Senior Fellow at the Center for Naval Analyses. The views reflected in my testimony today, however, are entirely my own, and are not associated with any organization of which I am now or have ever been a member.

My testimony today concerns proposals by the Department of Defense to modify certain provisions of environmental statutes to reconcile some specific differences between the need to pursue protection of the environment and the need to preserve military readiness. When I was in office in the last administration, I took the view that it was better policy, so long as it offered some prospect of success, to avoid having the Department of Defense ask for direct legislative relief, but rather to try to reach consensus and accommodation with regulators and environmental advocacy groups that permitted our operations and training to go forward with agreed modifications to meet environmental goals. This was desirable, I believed, since asking for DOD exclusions tended to unite environmental groups against the request and offer them the opportunity to paint DOD as anti-environmental in the press.

Serving in two different administrations spanning 26 years, start to finish, I have had the opportunity to observe the transformation of the environmental programs of the military services from nearly the dawn of the modern era of environmental protection to the present. Although no program is perfect, the military services have made tremendous strides in environmental protection, so much so that in some cases, their very stewardship has made military bases and ranges islands of biological diversity in a sea of urban sprawl. In the last decade, the military services have poured even more scarce resources into environmental protection and conservation. For example, this included funding millions of dollars of research to protect marine mammals at sea and creation of integrated natural resource management plans (INRMPs) to manage natural resources on our bases, including endangered species, as holistic ecological systems instead of species by species. For another example, the Navy spent $10 million on an unprecedented, independent, scientific research program to determine the effect of the Navy's new Low Frequency Active, Surface Towed Array Sonar System (SURTASS LFA) on marine mammals and another $10 million on further environmental analyses of that system.

Recent developments have led me to reconsider my position on legislative relief. It appears that some environmental advocacy groups will not be satisfied with any agreement worked out between the Department and the regulators accountable to Congress for ensuring that the environment is protected. These groups stake out categorical and ideological positions that hold in essence that no risk to the environment is permissible, even to support national security. These groups challenge the interpretations of statutes that allow regulators to meet defense requirements halfway, balancing two "public goods." Over time they have found some courts that agree with them. The result has been that the Department of Defense has been restricted in its training activities and prevented from deploying an important new sonar system. Some of our environmental laws permit private groups or individuals, often with the best of intentions to protect the environment, but without any expertise in defense matters or accountability to the American people, to obstruct military operations and training, forcing American servicemen to assume greater risk. I treasure the environment and have worked hard to protect it, but I also treasure the young men and women that the people of America ask to defend them. I therefore believe that consensus building and accommodation have failed, at least at present and in particular cases, and that Congress should step in to redress the balance.

At least some of the difficulty with the enforcement of environmental statutes that affect DOD is vagueness and ambiguity in the legislation. A case in point is the definition of harassment in the Marine Mammal Protection Act. The statute defines harassment in terms of "annoyance" and "potential to disturb". A court has determined that the National Marine Fisheries Service, the principal regulatory agency, must interpret this as virtually anything that would cause even one marine mammal to react to sounds or visual cues. An interpretation this broad, however, would mean that any ship, boat, or aircraft operating in the neighborhood of marine mammals would require a permit covering the incidental harassment. I do not believe that this is what Congress intended.

The designation of critical habitat provides another example. Endangered species are already provided with two levels of protection at a military base like United States Marine Corps Base Camp Pendleton, California. Although Congress has established military bases and ranges primarily for national defense purposes, military commanders must already consult with the U.S. Fish and Wildlife Service or the National Marine Fisheries Service if military actions, including training, may affect endangered species and must avoid jeopardizing them. In addition, under the Sikes Act, military commanders must consider how to manage endangered species on their bases along with all the other natural resources in the base's INRMP—which is reviewed by the U.S. Fish and Wildlife Service. At Camp Pendleton, measures to protect endangered species restrict amphibious landings to a tiny fraction of the beach and limit realistic training in many respects. Despite this, some environmental advocacy groups have tried to add a third layer of regulation, going to court to force the U.S. Fish and Wildlife Service to designate well over half of Camp Pendleton, most of which is not even occupied by endangered species, as critical habitat. Once designated as critical habitat, this land would have to be managed primarily to foster the recovery of endangered species. Military training on this critical base would become a secondary priority. I do not believe that this is what Congress intended.

The Migratory Bird Treaty Act presented a similar example of expansive application of a statute to the detriment of national defense and also shows what can be done to protect military readiness and the environment. This statute was enacted in 1918 to stop the indiscriminate slaughter of migratory birds to supply the restaurants of the east and the millinery industry. The Act makes it unlawful "at any time, by any means, or in any manner to pursue, hunt, take, capture [or] kill . . . any migratory bird [or] any part, egg, or nest of such bird. . ." The Act allows enforcement only against persons, associations, partnerships, or corporations, so its applicability to Federal agencies was vague until a court decision in 2000—82 years after it was passed, found that the statute applied to Federal agencies. Although this statute has never been enforced against the lumber industry, which arguably destroys large numbers of birds, nests, and eggs in the process of logging tracts of land, in 2001 an environmental group sued to stop critical military training. The suit asked the court to halt Navy, Marine Corps, and Air Force training activities at Farallon de Medinilla without a permit from U.S. Fish and Wildlife Service for incidental take of migratory birds. Training at Farallon de Medinilla provides the last training opportunity for many pilots to refresh perishable skills before dropping live ordnance in Afghanistan. Even the trial judge, who felt obliged to issue the injunction, raised the question whether Congress should consider amending the statute. Last year Congress wisely solved this problem by making the Migratory Bird Treaty Act inapplicable to the incidental taking of birds during military readiness activities, but leaving application of the act to the rest of DOD's activities in place.

It is clear from these and other similar cases that there is a need for clarification of congressional intent with respect to a number of environmental statutes as they affect the operations of the Department of Defense. What the Department has proposed is not a program of sweeping exemptions but a discreet number of limited fixes and clarifications in specific problem areas. They all preserve the role of regulators as participants and in fact strengthen the position of regulators by providing clearer guidelines. Thus I believe the Department's proposals should be adopted.

Senator ENSIGN. Dr. Ketten.

STATEMENT OF DR. DARLENE R. KETTEN, SENIOR SCIENTIST, DEPARTMENT OF BIOLOGY, WOODS HOLE OCEANOGRAPHIC INSTITUTION

Dr. KETTEN. Good morning, Mr. Chairman. Thank you very much for the opportunity to testify before this subcommittee. As you have stated, I am a Senior Scientist at Woods Hole Oceanographic Institution. I also have a joint appointment and responsibilities in the Department of Otolaryngology, that is ear, nose, and throat, at Harvard Medical School.

I am not here to represent my institutions' views officially. I am here to represent my views as a scientist, as an individual scientist. I want to underscore that point. However, these views have been arrived at based on approximately 15 years of experience

working on hearing in general, on head and neck trauma, on acoustic trauma, and on modeling to understand endangered species hearing abilities.

Also, most recently I have served on two panels relevant for this hearing; that is, the National Academy of Sciences National Resources Council Panel on Ocean Noise and Assessing Ocean Noise and Its Effects on Marine Mammals and on NOAA Fisheries Advisory Panel for Determining Safe Underwater Noise Exposures.

Now, having said all of that, again, it is an individual scientist's views. My concerns are based largely on discussions with my colleagues and many of the difficulties that they are facing as well as concerns for the military and their ability to carry out their requirements for readiness.

There is no human activity in the oceans that does not add noise, whether it be industrial, military, research, or recreation. We add noise to the oceans. The National Academy of Sciences panel was able to determine that we are adding about 3 decibels per decade. That is, the noise budget of the oceans is doubling every 10 years mostly based on human activity.

Of that human activity, the military component is less than 5 percent. However, as Secretary Pirie was stating there is no smoking gun, the question "Is there a smoking sonar?" which has brought a lot of public attention to military activity in particular.

For marine mammals, hearing is arguably their primary sense. Therefore, it is appropriate that we be concerned about noise effects.

The precautionary principle is a reasonable metric to apply. However, one of the reasons for this hearing is that many of our guidelines have been based on opinion, on extrapolation from science. My statement will be mercifully short because Dr. Lent has already very eloquently outlined many of the positions that I advocate. I need not go over those again, but I do need to emphasize that there is no safe sound byte that I can give you. I would love to give you a number that is safe for any type of noise exposure. We do not have that number.

What has happened recently that has led us to a highly polarized and litigious climate is that relatively few but very dramatic stranding events have led to an overly broad interpretation and concern for protection of marine mammals. Consequently, guidelines are being extrapolated and the precautionary principle is being applied, in my opinion, in the extreme and has the risk of leading to stagnation. Activities that are critical not only to our Nation's defense, but also, ironically, for obtaining the data that are needed to provide useful guidelines are being stymied.

It is imperative that we start looking at impacts with balance and perspective. Our focus has shifted away from the original MMPA guideline, which was for population level concerns—that is the fundamental meaning of "biological significance"—to instead individual significance. We are looking at individual impacts on relatively few animals from relatively rare events and broadening those to essentially a global level concern, which has led to a great many lawsuits.

I underscore that it is timely and appropriate that we look at noise impacts, but I do not think we need to be in a stagnant pool

of concern for ocean noise. What we need to do is to begin to look at biological significance. Significance is a timely, appropriate, and reasonable element that is proposed in this bill, particularly biological significance for the population level locally and globally.

If we start looking, as Dr. Lent has suggested, at that type of harassment, at that type of impact, then we can go forward not only militarily, but also with research, to provide the critical information we need for responsible stewardship of the ocean.

Thank you.

[The prepared statement of Dr. Ketten follows:]

PREPARED STATEMENT BY DARLENE R. KETTEN, PH.D.

This testimony is being submitted to the subcommittee to represent my views as an individual scientist. It does not represent those of either institution with which I am affiliated. I have arrived at my position stated below based primarily upon my experience as a researcher with over 15 years experience in the combined fields of mammalian hearing, ear disease, and head and neck trauma. My work focuses on understanding marine mammal hearing mechanisms and modeling the hearing of endangered species. My comments are also based on my experience as a member of the recent National Research Council panel on Ocean Noise and as a member of NOAA Fisheries advisory board on noise exposure.

Concomitant with man's increasing use of the oceans is an increase in the ocean's acoustic budget. As indicated in the current NRC report on Ocean Noise, noise from human related activity is increasing on average throughout the oceans at 3 dB per decade; i.e., potentially doubling every 10 years. Given our ever-increasing activity in all seas and at all depths, this figure is not surprising. Anthropogenic noise is an important component of virtually every human endeavor in the oceans, whether it is shipping, transport, exploration, research, military activities, construction, or recreation. For some activities, such as military exercises and oil exploration, impulsive and explosive devices are fundamental tools that are relatively short-term but locally intense; for others, such as shipping, the source levels may on average be lower, but the sounds are constant and cumulatively dominate the noise fields in high traffic areas of the oceans.

Because there is no human activity in the oceans that does not add noise and because our activities span the globe and produce sounds over the entire audible range of most animals, it is reasonable to assume that any manmade noise in the oceans may have a significant and adverse impact on marine animals. Because marine mammals are especially dependent upon hearing and in many cases are endangered, the concern over noise impacts on these animals is particularly acute. These concerns are both logical and appropriate, but it is also important to note that at this time, there is no data that gives us a firm answer on what will be the extent of impact from any one sound source. We simply do not have sufficient data to put accurate boundaries on our concerns.

This lack of discrete knowledge on impacts of underwater sound, coupled with the relatively open wording of the original Marine Mammals Protection Act (MMPA) and with recent dramatic stranding events, has led to a heated, highly polarized, litigious climate. An example of broad extrapolation from one event to another, which has military relevance, is a suit brought to halt LFA use based on the fact that beaked whale mass strandings have been shown to correlate with naval exercises involving mid-range sonars. Whales that stranded in three such cases, the Bahamas, Madeira, and Canary Islands, have been found to have an unusual suite of traumas, the mechanisms for which are still under investigation. However, there are substantial differences between LFA and mid-range tactical sonars, and, to date, there is no evidence of physical harm from LFA.

Nevertheless, this suit, which adduced as part of its concerns the Bahamian findings, was successful. Recently, other cases have been brought to halt physical oceanographic and behavioural research as well, admittedly motivated in part by very sincere but broad, undocumented concerns for the use of these unrelated sound sources. Clearly, the issue of restrictions of sound sources is not simply a military concern; decisions that are made here may impact indirectly the permitting and use of many forms of sound in our seas.

As noted above, virtually every human activity in the oceans involves sound either intentionally or as a by-product. For responsible use of the seas, it is imperative to consider to the best of our ability the probable impact of each sound we add and to determine whether that impact is worth its inherent risk. At some level, some

individuals may be impacted by any sound beyond the natural, average ambient. We must consider for any effort introducing sound use in the oceans whether and to what extent the projection and repetition of the signals employed will adversely impact significantly or negligibly any species within the "acoustic reach" of the source. Realistically, because of the diversity of hearing characteristics among marine animals, it is virtually impossible to eliminate all acoustic impacts from any endeavor, therefore the key issues that must be assessed are: (1) what combination of frequencies and sound pressure levels are proposed to fit each anthropogenic task; (2) what species are present in the area the device will ensonify at levels exceeding ambient; (3) what is the probable severity of any potential impacts to the exposed animals from the combined frequency-intensity-temporal characteristics of the source.

The important point is to know whether these factors produce any biologically significant impact to a species. Of course sound operates at the individual level, but the fundamental concern is for the well being of populations. All data to date have been gathered on individual or local populations. As the NRC report on Ocean Noise and Marine Mammals emphasized, our major concern is for population level impacts and consequently a major recommendation was to structure all research on marine mammals to allow predictions of population-level consequences. Individual effects are inputs to our database, but the true metric to apply is biological significance.

The original MMPA noted a concern for impact on marine mammal populations. Yet, much of the debate and contention that we see today over the issues of sound in the oceans derives from and focuses on relatively few impacted individuals. For example, in the case of the Bahamian stranding, seven animals died under circumstances clearly correlated with the use of military sonars. Reviews of past strandings suggest that there have been 8 to 10 similar events within the last 40 years, all involving only beaked whales. Clearly there should be concern; there is substantial reason to believe that sonars are at least a contributory cause of strandings under certain circumstances. The mechanisms involved are extremely important to determine, and there is now considerable research effort being devoted to this problem. Nonetheless, the strandings must be kept in perspective. The total mortality of suspected military related strandings in 40 years is fewer than 350, all involving two genera of beaked whales. We do not have evidence that a population level much less multi-species threat exists from those strandings. At this time we do not have any evidence to suggest that sonars in general use have a similar effect. NOAA Fisheries in a review of stranding and necropsy records for the same species did not find any evidence of similar traumas in single beaked whale strandings nor were these traumas found in any species other than beaked whales.

Precaution is appropriate; however, currently, extraordinarily precautionary positions are holding sway in which very broad and scientifically unfounded extrapolations are being made. We are losing sight of the need for balance and for perspective. High profile events, like the dramatic strandings in the Bahamas and Canaries, are being construed as virtually global, both in terms of species and sound source types. This is a potentially hazardous position since, ironically, this type of over-interpretation is actually preventing research that could provide precisely the answers that are needed to protect and conserve marine species. In a sense, precaution, in the extreme, may lead us to stagnation, and worse, because it is a position founded on assumed rather than known effects, it may prevent us from determining the true sources of greatest potential harm.

For responsible stewardship of our oceans, it is imperative that we understand our impacts and that we proceed with a balanced and informed view. Therefore, it is equally important that views of all parties with legitimate interests be considered. Risk assessment must be a part of that debate. There is undeniably some risk to some individuals from any underwater sound, but individual risk must be balanced by potential gain to the species. The addition of significant to the proposed revisions is a conceptual step forward worthy of consideration. It implies that our focus be shifted from the impossible goal of avoiding any possible individual impact to biologically significant, population level concerns. Such a shift, implemented with caution and judicious oversight, will not only reduce litigation for military operations, but also provide opportunities for education and understanding by the public of the appropriate scope for our concerns and of the critical need for research that will provide data to finally allow us to place clear and valid limits on sound use in our seas.

Senator ENSIGN. Ms. Young.

STATEMENT OF NINA M. YOUNG, DIRECTOR OF MARINE WILDLIFE CONSERVATION, THE OCEAN CONSERVANCY

Ms. YOUNG. Mr. Chairman, members of the subcommittee, thank you for the opportunity to present our views on the National Defense Authorization Act that would amend the Marine Mammal Protection Act (MMPA).

The MMPA is our Nation's leading instrument to conserve marine mammals. For more than 30 years the protections afforded by Congress have been critical to the recovery of vulnerable species of marine mammals, such as the great whales that were nearly decimated by whaling. Although we are extremely sensitive to the issue of military readiness, we do not believe that the DOD has demonstrated that the proposed changes to the MMPA within the National Defense Authorization Act are necessary or even that it has exhausted all administrative remedies available under existing law.

The DOD proposes to modify the MMPA's definition of harassment, amend its incidental take authorization process, and create a separate broad exemption for national defense. The proposed changes in the definition of harassment would severely undermine the precautionary nature of the act. The definitional changes would significantly raise the threshold that would trigger the DOD's obligation to secure an authorization to conduct activities that have the potential to harm marine mammals.

Federal agencies would be required to make difficult, if not impossible, judgments about whether a given activity is subject to the act's permitting and mitigation requirements. As a result, many military activities that would either be exempt outright or could obey the act's requirement by relying upon the uncertainty and the ambiguity created by this new language.

Overall, the result would be greater controversy and debate, diminished transparency, loss of scientific research and mitigation measures, impaired enforcement of the act, and increased numbers of marine mammals that would be harmed by military activities.

The proposed changes to the incidental take authorization process would remove key conservation elements that restrict the scope of the incidental take to small numbers of marine mammals within a specified geographic region. These existing provisions provide an effective conservation and management strategy for restricting take geographically and numerically to prevent any further depletion of marine mammals and to aid their recovery. The DOD has failed to show that the existing incidental take process is overly burdensome, let alone that the proposed statutory changes are needed.

Since 1994 when the MMPA was last amended, the DOD has applied for over 28 incidental take and harassment authorizations. None of the applications have been denied and in general they have been issued within the required time frames. Rather than amend the statute, we believe that improved coordination and advance planning may be the most expedient way to achieve both marine mammal conservation and improve efficiency in the issuance of permits for military readiness.

The third major amendment to the MMPA is the Defense Department's proposed exemption for national defense, which effectively creates an escape clause to allow the Defense Department to

bypass incidental take permitting process altogether. This exemption is not limited to the incidental take permitting process and as written it authorizes the Secretary of Defense to exempt any action or category of actions undertaken by the Defense Department or its components from compliance with any requirement of the MMPA for reasons of national defense and for a potentially unlimited number of successive 2-year periods.

Again, the Defense Department has failed to demonstrate that irreconcilable conflicts exist within the MMPA or that the flexibility currently afforded under the Armed Forces code is insufficient to merit such a comprehensive and wide-ranging exemption, one that would render the MMPA's conservation goals and mandates virtually meaningless.

Given the significant risk of changing these keystone provisions in the MMPA, the Ocean Conservancy and other interest groups should be given the opportunity to work constructively with the committees of jurisdiction, the DOD, the other agencies that appeared before you earlier, to address the concerns of all parties. Adopting these changes to the definition of harassment and to the incidental take authorization process in the National Defense Authorization Act could be disastrous for marine mammals. Instead, the issues raised by the DOD as well as those by Dr. Ketten pertaining to the pursuit and permitting of scientific research should be considered by the House and Senate committees of jurisdiction after we have significant discussions with other Federal agencies, scientists, and conservation groups in the context of an overall MMPA reauthorization.

Mr. Chairman, members of the subcommittee, thank you for the opportunity to comment on the Defense Department's proposal. I will be happy to answer any questions.

[The prepared statement of Ms. Young follows:]

PREPARED STATEMENT BY NINA M. YOUNG

Mr. Chairman and members of the subcommittee, thank you for the opportunity to present our views on provisions in the National Defense Authorization Act for Fiscal Year 2004 that would amend the Marine Mammal Protection Act (MMPA). My name is Nina M. Young; I am the Director of Marine Wildlife Conservation for The Ocean Conservancy.

The Ocean Conservancy (TOC) strives to be the world's foremost advocate for the oceans. Through science-based advocacy, research, and public education, we inform, inspire, and empower people to speak and act for the oceans. TOC is the largest and oldest nonprofit conservation organization dedicated solely to protecting the marine environment. Headquartered in Washington, DC, TOC has regional offices in Alaska, California, Florida, and Maine.

I. SUMMARY STATEMENT

The MMPA is our Nation's leading instrument for the conservation of whales, dolphins, sea otters, seals, sea lions, polar bears, and walrus. Although we are sensitive to the issue of military readiness; we do not believe that the Department of Defense has demonstrated that the proposed changes to the MMPA within the National Defense Authorization Act for Fiscal Year 2004 are necessary or even that the Defense Department has exhausted all administrative remedies available to it under existing law.

The Department of Defense proposes to modify the MMPA's definition of harassment, amend its incidental take authorization process, and create a separate broad categorical exemption for military readiness activities. The proposed changes in the definition of harassment and changes in the incidental take authorization process for military readiness would severely undermine the precautionary nature of the act, remove key conservation elements that restrict the scope of the incidental take

to small numbers of marine mammals within a geographic region, and significantly raise the threshold that triggers the Department of Defense's obligation to secure authorization to conduct activities that have the potential to harass marine mammals. The proposed definition and incidental take authorization would not only increase injuries and deaths of marine mammals, but also diminish transparency, result in a loss of scientific research and mitigation measures, require Federal agencies to make difficult, if not impossible, scientific judgments about whether a given activity is subject to the act's permitting and mitigation requirements, and impair enforcement of the act. The end result would be that many military readiness activities would either be exempt outright or could evade the act's requirements by relying upon the uncertainty and ambiguity created by this new language.

Since 1994, when the MMPA was last amended, the Department of Defense has applied for over 20 incidental take and harassment authorizations. None of these applications has been denied, and in general they have been issued within the expected or required timeframes. The Department of Defense has failed to show that the existing incidental take process is overly burdensome, let alone that the proposed statutory changes are needed. To the contrary, it appears that the program is functioning much as Congress intended. Rather than amend the statute, we believe that improved coordination and advanced planning may be the most expedient way to achieve both marine mammal conservation and improve efficiency in the issuance of permits for military readiness activities.

To add insult to injury, the proposed exemption for national defense effectively creates an escape clause which allows the Defense Department to bypass the incidental take permitting process altogether. Moreover, this exemption is not even limited to the incidental take permitting process. As written, it authorizes the Secretary of Defense to exempt "any action or category of actions undertaken by the Department of Defense or its components from compliance with any requirement" of the MMPA for reasons of national defense for a potentially unlimited number of successive 2-year periods. The Department of Defense has failed to demonstrate that an irreconcilable conflict exists within the incidental take authorization or other provisions of the MMPA or that the flexibility currently provided under the Armed Forces Code is insufficient to merit such a comprehensive and wide-ranging exemption—one that could render the MMPA's conservation goals and mandates virtually meaningless.

Given the significant risks of changing these provisions in the MMPA, The Ocean Conservancy and other interest groups should be given the opportunity to work constructively with the committees of jurisdiction and the agencies to address the concerns of all parties. Adopting significantly flawed changes to the harassment definition and incidental take authorizations in the National Defense Authorization Act, coupled with the proposed virtually unfettered exemption for national defense, would not only be disastrous for marine mammals, but would set a double standard by significantly limiting, or exempting altogether, the military from MMPA requirements that all other Federal, State, and private actors must follow. We strongly recommend that Congress refrain from amending some of the most important provisions of the MMPA through this bill. We believe that the issues raised by the Department of Defense should be considered by the House and Senate committees of jurisdiction, after significant discussions with other Federal agencies, scientists, and conservation groups, in the context of an overall MMPA reauthorization package.

Our more detailed comments are organized as follows. First, we provide background on the MMPA and its incidental take provisions. Second, we address the problems with the Defense Department's proposed changes to the definition of "harassment." Third, we address the proposed amendments to create an incidental take authorization process specific to military readiness activities. Fourth, we explain why the proposed statutory changes to the incidental take authorization process are not necessary. Finally, our testimony will address the proposed MMPA broad categorical exemption for purposes of national defense.

II. BACKGROUND ON THE MARINE MAMMAL PROTECTION ACT

A. Moratorium on Taking

The MMPA is the most comprehensive marine mammal conservation and management legislation in the world. Passed to rectify the consequences of "man's impact upon marine mammals, which has ranged from what might be termed malign neglect to virtual genocide," H.R. Rep. No. 707, 92d Cong., 1st Sess. 11 (1971) the MMPA, enforced by the U.S. Departments of Commerce and the Interior, governs every interaction within U.S. jurisdiction between an individual and a marine mammal. Its purpose is to protect marine mammal species of "great international significance, aesthetic and recreational as well as economic." Among the species protected

under the act are whales, dolphins, porpoises, seals, walruses, sea otters, manatees, and polar bears.

It is the goal of the MMPA that these species be "protected and encouraged to develop to the greatest extent feasible commensurate with sound policies of resource management . . . [in order to] maintain the health and stability of the marine ecosystem." 16 U.S.C. § 1361(6). Congress also mandated marine mammals are to be protected and managed so that they do not "cease to be a significant functioning element in the ecosystem of which they are a part" or be allowed to "diminish below their optimum sustainable population" (OSP). 16 U.S.C. 1361(2) (1994). A species or population stock that is determined to be below its OSP level, or is listed as endangered or threatened under the ESA, is designated as "depleted" under the MMPA.

Congress sought to achieve broad protection for marine mammals by establishing a moratorium on their importation and "take." The term "take" means "to harass, hunt, capture, or kill or attempt to harass, hunt, capture, or kill any marine mammal." 16 U.S.C. 1362(13). However, certain activities may be exempted from this moratorium, such as: scientific research; activities designed to enhance the survival or recovery of a marine mammal species or stock; commercial and educational photography; first-time import for public display; capture of wild marine mammals for public display; incidental take during commercial fisheries; and incidental take during non-fishery activities.

B. Exemptions for Incidental Take

Under sections 101(a)(5)(A) and 101(a)(5) (D) of the MMPA, the Secretary of Commerce or Interior may waive the moratorium and issue a permit or letter of authorization for taking small numbers of marine mammals, provided he or she determines, using the best available scientific evidence, that such take would have only a negligible impact on the marine mammal species or stocks.

Under section 101(a)(5)(A) of the MMPA, the Secretaries of Commerce or Interior may authorize the taking of small numbers of marine mammals incidental to activities other than commercial fishing (covered by other provisions of the act) within a specified geographical region when, after notice and opportunity for public comment, the responsible regulatory agency (either the National Marine Fisheries Service (NMFS) or the Fish and Wildlife Service (FWS)) determines that the taking would have negligible effects on the affected marine mammal species or stock, and that the take will not have an unmitigable adverse impact on subsistence harvests of these species. The act also requires the Secretary to set forth permissible methods and levels of "take" within a specified geographic region as well as requirements for monitoring and reporting. Issuance of a "small take" authorization, also known as a letter of authorization (LOA), includes two comment periods, possible public hearings, and consultations prior to the promulgation and publication of regulations in the Federal Register. It can take from 6 to 12 months for the agencies to complete this process.

Section 101(a)(5)(D), added to the MMPA in 1994, provides a more streamlined mechanism for obtaining authorizations when the taking will be of small numbers of marine mammals by incidental harassment only. Under this provision, referred to as an Incidental Harassment Authorization (IHA), the Secretary is required to publish in the Federal Register a proposed authorization within 45 days after receiving an application. Following a 30-day public comment period, the Secretary then has 45 days to either issue or deny the requested authorization. Because the incidental harassment authorization process has eliminated the need for promulgating specific regulations on the incidental taking, IHAs provide individuals who wish to carry out or undertake relatively short-term activities that might inadvertently harass marine mammals an expedited means to acquire an incidental take authorization. By law, the entire process can run no longer than 120 days.

C. Definition of Harassment—The 1994 Amendment

The exemptions for incidental take are wedded to the definition of "harassment" since the definition establishes the regulatory threshold to allow the applicant to make an initial assessment whether a small take or an incidental harassment authorization is needed. The definition describes a range of impacts that the regulatory agencies must assess during the authorization process to determine whether to authorize the activity. In 1994, Congress amended the MMPA to differentiate between two general types of harassment: Level A, having the potential to cause physical injury and Level B, having the potential to impact behavior of marine mammals in the wild. The definition is as follows:

> (18)(A) The term "harassment" means any act of pursuit, torment, or annoyance which——

(i) has the potential to injure a marine mammal or marine mammal stock in the wild; or

(ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

(B) The term "Level A harassment" means harassment described in subparagraph (A)(i).

(C) The term "Level B harassment" means harassment described in subparagraph (A)(ii).

III. PROPOSED CHANGES TO THE DEFINITION OF HARASSMENT

A. Proposed New Definition

The Department of Defense claims that the definitions of Level A and Level B harassment added to the MMPA in 1994 are overly broad and somewhat ambiguous. In an attempt to resolve this perceived problem, the Department of Defense has proposed the following definition:

For purposes of military readiness activities, the term 'harassment' means any act which——

(i) injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild; or

(ii)(I) disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavior patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering to a point where such behavioral patterns are abandoned or significantly altered; or

(II) is directed toward a specific individual, group, or stock of marine mammals in the wild that is likely to disturb the individual, group, or stock of marine mammals by disrupting behavior, including, but not limited to migration, surfacing, nursing, breeding, feeding, or sheltering.

B. Problems with the Proposed Definition

The most salient effect of this language is to raise the threshold of regulatory action. For Level A harassment, the proposed definition would shift from "has the potential to injure" to "injures or has the significant potential to injure." For Level B harassment, "potential to disturb" would become "disturbs or is likely to disturb;" and an addition would be made to the language governing behavioral disruptions, requiring that "natural" behaviors be "abandoned or significantly altered." (emphasis added).[1]

This new language would also introduce new uncertainty into the act. Adding the term "significant" to the definition would take the act into a scientific and policy arena that is beset by ambiguity. NMFS has struggled with this term and has yet to define it with regard to the "significant adverse impact" clause in the act's "incidental take" provisions for commercial fishing (16 U.S.C. §§ 1383(g)(2), 1387(g)(4)). Currently, the state of marine mammal science will not yield a clear, practical definition of "significant potential" or of "significantly altered"; indeed, these terms are likely to generate more scientific questions than answers.

The term "potential" is clear and requires no further evaluation of the significance of an activity's likelihood to injure or disturb. It is protective of the species, requiring only the disruption of basic biological functions or behavioral patterns such as migration, breathing, nursing, breeding, feeding, or sheltering—impacts that are reasonably verifiable—rather than significant alteration of these biologically important behaviors, to trigger the act's prohibitions. Moreover, because the definition references "disruptions in behavioral patterns," it is clear that it does not encompass any and all behavioral modifications.

The bill also adds a new requirement to Level B harassment that natural behavioral patterns be disrupted to the point where such behavioral patterns are abandoned. Requiring the abandonment of critical biological behaviors for an action to constitute harassment violates the precautionary goals of the act and sound scientific conservation principles. In addition, what constitutes "abandonment" of behavioral patterns under the proposed new definition of Level B harassment will vary according to species, gender, time scale, and the nature of the behavior itself.

[1] The third subparagraph, which establishes a somewhat more conservative standard for behavioral impacts, would apply only to activities that are directed toward a specific individual, group, or stock of marine mammals, not to activities that take marine mammals incidental to their operation. This provision would not cover any of the activities for which the DOD has sought small take permits or incidental harassment authorizations under the MMPA.

The proposed amendment offers no basis to determine what constitutes abandonment of behavioral patterns. For example, would abandonment of a nursing bout between an endangered right whale mother and calf be treated the same as temporary abandonment of the migratory path of a gray whale? In fact, it is unclear whether either event would count as "abandonment" under the revised definition.

Taken together, these changes would have a debilitating effect on enforcement. Under the terms of the act, the Defense Department itself would have initial authority to decide whether its activities have the "significant potential to injure" marine mammals or are likely to "significantly alter" marine mammal behavior. A great many activities could simply evade the act's requirements by the Defense Department's relying upon the uncertainty and ambiguity in this new language and not seeking authorization in the first place. For the public or NMFS to enforce the act in these circumstances would be difficult.

The practical outcome is that many more marine mammals would be harmed by military activities. Potentially injurious activities that were once assessed, monitored, and mitigated under the act would no longer enter the permit process. NMFS could not ensure that the impacts of such activities on populations or stocks would be negligible. In addition, small take permit and incidental harassment authorization mitigation measures and monitoring requirements that have been effective in protecting marine mammal populations and resulted in critical information on the impacts of a particular activity would be lost. Overall, the result of these changes is likely to be more injury and death of marine mammals, less mitigation and monitoring of impacts, less transparency for the public and the regulatory agencies, and even more controversy and debate.

C. Mischaracterizations of Issues Related to the Definition of Harassment

In his written testimony before the Subcommittee on Readiness of the House Armed Services Committee, Deputy Under Secretary of Defense, Raymond F. Dubois, Jr. stated that: "The new definition, as we requested last year, reflects the position of the National Research Council (NRC) and focuses on minimizing injury and biologically significant disruptions to behavior critical to survival and reproduction."

The NRC convened a panel on marine mammals and low frequency sound that, among other things, looked at the MMPA's definition of harassment (National Research Council 2000). However, the NRC recommendations differ substantially from the Defense Department's proposed amendment. First, the NRC panel proposed no modifications to the definition of "Level A" or injurious harassment. Second, the NRC retained the current standard of probability in the definition for "Level B" harassment, by including the phrase "has the potential to disturb a marine mammal." Third, the NRC did not raise the threshold for the disruption of natural behaviors in Level B harassment to the Department of Defense's level of "abandonment or significantly altered."[2]

In its testimony, the Defense Department, to bolster its assertion that the definition of harassment is flawed and must be changed, cites two examples of recent Federal district court cases where scientific research was stopped due to concerns about acoustic impacts to marine mammals. Deputy Assistant Secretary of the Navy, Wayne Arny, before the Subcommittee on Readiness of the House Armed Services Committee, stated:

> "In one case, the court enjoined seismic airgun research on geological fault lines conducted by the National Science Foundation off the coast of Mexico based on the court's concern that the research may be harming marine mammals in violation of the ESA and NEPA. In another case a court enjoined a Navy funded research project by the Woods Hole Oceanographic Institute designed to study the effectiveness of a high frequency detection sonar (similar to a commercial fish finder) in detecting migrating Grey Whales off the coast of California. The court's order stopped research on the

[2] The definition proposed by the NRC, while more conservative than that proposed by the Department of Defense, introduces two new subjective and ambiguous terms—"meaningful" and "biologically significant." The Marine Mammal Commission (MMC) noted in its testimony before the House Resources Committee in 2001 that:

"Even were there a common understanding of these terms, their inclusion appears to be premised on an unrealistically high assessment of our ability to differentiate between biologically significant and insignificant responses. However, when assessing activities that cause behavioral modification, we often cannot distinguish between those activities that will have significant, long-term effects and those that will not. Until we have the capability to distinguish reliably between what is and is not significant, or what will or will not have long-term consequences, the commission believes that it would be ill-advised to adopt a definition that excludes consideration of short-term impacts entirely."

development of a promising mitigation measure to avoid harming marine mammals from acoustic sources."

In the case of the National Science Foundation's (NSF) use of seismic airguns to undertake geological research, NSF never even applied for an incidental take authorization under the MMPA. In addition, the project was funded and implemented without completing an Environmental Assessment or Environmental Impact Statement under the National Environmental Policy Act (NEPA). The Woods Hole case involved a series of permits issued by NMFS for scientific research pursuant to section 104 of the MMPA. Moreover, the challenge to these permits was brought under NEPA for failure to perform the required analysis of environmental impacts, not the MMPA. Although we understand the adverse reactions that these decisions have engendered within the scientific community, these cases have little or no bearing on the sweeping statutory changes to the MMPA sought by the Department of Defense.

IV. PROPOSED CHANGES TO THE MMPA'S SMALL TAKE AND THE INCIDENTAL HARASSMENT PROVISIONS

The Department of Defense proposes to create a separate incidental take authorization process for military readiness activities. While similar to the existing small take and incidental harassment authorizations in sections 101(a)(5)(A) and 101(a)(5)(D) of the MMPA respectively, the proposed process eliminates key conservation elements that restrict the scope of the incidental take to small numbers of marine mammals while engaging in a specified activity within a specified geographic region.

A. Deletion of Requirement That Incidental Take Authorization Be Limited to Small Numbers of Marine Mammals of a Species or Population Stock

Sections 101(a)(5)(A) and 101(a)(5)(D) of the MMPA allow the Secretary to authorize the incidental take of only "small numbers of marine mammals of a species or population." Although in restricting the take to "small numbers" of marine mammals the committee acknowledged that it was unable to offer a more precise formulation because the concept was not capable of being expressed in absolute numerical limits; it made clear its intent that the taking should be infrequent, unavoidable, or accidental. H.R. Rep. No. 228, 97th Cong., 1st Sess. 19 (1981). Therefore, it is obvious that the incidental take authorization is not intended to provide the Department of Defense with the ability to take unlimited numbers of marine mammals. In addition, the committee noted that this requirement is separate and distinct from the required finding that the taking of small numbers of marine mammals will have a negligible impact on such species or stock. *Id.*

The requirement that incidental take under these provisions be limited to "small numbers of marine mammals of a species or population stock" is an important and independent requirement that should continue to apply to all persons, including the Department of Defense. Deleting this requirement would allow increased and potentially unsustainable levels of injury or harassment. Although it is true that the bill retains the requirement that the Secretary find that the incidental taking have a negligible impact on the species or stock, these impacts are difficult to analyze, especially for marine mammal stocks for which little is known about their abundance or biology. Without the "small number" limitation, it may be difficult to evaluate the effects of injury or harassment on annual rates of recruitment and thereby establish sufficiently stringent quantitative standards for negligible impact, this creates the risk that adverse, possibly irreversible impacts will occur before they can be assessed. The additional requirement in the existing law, that the take be restricted to small numbers of marine mammals, ensures that the biological consequence of that take will not hinder a marine mammal population's ability to grow or recover.

B. Deletion of Requirement That Activities Take Place Within a Specified Geographical Region

Congress amended the MMPA in order to ensure that the specified activity and the specified region are narrowly identified so that the anticipated effect would be substantially similar. H.R. Rep. No. 228, 97th Cong., 1st Sess. 19 (1981). NMFS defines specified geographical region as "an area within which a specified activity is conducted and that has certain bio-geographic characteristics." C.F.R. § 216.103. The Defense Department's proposal would strike this requirement—despite its importance to environmental assessment under the act, and its consonance with sound management of marine mammals.

Restricting the activities to a specified region is in keeping with the requirements that the incidental taking must have a negligible impact on a stock of marine mammals and ensure that the taking has the least practicable adverse impact on its

habitat. NMFS criteria for stocks states that stocks should be defined on the smallest divisible unit approaching that of the area of take unless there exists evidence of smaller subdivisions provided by ecology, life-history, morphology, and genetics data. (NMFS 1995 and 1997). In combination with the "small numbers" limitation discussed previously, this fine-scale approach to defining stocks provides an effective conservation and management strategy for restricting take geographically and numerically to prevent depletion of marine mammal populations and for prescribing mitigation that is appropriately tailored and scaled.

In addition, geographic regions themselves serve different biological purposes for marine mammal stocks. Some areas are vital to foraging, others are migratory corridors, and still others are vital to breeding, calving, and reproduction. The biological significance of a particular habitat or region is critical for determining whether the taking will have a negligible impact on the population of marine mammals and result in the least practicable adverse impact on its habitat.

Removing the requirement that the incidental take be restricted to a specified geographic region is contrary to effective conservation and management practices that limit take to narrowly defined marine mammal stocks on a restricted geographic basis to avoid depletion. It also jeopardizes the MMPA's goals of habitat conservation as it undermines effective consideration of the biological role or significance of the habitat to that marine mammal stock.

C. Other Proposed Changes to the Incidental Take Provisions

The Defense Department has proposed a number of additional changes to the incidental take authorization that could impair the process of environmental review.

First, under current law, both the incidental take and incidental harassment authorizations must prescribe "permissible methods of taking by harassment pursuant to such military readiness activity, and other means of affecting the least practicable impact upon such species or stock and its habitat, paying particular attention to rookeries and mating grounds and areas of similar significance. . ." The Department of Defense proposes to remove the phrase "and areas of similar significance." This amendment is scientifically indefensible and could significantly limit the types of habitats to be considered, further eroding the conservation goals of this provision.

Second, the law currently provides for public notice and comment on small take authorizations. The bill, however, would limit that requirement to decisions to withdraw or suspend an already existing authorization (except, as under current law, when the Secretary determines that an emergency exists and therefore the notice and comment provisions do not apply). Perhaps this is an oversight, but there is no logical reason to provide notice and comment only on decisions to withdraw or suspend an existing small take authorization and not on the decision whether to issue such an authorization in the first instance.

Third, the incidental harassment authorization currently requires the applicant to apply and for NMFS to solicit public comments on that application through a notice in the Federal Register, "newspapers of general circulation, and appropriate electronic media and to all locally affected communities." In comparison, the bill requires only that the Secretary receive a "request" to trigger the public notice and comment requirement and limits notification to the Federal Register. This change could be interpreted to eliminate the application requirement thus reducing the ability for the public to effectively evaluate the proposed incidental harassment. By restricting notification to the Federal Register, this provision of the bill would also significantly curtail public notice, thereby limiting meaningful public participation on proposals that could have serious implications for private citizens.

Finally, the bill would add a provision stating, "Nothing in this chapter shall require disclosure of information classified in the interest of national defense." We are concerned that specifically protecting classified documents from disclosure for purposes of environmental review will further undermine NMFS's ability to do an effective environmental analysis and prescribe mitigation measures.

V. THE DEPARTMENT OF DEFENSE HAS NOT MADE A COMPELLING CASE THAT THESE STATUTORY CHANGES ARE NEEDED

A. Incidental Take Permits Are Routinely Granted on a Timely Basis

Since 1994, when the current definition of "harassment" was adopted, the Department of Defense has submitted 6 applications for small take authorizations and 16 under its "incidental harassment authorizations," one of which was subsequently withdrawn. As Assistant Administrator William Hogarth noted in his testimony before the Committee on Armed Services in March 2002, no application for either a

small take or incidental harassment authorization submitted by the Defense Department has ever been denied.

From the period 1994 to present, the Defense Department sought six small take authorizations. For four of these applications, it took an average of just over 15 months from application date to the effective date of authorization. As noted above, decisions on small take applications can take from 6–12 months to promulgate regulations and issue the LOA. Fifteen months barely falls outside of that range.

In only two cases, applications to take marine mammals incidental to shock testing of the U.S.S. *Seawolf* and the deployment of the Surtass LFA, the decision process took approximately 3 years. This was due to a myriad of factors, unique to these applications, including their scope, complexity, number of public comments received, and time required to comply with the National Environmental Policy Act.

Similarly, the incidental harassment authorizations averaged just over 4 months from application to effective date of authorization. Most of these fell within the statutory mandate of 120 days. In light of this information, the Department of Defense has not shown either that it is unable to comply with the existing permitting requirements or that the length of the existing incidental take process is burdensome. To the contrary, it appears that the program is functioning much as Congress intended.

B. Results of a GAO Study Support This Conclusion

The conclusion that the Defense Department has not demonstrated the need for major changes in the MMPA is consistent with a recent study, released last June, by the General Accounting Office (GAO). The GAO concluded that commanders throughout the Armed Forces continue to report a high level of combat readiness, and that the Defense Department has failed to document either the adverse impacts on training or the increased costs associated with meeting its stewardship responsibilities.[3]

C. Opportunities Exist to Improve Implementation of the Act Administratively

The Defense Department's proposal to create a separate incidental take exemption process for military readiness activities would introduce substantial ambiguity and would eliminate critical elements from the authorization process. Rather than pursue dramatic legislative change, the need for which has not been demonstrated, we believe that the Department should look to non-legislative alternatives to further streamline the administrative process. In this context, Assistant Administrator Hogarth, in his March 2002 testimony, stated:

> Our ability to be efficient stems in large part from our ability to discuss activities with our Navy counterparts in advance, and with an understanding of the overall activities and needs of the program. With respect to our regulatory program, our limited staff is directly related to our ability to meet the increasing demands by Navy and other agencies. However, to the extent the Navy and other action agencies can plan sufficiently far in advance of activities and provide us with adequate time to work with them at the earliest possible stages, the implications of the permit process should be minor.[4]

The Department of Defense and NMFS are about to sign a memorandum of understanding that would further improve the authorization process. Based on these statements, and our own knowledge of how the current program functions, we believe there are a number of ways to administratively improve its implementation to address the concerns of the Department of Defense, without amending the statute or undermining its conservation objectives. We believe that this approach is the most expedient way to achieve both marine mammal conservation and to improve efficiency in the issuance of permits for military readiness activities. As a first step, we urge NMFS to undertake a programmatic review of the incidental take authorization program as a means to improve efficiency and meet the goals and mandates of the MMPA.

VI. PROPOSED EXEMPTIONS OF ACTIONS NECESSARY FOR NATIONAL DEFENSE

Under subsection (e), Exemptions of Action Necessary for National Defense, the Secretary of Defense may exempt any action or category of actions undertaken by the Department of Defense from compliance with any requirement of the MMPA if

[3] General Accounting Office, Military Training: DOD Lacks a Comprehensive Plan to Manage Encroachment on Training Ranges (June 2000) (GAO–02–614).

[4] Available at this time in transcript form from www.house.gov/hasc/openingstatementsandpressreleases/107thcongress/02–03–14hogarth.html.

the Secretary determines it is necessary for national defense. The exemption is for a period of 2 years with the possibility of unlimited additional exemptions, each 2 years in duration. The effect of this provision is to create an escape clause that allows the Defense Department to bypass the incidental take permitting process entirely. Moreover, this exemption would apply broadly to any requirement of the MMPA for any action or category of actions undertaken by the Defense Department which the Secretary determines are necessary for national defense.

We believe this exemption is excessively broad for four reasons. First, it would vest authority to grant an exemption entirely in the Secretary of Defense. Second, the exemption applies to "any action or category of actions undertaken by the Department of Defense or its components"—and so is not limited to individual activities, technologies, or exercises, allowing in theory for a sweeping application of this provision. Third, the exemption confers immunity from "compliance with any requirement" of the MMPA. Fourth, the Secretary of Defense can avail himself/herself of endless renewals of the exemption. Even more fundamentally, we believe the Department of Defense has failed to demonstrate an irreconcilable conflict exists within the incidental take authorization or any other provision of the MMPA that would merit such an exemption—one that would render the MMPA's conservation goals and mandates virtually meaningless.

The Department of Defense has flexibility under the Armed Forces Code, 10 U.S.C. § 2014, to seek special accommodation and relief from any agency action that, in its determination, would have a "significant adverse effect on the military readiness of any of the Armed Forces or a critical component thereof." If the accommodations it seeks are not forthcoming and an agreement is not reached directly with the head of the executive agency concerned, it may take its case directly to the President. These provisions have never been invoked with regard to the MMPA, presumably because the Department's requests for authorization under the act have never been denied and because any mitigation required by the agency was judged not to have a significant adverse effect on readiness. The Department of Defense has not demonstrated that either the flexibility to seek special accommodation and relief under the Armed Forces Code is insufficient or that the broad exemptions it now seeks are warranted.

VII. CONCLUSION

Our groups support the military's efforts to protect national security and are sensitive to the issue of military readiness. We do not believe, however, that the Defense Department has demonstrated that the dramatic changes proposed are necessary or that it has utilized the administrative remedies available to it under existing law. The Department of Defense's proposals to modify the MMPA's definition of harassment, create a separate incidental take authorization process for military readiness activities, and create a broad exemption to the MMPA, threaten to severely undermine the precautionary nature of the act and lead to significantly increased harm to marine mammal populations.

We support a process, in the context of MMPA reauthorization, in which all stakeholders can work together to develop creative and collaborative approaches to demonstrated problems. We hope this subcommittee will allow us the opportunity to work constructively on alternative approaches with all of the affected agencies and organizations to try and address the Department's concerns before any fundamental changes are made to this keystone conservation law.

Senator ENSIGN. Thank you.

Ms. Clark.

STATEMENT OF JAMIE RAPPAPORT CLARK, SENIOR VICE PRESIDENT FOR CONSERVATION PROGRAMS, NATIONAL WILDLIFE FEDERATION

Ms. CLARK. Good morning, Mr. Chairman and members of the subcommittee. I am here this morning on behalf of the 10 national conservation organizations identified in my written submission to testify on why exempting the Defense Department from key provisions of the ESA would be a serious mistake.

Prior to arriving at the National Wildlife Federation in 2001, I served for 13 years at the U.S. FWS, with the last 4 years as Director of the Agency. Before my time with the Service, I held a variety

of positions with the military, including the FWS Administrator for the Department of the Army. I am the daughter of an Army officer and grew up on military installations across the country throughout my childhood.

During my tenures at the FWS and the Defense Department, DOD routinely worked with wildlife agency experts to comply with environmental laws and to conserve imperiled wildlife while achieving military readiness. This approach of working through compliance issues on an installation-by-installation basis really works. As DOD themselves have acknowledged, our Armed Forces are as prepared today as they have ever been in their history and their state of readiness has been achieved without broad, sweeping exemptions from environmental laws.

The Defense Department's proposed ESA exemption suffers from three basic flaws. First, DOD's exemption would eliminate a key tool for conserving endangered species. Their proposal would effectively eliminate the potential for critical habitat designations on DOD lands, thus eliminating many of the ESA consultations that have enabled DOD to look before they leap into a potentially harmful training exercise. This could mean significant losses for our Nation's rich natural heritage and potential negative effects to the long-term land sustainability needed for readiness training.

DOD manages approximately 25 million acres of land across the country, home to at least 300 federally-listed species. Without the refuge provided by these bases, many of these species could rapidly slide towards extinction.

Second, an exemption from the ESA is truly unnecessary. Three provisions of the current law already provide the flexibility needed to balance military readiness and species conservation. Section 7(a)(2) of the act provides Defense with an opportunity to negotiate locally tailored solutions in consultation with the Service's wildlife experts. Section 4(b)(2) of the ESA obliges the Services to, and they do, exclude any area from a critical designation if they determine that the benefits of exclusion outweigh the benefits of specifying the area.

The court case, Mr. Chairman, referred to in the earlier panel has no effect on the ability of the Services to balance out critical habitat. It dealt with a definitional issue, and so no flexibility has been taken from the Services as a result of the spotted owl court case.

Section 7(j) of the ESA says that an exemption must be granted for an activity if the Secretary of Defense finds the exemption is needed for reasons of national security. He does not need to go to the President. The Secretary of Defense declares the exemption is there.

It is really unfortunate, Mr. Chairman, that this debate has relied so heavily on anecdotes in an attempt to show that Defense agencies have not been able to balance military readiness and conservation objectives. Some of the anecdotes are just unpersuasive on their face, such as the assertion that environmental laws have prevented the armed services from learning how to dig foxholes.

Others are frustrating or misleading. For example, there has been repeated discussions that 57 percent of Camp Pendleton is subject to restrictions on training due to proposed critical habitat

designations. Well, I was there. Those proposed designations are now final designations that cover less than 1 percent of Pendleton's training lands, not 57 percent.

In a June 2002 report on encroachment, the GAO looked into many of the anecdotes. It found that DOD agencies have never inventoried their training resources, planned for their training needs, or performed any in-depth analysis of civilian encroachment on readiness activities. Without any real evidence that environmental laws are at fault for any presumed readiness gaps and many conflicting facts, DOD has no basis for requesting wholesale exemptions from these important statutes.

The third reason why enacting DOD's proposed ESA changes would be a huge mistake is because the current approach, developing solutions at the local level rather than relying on broad national exemptions, has really worked. There are plenty of examples of Defense working with Federal wildlife agencies to develop win-win solutions at the local level, but today I will just focus on one, the protection of red-cockaded woodpeckers amidst intense training activities at Camp Lejeune Marine Corps Base in North Carolina.

Rather than characterizing the experience myself, I will rely on the words of Major General Mize from Camp Lejeune, who stated the following at a recent national symposium: "I can say with confidence that the efforts of our natural resources managers and the training community have produced an environment in which endangered species management and military training are no longer considered mutually exclusive, but are compatible."

With the ongoing war in Iraq and continuing threats of terrorism, no one can dismiss the importance of military readiness. However, there is no justification for Defense to retreat from their environmental stewardship commitments at home. I know that there is concern and even conflicts between military training needs and sustainable natural resources conservation at times, but Congress should pay close attention to the words of Major General Mize and the many others who are continually crafting solutions at the installation level and reject the Pentagon's effort to undermine those solutions with broad-based exemptions to the ESA.

Thank you, Mr. Chairman.

[The prepared statement of Ms. Clark follows:]

PREPARED STATEMENT BY JAMIE RAPPAPORT CLARK

Good morning, Chairman Ensign, Senator Akaka, and members of the subcommittee. My name is Jamie Rappaport Clark, Senior Vice President for Conservation Programs at the National Wildlife Federation, the Nation's largest conservation education and advocacy organization. I am here to testify on behalf of National Wildlife Federation, as well as Defenders of Wildlife, the Endangered Species Coalition, Fund for Animals, Humane Society of the United States, Military Toxics Project, Public Employees for Environmental Responsibility, Public Interest Research Group, Natural Resources Defense Council, and World Wildlife Fund. I thank the subcommittee for this opportunity to testify on the administration's Readiness and Range Preservation Initiative.

Prior to arriving at the National Wildlife Federation in 2001, I served for 13 years at the U.S. Fish and Wildlife Service, with the last 4 years as the director of the agency. Prior to that, I served as Fish and Wildlife Administrator for the Department of the Army, Natural and Cultural Resources Program Manager for the National Guard Bureau, and Research Biologist for U.S. Army Medical Research Institute. I am the daughter of a U.S. Army colonel, and lived on or near military bases throughout my entire childhood.

Based on this experience, I am very familiar with the Defense Department's long history of leadership in wildlife conservation. On many occasions during my tenures at FWS and the Defense Department, DOD rolled up its sleeves and worked with wildlife agency experts to find a way to comply with environmental laws and conserve imperiled wildlife while achieving military preparedness objectives.

The administration now proposes in its Readiness and Range Preservation Initiative that Congress scale back DOD's responsibilities to conserve wildlife and to protect people from the hazardous pollution that DOD generates. This proposal is both unjustified and dangerous. It is unjustified because DOD's longstanding approach of working through compliance issues on an installation-by-installation basis works. As DOD itself has acknowledged, our Armed Forces are as prepared today as they ever have been in their history, and this has been achieved without broad exemptions from environmental laws.

The DOD proposal is dangerous because, if Congress were to broadly exempt DOD from its environmental protection responsibilities, both people and wildlife would be threatened with serious, irreversible, and unnecessary harm. Moreover, other Federal agencies and industry sectors with important missions, using the same logic as used here by DOD, would line up for their own exemptions from environmental laws.

My expertise is in the Endangered Species Act (ESA), so I would like to focus my testimony on why exempting the Defense Department from key provisions of the ESA would be a serious mistake. I will rely on my fellow witnesses to explain why the proposed exemptions from other environmental and public health and safety laws is similarly unwise.

CONCERNS WITH THE ESA EXEMPTION

The Defense Department's proposed ESA exemption suffers from three basic flaws: it would severely weaken this Nation's efforts to conserve imperiled species and the ecosystems on which all of us depend; it is unnecessary for maintaining military readiness; and it ignores the Defense Department's own record of success in balancing readiness and conservation objectives under existing law.

1. Section 2017 Removes a Key Species Conservation Tool

Section 2017 of the administration's Readiness and Range Preservation Initiative would preclude designations of critical habitat on any lands owned or controlled by DOD if DOD has prepared an Integrated Natural Resources Management Plan (INRMP) pursuant to the Sikes Act and has provided "special management consideration or protection" of listed species pursuant to section 3(5)(A) of the ESA.

This proposal would effectively eliminate critical habitat designations on DOD lands, thereby removing an essential tool for protecting and recovering species listed under the ESA. Of the various ESA protections, the critical habitat provision is the only one that specifically calls for protection of habitat needed for recovery of listed species. It is a fundamental tenet of biology that habitat must be protected if we ever hope to achieve the recovery of imperiled fish, wildlife, and plant species.

Section 2017 would replace this crucial habitat protection with management plans developed pursuant to the Sikes Act. The Sikes Act does not require the protection of listed species or their habitats; it simply directs DOD to prepare INRMPs that protect wildlife "to the extent appropriate." Moreover, the Sikes Act provides no guaranteed funding for INRMPs and the annual appropriations process is highly uncertain. Even the best-laid management plans can go awry when the anticipated funding fails to come through. Yet, under section 2017, even poorly designed INRMPs that allow destruction of essential habitat and put fish, wildlife, or plant species at serious risk of extinction would be substituted for critical habitat protections.

Section 2017 contains one minor limitation on the substitution of INRMPs for critical habitat designations: such a substitution is allowed only where the INRMP provides "special management consideration or protection" within the meaning of section 3(5)(A) of the ESA. Unfortunately, this limitation does nothing to ensure that INRMPs truly conserve listed species.

The term "special management consideration or protection" was never intended to provide a biological threshold that land managers must achieve in order to satisfy the ESA. The term is found in section 3(5) of the ESA, which sets forth a two-part definition of critical habitat. Section 3(5)(A) states that critical habitat includes areas occupied by a listed species that are "essential for the conservation of the species" and "which may require special management consideration or protection." Section 3(5)(B) states that critical habitat also includes areas not currently occupied by a listed species that are simply "essential for the conservation of the species."

As this language makes clear, an ESA § 3(5) finding by the U.S. Fish and Wildlife Service or National Marine Fisheries Service (Services) that a parcel of land "may require special management consideration or protection" is not the same as finding that it is already receiving adequate protection. Such a finding simply highlights the importance of a parcel of land to a species, and it should lead to designation of that land as critical habitat. See *Center for Biological Diversity v. Norton,* 240 F. Supp. 2d 1090 (D. Ariz. 2003) (rejecting, as contrary to plain meaning of ESA, defendant's interpretation of "special management consideration or protection" as providing a basis for substituting a U.S. Forest Service management plan for critical habitat protection). By allowing DOD to substitute INRMPs for critical habitat designations whenever it unilaterally makes a finding of "special management consideration or protection," section 2017 significantly weakens the ESA.

Section 2017 is also problematic because it would eliminate many of the ESA section 7 consultations that have stimulated DOD to "look before it leaps" into a potentially harmful training exercise. As a result of section 7 consultations, DOD and the Services have routinely developed what is known as "work-arounds," strategies for avoiding or minimizing harm to listed species and their habitats while still providing a rigorous training regimen.

Section 2017 purports to retain section 7 consultations. However, the duty to consult only arises when a proposed Federal action would potentially jeopardize a listed species or adversely modify or destroy its critical habitat. By removing critical habitat designations on lands owned or controlled by DOD, section 2017 would eliminate one of the two possible justifications for initiating a consultation, reducing the likelihood that consultations will take place. This would mean that DOD and the Services would pay less attention to species concerns and would be less effective in conserving imperiled species and maintaining the sustainability of the land.

The reductions in species protection proposed by DOD would have major implications for our Nation's rich natural heritage. DOD manages approximately 25 million acres of land on more than 425 major military installations. These lands are home to at least 300 federally-listed species. Without the refuge provided by these bases, many of these species would slide rapidly toward extinction. These installations have played a crucial role in species conservation and must continue to do so.

2. The ESA Exemption is Not Necessary to Maintain Military Readiness

The ESA already has the flexibility needed for the Defense Department to balance military readiness and species conservation objectives. Three key provisions provide this flexibility. First, under the consultation provision of section 7(a)(2) of the act, DOD is provided with the opportunity to develop solutions in tandem with the Services to avoid unnecessary harm to listed species from military activities. Typically, the Services conclude, after informal consultation, that the proposed action will not adversely affect a listed species or its designated critical habitat or, after formal consultation, that it will not likely jeopardize a listed species or destroy or adversely modify its critical habitat. See, e.g., U.S. Army Environmental Center, Installation Summaries from the fiscal year 2001 Survey of Threatened and Endangered Species on Army Lands (August 2002) at 9 (noting successful conclusion of 282 informal consultations and 36 formal consultations, with no "jeopardy" biological opinions). In both informal and formal consultations, the Services either will recommend that the action go forward without changes, or it will work with DOD to design "work arounds" for avoiding and minimizing harm to the species and its habitat. In either case, DOD accomplishes its readiness objectives while achieving ESA compliance.

Second, under section 4(b)(2) of the ESA, the Services are authorized to exclude any area from critical habitat designation if they determine that the benefits of exclusion outweigh the benefits of specifying the area. (An exception is made for when the Services find that failure to designate an area as critical habitat will result in the extinction of a species—a finding that the Services have never made.) In making this decision, the Services must consider "the economic impact, and any other relevant impact" of the critical habitat designation. DOD has recently availed itself of this provision to convince the U.S. Fish and Wildlife Service to exclude virtually all of the habitat at Camp Pendleton—habitat deemed critical to five listed species in proposed rulemakings—from final critical habitat designations. Thus, for situations where the section 7(a)(2) consultation procedures place undue burdens on readiness activities, DOD already has a tool for working with the Services on excluding land from critical habitat designation. Attached to my testimony is a factsheet that shows how the Services have worked cooperatively with DOD on these exclusions, and another factsheet showing the importance of maintaining the Services' role in evaluating proposed exclusions.

Third, under section 7(j) of the ESA an exemption "shall" be granted for an activity if the Secretary of Defense finds the exemption is necessary for reasons of na-

tional security. To this date, DOD has never sought an exemption under section 7(j)—highlighting the fact that other provisions of the ESA have provided DOD with all the flexibility it needs to reconcile training needs with species conservation objectives.

Where there are site-specific conflicts between training needs and species conservation needs, the ESA provides these three mechanisms for resolving them in a manner that allows DOD to achieve its readiness objectives. Granting DOD a nationwide ESA exemption, which would apply in many places where no irreconcilable conflicts between training needs and conservation needs have arisen, would be harmful to imperiled species and totally unnecessary to achieve readiness objectives.

a. DOD Has Misstated the Law Regarding Its Ability to Continue with a Cooperative, Case-by-Case Approach to Critical Habitat Designations

DOD has stated that the ESA exemption is necessary because a recent court ruling in Arizona would prevent DOD from taking the cooperative, case-by-case approach to critical habitat designations that was developed when I served as Director of the Fish and Wildlife Service (FWS). This description of the court ruling is inaccurate—the ruling clearly allows DOD to continue the cooperative, case-by-case approach if it wishes.

The court ruling at issue is entitled Center for Biological Diversity v. Norton, 240 F. Supp. 2d 1090 (D. Ariz. 2003). In this case, FWS excluded San Carlos Apache tribal lands from a critical habitat designation pursuant to ESA § 4(b)(2) because the tribal land management plan was adequate and the benefits of exclusion outweighed the benefits of inclusion. The Federal district court upheld the exclusion as within FWS's broad authority under ESA § 4(b)(2). At the same time, the court held that lands could not legitimately be excluded from a critical habitat designation on the basis of the "special management" language in ESA § 3(5).

Under the court's reasoning, FWS continues to have the broad flexibility to exclude DOD lands from a critical habitat designation on the basis of a satisfactory INRMP and the benefits to military training that the exclusion would provide. The ruling simply clarifies that such exclusions must be carried out pursuant to ESA § 4(b)(2) rather than ESA § 3(5). Thus, DOD's assertion that the Center for Biological Diversity ruling prevents it from working with FWS to secure exclusions of DOD lands from critical habitat designations is inaccurate.

b. DOD's Anecdotes Do Not Demonstrate That the ESA Has Reduced Readiness

The DOD has offered a series of misleading anecdotes describing difficulties it has encountered in balancing military readiness and conservation objectives. Before Congress moves forward with any exemption legislation, the appropriate congressional committees should get a more complete picture of what is really happening at DOD installations.

Some of DOD's anecdotes are simply unpersuasive on their face, such as DOD's repeated assertion that environmental laws have prevented the armed services from learning how to dig foxholes and that troops abroad have been put at greater risk as a result. There is simply no evidence that environmental laws have ever prevented foxhole digging. Moreover, given its vast and varied landholdings and the many management options available, the Defense Department certainly can find places on which troops can learn to dig foxholes without encountering endangered species or other environmental issues.

Other anecdotes have simply disregarded the truth. For example, DOD and its allies have repeatedly argued that more than 50 percent of Camp Pendleton may not be available for training due to critical habitat designations. In fact, only five species have been proposed for critical habitat designations at Camp Pendleton. In each of these five instances, DOD raised concerns about impacts to military readiness, and in each instance, FWS worked closely with DOD to craft a solution. FWS ultimately excluded virtually all of the habitats for the five listed species on Camp Pendleton from critical habitat designations—even though FWS had earlier found that these habitats were essential to the conservation of the species. As a result of FWS's exclusion decisions, less than 1 percent of the training land at Camp Pendleton, and less than 4 percent of all of Camp Pendleton, is designated critical habitat. (Most of the critical habitat designated at Camp Pendleton is non-training land leased to San Onofre State Park, agricultural operations, and others. DOD's repeated suggestion that more than 50 percent of Camp Pendleton is at risk of being rendered off-limits to training due to critical habitat is simply inaccurate.

DOD also has argued that training opportunities and expansion plans at Fort Irwin have been thwarted by the desert tortoise. Yet just 2 weeks ago this official line was contradicted by the reality on the ground. In an article dated March 21, 2003, Fort Irwin spokesman Army Maj. Michael Lawhorn told the Barstow Desert

Dispatch that he is unaware of any environmental regulations that interfere with troops' ability to train there. He also said there isn't any environmental law that hinders the expansion.

Attached to my testimony is a factsheet outlining a series of additional misleading anecdotes used by DOD and the additional facts that must be considered before drawing any conclusions about the impact of the ESA on military readiness.

These examples of misleading anecdotes highlight the need for Congress to look behind the reasons that are being put forward by DOD as the basis for weakening environmental laws. DOD uses the anecdotes in an attempt to demonstrate that conflicts between military readiness and species conservation objectives are irreconcilable. However, solutions to these conflicts are within reach if DOD is willing to invest sufficient time and energy into finding them. DOD has vast acres of land on which to train and vast stores of creativity and expertise among its land managers. With careful inventorying and planning, DOD can find a proper balance.

Has DOD made the necessary effort to inventory and plan for its training needs? In June 2002, the General Accounting Office issued a report entitled "Military Training: DOD Lacks a Comprehensive Plan to Manage Encroachment on Training Ranges," suggesting that the answer is no. The GAO found:

- DOD has not fully defined its training range requirements and lacks information on training resources available to the Services to meet those requirements, and that problems at individual installations may therefore be overstated.
- The armed services have never assessed the overall impacts of encroachment on training.
- DOD's readiness reports show high levels of training readiness for most units. In those few instances of when units reported lower training readiness, DOD officials rarely cited lack of adequate training ranges, areas, or airspace as the cause.
- DOD officials themselves admit that population growth around military installations is responsible for past and present encroachment problems.
- The armed services' own readiness data do not show that environmental laws have significantly affected training readiness.

Ten months after the issuance of the GAO report, DOD still has not produced evidence that environmental laws are at fault for any of the minor gaps in readiness that may exist. EPA Administrator Whitman confirmed this much at a recent hearing. At a February 26, 2003, Senate Environment and Public Works Committee hearing on EPA's budget, EPA Administrator Whitman stated that she was "not aware of any particular area where environmental protection regulations are preventing the desired training."

To this date, DOD has not provided Congress with the most basic facts about the impacts of ESA critical habitat requirements on its readiness activities. Out of DOD's 25 million acres of training land, how many acres are designated critical habitat? At which installations? Which species? In what ways have the critical habitat designations limited readiness activities? What efforts did DOD make to alert FWS to these problems and to negotiate resolutions? Without answers to these most basic questions, Congress cannot fairly conclude that the ESA is at fault for any readiness gaps or that a sweeping ESA exemption is warranted.

3. DOD has Worked Successfully with the Services to Balance Readiness and Species Conservation Objectives

The third reason why enacting DOD's proposed ESA changes would be a mistake is because the current approach—developing solutions at the local level, rather than relying on broad, national exemptions—has worked. My experience at both FWS and DOD has shown me that solutions developed at the local level are sometimes difficult to arrive at, but they are almost always more intelligent and long-lasting than one-size-fits-all solutions developed at the national level.

Allow me to provide a few brief examples. At the Marine Corps Base at Camp Lejeune in North Carolina, every colony tree of the endangered red-cockaded woodpecker is marked on a map, and marines are trained to operate their vehicles as if those mapped locations are land mines. Here is the lesson that Major General David M. Mize, the Commanding General at Camp Lejeune, has drawn from this experience:

> "Returning to the old myth that military training and conservation are mutually exclusive; this notion has been repeatedly and demonstrably debunked. In the overwhelming majority of cases, with a good plan along with common sense and flexibility, military training and the conservation and recovery of endangered species can very successfully coexist."

"Military installations in the southeast are contributing to red-cockaded woodpecker recovery while sustaining our primary mission of national military readiness."

"I can say with confidence that the efforts of our natural resource managers and the training community have produced an environment in which endangered species management and military training are no longer considered mutually exclusive, but are compatible."

These sentiments, which I share, were relayed by Major General Mize just 8 weeks ago at a National Defense University symposium sponsored by the U.S. Army Forces Command (FORSCOM) and others. At that symposium, representatives of Camp Lejeune Marine Corps Base, Eglin Air Force Base, Fort Bragg Army Base, Fort Stewart Army Base, Camp Blanding Training Center in Florida, the U.S. Army Environmental Center, and other Defense facilities—some of the most heavily utilized training bases in the country—heralded the success that Defense Department installations have had in furthering endangered species conservation while maintaining military readiness.

On the Mokapu Peninsula of Marine Corps Base Hawaii, the growth of non-native plants, which can decrease the reproductive success of endangered waterbirds, is controlled through annual "mud-ops" maneuvers by Marine Corps Assault Vehicles. Just before the onset of nesting season, these 26 ton vehicles are deployed in plow-like maneuvers that break the thick mats of invasive plants, improving nesting and feeding opportunities while also giving drivers valuable practice in unusual terrain.

Attached to my testimony is a factsheet with additional examples of successful efforts by DOD installations across the country to balance military readiness and species conservation.

These success stories highlight a major trend that I believe has been missed by those promoting the DOD exemptions. In recent years, DOD has increasingly recognized the importance of sustainability because it meets several importance objectives at once. Sustainable use of the land helps DOD achieve not only compliance with environmental laws, but also long-term military readiness and cost-effectiveness goals. For example, by operating tanks so that they avoid the threatened desert tortoise, DOD prevents erosion, a problem that is extremely difficult and costly to remedy. If DOD abandons its commitment to environmental compliance, it will incur greater long-term costs for environmental remediation and will sacrifice land health and military readiness.

A November 2002 policy guidance issued by the then-Secretary of the Navy to the Chief of Naval Operations and the Commandant of the Marine Corps suggests that certain members of DOD's leadership are indeed willing to abandon the sustainability goal. The policy guidance on its face seems fairly innocuous—it purports to centralize at the Pentagon all decisionmaking on proposed critical habitat designations and other ESA actions. However, the Navy Secretary's cover memo makes clear that its purpose is also to discourage any negotiation of solutions to species conservation challenges by Marines or Navy personnel in the field, lest these locally-developed "win-win" solutions undercut DOD's arguments on Capitol Hill that the ESA is broken. According to paragraph 2 of the cover memo, "concessions . . . could run counter to the legislative relief that we are continuing to pursue with Congress."

Similar sentiments were voiced by Deputy Defense Secretary Paul Wolfowitz in his March 7, 2003, memo to the chiefs of the Army, Navy, and Air Force. Deputy Secretary Wolfowitz argued that "it is time for us to give greater consideration to requesting exemptions" from environmental laws and pleaded for specific examples of instances in which environmental regulations hamper training. The implicit message is that efforts at the installation level to resolve conflicts between conservation and training objectives should be suspended, and that such conflicts instead should be reported to the Pentagon, where environmental protections will simply be overridden.

These messages to military personnel in the field mark a very unfortunate abdication of DOD's leadership in wildlife conservation. To maintain its leadership role as steward of this Nation's endangered wildlife, DOD must encourage its personnel to continue developing innovative solutions and not thwart those efforts.

CONCLUSION

With the Iraq war ongoing and terrorism threats always present, no one can dismiss the importance of military readiness. However, there is no justification for the Defense Department to retreat from its environmental stewardship commitments at home. As base commanders have been telling us, protecting endangered species and

other important natural resources is compatible with maintaining military readiness.

Surveys show that the American people today want environmental protection from the Federal Government, including the Defense Department, as much as ever. According to an April 2002 Zogby Poll, 85 percent of registered voters believe that the Defense Department should be required to follow America's environmental and public health laws and not be exempt. Americans believe that no one, including the Defense Department, should be above the law.

Congress should reject the proposed environmental exemptions in the administration's defense authorization package. This proposal, along with the parallel proposal in the administration's fiscal year 2004 budget request that Congress cut spending on DOD's environmental programs by $400 million, are a step in the wrong direction.

DOD has a long and impressive record of balancing readiness activities with wildlife conservation. The high quality of wildlife habitats at many DOD installations provides tangible evidence of DOD's positive contribution to the Nation's conservation goals. At a time when environmental challenges are growing, DOD should be challenged to move forward with this successful model and not to sacrifice any of the progress that has been made.

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FWS Has Repeatedly Granted DOD's Requests That Its Lands Be Excluded From ESA Critical Habitat Designations

In pushing for exemptions from Endangered Species Act (ESA) critical habitat protections, the Department of Defense (DOD) has argued that the ESA lacks sufficient flexibility to exclude DOD lands from critical habitat designations where appropriate. However, as shown below, where the U.S. Fish and Wildlife Service (FWS) has found that DOD's lands are needed for training and listed species are being adequately conserved, it has repeatedly acceded to DOD's requests that those be excluded from critical habitat designations. *See also* NWF Factsheet: FWS's Case-by-Case Review of INRMPs is Essential for Conserving Imperiled Wildlife. DOD's effort to replace this flexible, case-by-case review with a sweeping ESA exemption is completely unwarranted.

The following FWS statements from the Federal Register show that, time and again, FWS has used the flexibility of the existing ESA to exclude large swaths of valuable habitat on DOD lands from critical habitat designations:

1. Lompoc yerba santa and Gaviota tarplant (plants) at Vandenberg Air Force Base, 67 FR 67968-01 (November 7, 2002):

"Although measures to provide for the conservation of Eriodictyon capitatum or Deinandra increscens ssp. villosa are not currently included in the draft INRMP, the Air Force has committed to incorporate into their INRMP, and implement, specific measures that will address the conservation of these species and their habitat where they occur on Vandenberg. Based on this commitment, we have, therefore, determined that lands on Vandenberg Air Force Base should be excluded under subsection 4(b)(2) of the Act because the benefits of exclusion outweigh the benefits inclusion and will not cause the extinction of the species. For this reason, we are excluding from the designated critical habitat those proposed units and portions of proposed units that were located on Vandenberg."

2. 1Chlorogalum purpureum (a plant) at Camp Roberts and Ft. Hunter Liggett, 67 FR 65414-01 (October 24, 2002):

"We have revised the proposal to eliminate lands at Camp Roberts under section 3(5)(A), and lands at Ft. Hunter Liggett under section 4(b)(2). It is our policy that if any areas containing the primary constituent elements are currently being managed to address the conservation needs of Chlorogalum purpureum management or protection, these areas would not meet the definition of critical habitat in section 3(5)(A)(i) of the Act and would not be included in this final rule. We have determined that this is the case at CampRoberts due to their having an approved Integrated Natural Resources Management Plan which addresses the conservation needs of Chlorogalum purpureum.

We have also determined that the direct and indirect costs to the Army, including reduction in military readiness, from designation of critical habitat at Ft. Hunter Liggett are such that the benefits of excluding those lands exceed the benefits of their inclusion.

3. Monterey Spineflower at Naval Postgraduate School, 67 FR 37498-01 (May 29, 2002)

"In their comments on the proposed rule, the DON requested that the lands of the School be excluded from the Marina unit of critical habitat because of the protections and management actions provided for Chorizanthe pungens var. pungens as part of the INRMP. We evaluated the INRMP and found that it meets the three criteria described above. We excluded these lands from critical habitat under the section 3(5)(A) definition."

3. Riverside Fairy Shrimp at Miromar AFB and Camp Pendleton 67 FR 59884-01 (September 24, 2002)

[NOTE: This designation was vacated by a federal court on October 30, 2002, after an industry group claimed that FWS's economic impact analysis was not sufficently broad. *See* Building Ind. Legal Defense Found. V. Norton, 231 F. Supp. 100 (D.D.C. 2002). The court required FWS to complete a new designation by July 2004.]

"To date, Miramar is the only DOD installation that has completed a final INRMP that provides for sufficient conservation management and protection for vernal pools and the Riverside fairy shrimp. We reviewed this plan and determined that it addresses and meets the three criteria. Therefore, lands on Miramar (proposed Critical Habitat Unit 5) do not meet the definition of critical habitat, and they have not been included in this final designation of critical habitat for the Riverside fairy shrimp."

"To date, as the INRMP for Camp Pendleton has not yet been completed and approved, these lands meet the definition of critical habitat. Nevertheless, we have determined that **it is appropriate to exclude training areas on Camp Pendleton from this critical habitat designation under section 4(b)(2).** The main benefit of this exclusion is ensuring that the mission-critical military training activities can continue without interruption at Camp Pendleton while the INRMP is being completed."

"The proposed critical habitat designation included about 2,295 ha (5,670 ac), or about 10 percent of the base. This exclusion does not apply to the vernal pool complexes in the Wire Mountain Housing Area, within the Cockleburr Sensitive Area, and lands leased to the State of California and included within San Onofre State Park. Because these lands are used minimally, if at all, by the Marines for training, the 312 ha (770 ac) of lands proposed on Camp Pendleton and within the San Onofre State Park are retained in the final designation."

California Red-legged Frog 66 FR 14626-01 (March 13, 2001)

"During the comment period for the proposed determination of critical habitat for the California red-legged frog, we received and subsequently evaluated a final INRMP for Vandenberg Air Force Base found in Units 23, 24, and 26. This plan addresses the California red-legged frog as a covered species and provides conservation measures for the species. Based on this plan and Vandenberg's section 7 consultation history, we have determined that the conservation measures afforded the subspecies are sufficient to assure its conservation on the base. Therefore, we have excluded Vandenberg Air Force Base from the final determination of critical habitat for the red-legged frog resulting in a reduction of approximately 38,445 ha (95,000 ac) from these units."

"We also received and evaluated a request from Camp Parks Reserve Forces Training Area found in Unit 15 and Camp San Luis Obispo found in Unit 21, for exclusion from final designation because of the impact a final designation would have on their training-critical mission. The proposed designation included about 90 percent of both installations. After evaluation of the benefits of inclusion and the benefits of exclusion, we have excluded Camp Parks resulting in a reduction of approximately 857 ha (2,118 ac) in Unit 15 and CSLO resulting in a reduction of approximately 2,272 ha (5,613 ac) in Unit 21 from this final designation."

Arroyo Toad 66 FR 9414-01 (February 7, 2001)

[NOTE: This designation was vacated by a federal court on October 30, 2002, after an industry group claimed that the economic impact analysis was not sufficiently broad. *See* Building Ind. Legal Defense Found. V. Norton, 231 F. Supp. 100 (D.D.C. 2002). The court required FWS to complete a new designation by July 2004.]

"Arroyo toad numbers on Camp Pendleton are significant and are inclusive of the few remaining populations along the coastal plain."

"[W]e have determined that it is appropriate to exclude Camp Pendleton from this critical habitat designation under section 4(b)(2). The main benefit of this exclusion is ensuring that the mission-critical military training activities can continue without interruption at Camp Pendleton while the INRMP and programmatic uplands consultation are being completed. This exclusion does not include that part of Camp Pendleton leased to the State of California and included within San Onofre State Park (including San Mateo Park) and those agricultural leased lands adjacent to San Mateo Creek. Because these lands are used minimally, if at all, by the Marines for training, the lands proposed within the state park and agricultural leases are retained in the final designation."

"Fort Hunter Liggett seemed most concerned in their comments about the inclusion of what they termed "marginal and unsuitable" habitat and the resulting consultation requirements, and the perceived need to reinitiate consultation on certain actions. We

believe we have adequately addressed much of their concern by eliminating the northernmost reach of the river that was proposed, and by the reduction in grid cell size to eliminate such marginal habitat (see Changes from the Proposal section)."

"A primary concern expressed by Fallbrook Naval Weapons Station is that the designation of critical habitat within certain developed areas will impose additional restrictions on their operations. However, existing structures, ordnance storage magazines and bunkers, and other developed areas do not provide the primary constituent elements necessary for the arroyo toad and thus by definition are not critical habitat."

Mexican Spotted Owl 66 FR 8530-01 (February 1, 2001)

[NOTE: In *Center for Biological Diversity v. Norton*, 240 F. Supp. 2d 1090 (D. Ariz. 2003), the court overturned the critical habitat designation for the Mexican spotted owl on the ground that that U.S. Forest Service lands could not legitimately be excluded from a critical habitat designation on the basis of the "special management" language in ESA §3(5). However, the court upheld FWS's exclusion of tribal lands as within FWS's broad authority under ESA §4(b)(2). Thus, the ruling does not remove FWS's flexibility to exclude DOD lands from a critical habitat designation on the basis of a satisfactory INRMP and the benefits to military training that the exclusion would provide. *See* NWF Factsheet: DOD's Argument for an ESA Exemption is Based Upon a Misstatement of the Law.]

"Fort Carson, Colorado, provided information during the comment period that indicated the Mexican spotted owl is not known to nest on the military installation and the species is a rare winter visitor. Protected and restricted habitat is also not known to exist on Fort Carson. Further, Fort Carson is updating the Integrated Natural Resources Management Plan (INRMP) to include specific guidelines and protection measures that have been recently identified through informal consultation with us. The INRMP will include measures to provide year-round containment and suppression of wildland fire and the establishment of a protective buffer zone around each roost tree. The target date of completion for this revision is early 2001. Fort Carson, through consultation with us, indicated they will ensure that the INRMP will meet the criteria for exclusion. They also provided additional information and support to indicate that no protected or restricted habitat exists on the base, and asked to be excluded from the final designation. We agree that Fort Carson should be excluded from the final designation."

Coastal California Gnatcatcher 65 FR 63680-01 (October 24, 2000)

"To date, Marine Corps Air Base Miramar is the only DOD installation that has completed a final INRMP that provides for sufficient conservation management and protection for the gnatcatcher. We have reviewed this plan and have determined that it addresses and meets the three criteria. Therefore, lands on Marine Corps Air Base Miramar do not meet the definition of critical habitat and have been excluded from the final designation of critical habitat for the gnatcatcher."

In contrast to Marine Corps Air Base Miramar, other military installations within the area proposed as critical habitat for the gnatcatcher have not yet completed their INRMPs. Most notably, Marine Corps Base Camp Pendleton (Camp Pendleton) represents one of the largest contiguous blocks of coastal sage scrub in southern California. The base provides habitat for numerous core populations of gnatcatchers and essential habitat linkages between core populations in northern San Diego County to those in southern Orange and southwestern Riverside Counties. In light of these factors, we proposed 20,613 ha (50,935 ac) of the approximately 50,000 ha (125,000 acre) base as critical habitat for the gnatcatcher."

"During both public comment periods for the proposal, the Marines concluded that the designation, if it were to become final, would cripple their ability to conduct their critical training activities. They asserted that "this overwhelming proposal [if made final] will have a long term, cumulative and detrimental impact on [their] mission." The proposed critical habitat encompassed more than 40 percent of the Base. Out of the 46 training or joint use areas on Camp Pendleton, the proposal included all of 22 and portions of 9 such areas, which were concentrated on the coastal portion of the Base. In addition, the proposal included three of four principal landing beaches and the key inland training areas adjacent to these beaches where Marines train in amphibious warfare, large and small tactics, and warfighting skills. Camp Pendleton is the Marine Corps' only amphibious training base on the Pacific coast."

"Today, as the INRMP has not yet been completed and approved, these lands on the base meet the definition of critical habitat. Nevertheless, **we have determined that it is appropriate to exclude Camp Pendleton from this critical habitat designation under section 4(b)(2).** The main benefit of this exclusion is ensuring that the mission-critical military training activities can continue without interruption at Camp Pendleton while the INRMP is being completed."

"In particular, the Marines implement a set of "programmatic instructions" that create 500-foot buffers around each 1998 gnatcatcher observation. These avoided areas, after eliminating overlapping buffers and off-Base areas, total about 3,343 ha (8,260 ac), or a little less than 7 percent of the entire area of Camp Pendleton. Although avoiding these areas constrains Marine training activities to some degree, the effectiveness of their overall mission is not compromised. The proposed critical habitat designation, however, included about 20,613 ha (50,935 ac), or, to reiterate, about 40 percent of the Base. If this area is included in the final designation of critical habitat for the gnatcatcher, the Marines would be compelled by their interpretation of the Endangered Species Act to significantly curtail necessary training within the area designated as critical habitat, to the detriment of mission-critical training capability, until the consultation is concluded, up to a year from now. As a result, this increase in the extent of avoided areas would greatly restrict use of the Base, severely limiting the Base's utility as a Marine training site."

"This **exclusion does not include that part of Camp Pendleton leased to the State of California and included within San Onofre State Park** (including San Mateo Park).

Because these lands are used minimally, if at all, by the Marines for training, the 1,195 ha (2,960 ac) of lands proposed within the state park are retained in the final designation. These lands do not include lands leased for agricultural purposes."

San Diego Fairy Shrimp 65 FR 63438-01 (October 23, 2000)

"We evaluated Department of Defense (DOD) Integrated Natural Resource Management Plans (INRMPs) for DOD land that was within the proposed critical habitat to determine whether any INRMPs met the special management criteria. To date, Marine Corps Air Base, Miramar is the only DOD installation that has completed a final INRMP that provides for sufficient conservation management and protection for the San Diego fairy shrimp. We reviewed this plan and determined that it addresses and meets the three criteria. Therefore, lands on Marine Corps Air Base, Miramar no longer meet the definition of critical habitat, and they have been excluded from the final designation of critical habitat for the San Diego fairy shrimp."

"In contrast to Marine Corps Air Base Miramar, Marine Corps Base Camp Pendleton (Camp Pendleton) has not yet completed their INRMP. Camp Pendleton has several substantial vernal pool complexes that support the San Diego fairy shrimp. In light of these factors, we proposed 4,902 ha (12,114 ac) of the approximately 50,000 ha (125,000 acre) base as critical habitat for the San Diego fairy shrimp. Out of the 46 training or joint use areas on Camp Pendleton, the proposal included all of five such areas, which were concentrated on the coastal portion of the Base. In addition, the proposal included habitat found elsewhereon the base."

"Today, as the INRMP has not yet been completed and approved, these lands on the base meet the definition of critical habitat. Nevertheless, we have determined that it is appropriate to exclude Camp Pendleton from this critical habitat designation under section 4(b)(2). The main benefit of this exclusion is ensuring that the mission-critical military training activities can continue without interruption at Camp Pendleton while the INRMP is being completed."

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FWS's Case-by-Case Review of INRMPs Is Essential For Conserving Imperiled Wildlife

Reject Defense Department's Proposed Exemption From This Accountability

The Defense Department has requested an exemption from the Endangered Species Act (ESA) on the ground that the Integrated Natural Resources Management Plans (INRMPs) it prepares under the Sikes Act are an adequate substitute for ESA critical habitat protection.

However, the U.S Fish and Wildlife Service (FWS) has reviewed a number of INRMPs in the past few years for the very purpose of determining their adequacy as substitutes for critical habitat protection. As shown in the table below, on repeated occasions, FWS has determined that INRMPs were inadequate to conserve listed species.

U.S. Fish and Wildlife Service's Findings Regarding Inadequacy of INRMPs

DOD Installation	Endangered and Threatened Species Habitat at Installation	FWS Findings
Pacific Missile Range, Navy's Barking Sands Facility, Kaua`i	Plants: *Panicum niihauense* (no common name)	"Management at the PRMF Barking Sands Facility lands currently consists of restricting human access and off-road vehicles from the dune ecosystems and mowing landscaped areas. These actions alone are not sufficient to address the factors inhibiting the long-term conservation of Panicum niihauense. Therefore, we cannot at this time find that management on these lands under Federal jurisdiction as sufficient to find that they no longer meet the definition of critical habitat." 68 FR 9116 (February 27, 2003).

Santa Cruz Armory, California	Plants: Santa Cruz tarplant (*Holocarpha macradenia)*	"We conclude that [the California Army National Guard] does not yet have an INRMP for the Santa Cruz Armory that sufficiently addresses the criteria above. These lands do not warrant exclusion from critical habitat designation because the proposed management plan has not been approved and does not contain assurances that the management actions it describes will be implemented or effective." 67 FR 63968 (October 16, 2002).
Navy's Barking Sands and Makaha Ridge Facility, Kaua`i	Plants: *Panicum niihauense* (no common name) *Sesbania tomentosa* (`ohai) *Wilkesia hobdyi* (iliau)	"Management at the Barking Sands and Makaha Ridge Facility lands currently consists of restricting human access and mowing landscaped areas. **These actions alone are not sufficient to address the factors inhibiting the long-term conservation** of [plants] *Panicum niihauense* and *Wilkesia hobdyi.* Therefore, we can not at this time find that management on these lands under Federal jurisdiction is adequate to preclude a proposed designation of critical habitat." 67 Fed. Reg. 3940, 3998 (Jan. 28, 2002).
Army's Dillingham Military Reservation, O`ahu	Plants: *Cyperus trachysanthos* (pu`uka`a) *Hibiscus brackenridgei ssp. mokuleianus* (ma`o hau hele) *Nototrichium humile* (kulu`i) *Schiedea kealiae* (no common name)	"We believe this land is needed for the recovery of one or more of these four [plant] species. Currently, the Army is not implementing any management actions for these listed species at the Dillingham Military Reservation (HINHP Database 2001; Army 2001b). In addition, proposed management actions identified for [the plant] *Schiedea kealiae* in the 2001 INRMP are 'subject to available funding'. **We do not believe that appropriate conservation management strategies have been adequately funded or effectively implemented.** Therefore, we cannot at this time find that management of this land under Federal jurisdiction is adequate to preclude a proposed designation of critical habitat." 67 Fed. Reg. 37108, 37161 (May 28, 2002).

Army's Kahuku Training Area, O'ahu	Plants: *Adenophorus periens* (no common name) *Chamaesyce rockii* (`akoko) *Cyanea grimesiana ssp. grimesianna* (haha) *Cyanea koolauensis* (haha) *Cyanea longiflora* (haha) *Eugenia koolauensis* (nioi) *Gardenia mannii* (nanu) *Hesperomannia arborescens* (no common name) *Phyllostegia hirsuta* (no common name) *Tetraplasandra gymnocarpa* (`ohe`ohe)	"Proposed management actions identified for listed plant species in the 2001 INRMP are 'subject to available funding'. **We do not believe that there are sufficient assurances that appropriate conservation management strategies will be adequately funded or effectively implemented.** Therefore, we cannot at this time find that management of this land under Federal jurisdiction is adequate to preclude a proposed designation of critical habitat." 67 Fed. Reg. 37108, 37161-37162 (May 28, 2002).
Army's Kawailoa Training Area, O'ahu	Plants: *Adenophorus periens* (no common name) *Chamaesyce rockii* (`akoko) *Cyanea acuminata* (haha) *Cyanea crispa* (haha) *Cyanea grimesiana ssp. grimesiana* (haha) *Cyanea humboldtiana* (haha) *Cyanea koolauensis* (haha) *Cyanea longiflora* (haha) *Cyanea st.-johnii* (haha) *Cytrandra dentata* (ha`iwale) *Cyrtandra viridiflora* (ha`iwale) *Delissea subcordata* (no common name) *Eugenia koolauensis* (nioi) *Gardenia mannii* (nanu) *Hesperomannia arborescens* (no common name) *Labordia cyrtandrae* (kamakahala) *Lobelia oahuensis* (no common name) *Melicope lydgatei* (alani) *Myrsine juddii* (kolea) *Phlegmariurus nutans* (wawae`iole) *Phyllostegia hirsuta* (no common name) *Phyllostegia parviflora* (no common name) *Plantago princeps* (ale) *Platanthera holochila* (no common name) *Pteris lidgatei* (no common name) *Sanicula purpurea* (no common name) *Tetraplasandra gymnocarpa* (`ohe`ohe) *Viola oahuensis* (no common name)	"Proposed management actions identified for listed plant species in the 2001 INRMP are 'subject to available funding'. **We do not believe that the current management measures are sufficient to address the primary threats to these species, nor do we believe that there are appropriate assurances that appropriate conservation management strategies will be adequately funded or effectively implemented.** Therefore, we cannot at this time find that management of this land under Federal jurisdiction is adequate to preclude a proposed designation of critical habitat." 67 Fed. Reg. 37108, 37192 (May 28, 2002).

Army's Makua Military Reservation, O`ahu	Plants: *Alectryon macrococcus* (mahoe) *Alsinidendron obovatum* (no common name) *Bonamia menziesii* (no common name) *Cenchrus agrimonioides* (kamanomano) *Chamaesyce celastroides var. keanana* (`akoko) *Ctenitis squamigera* (pauoa) *Cyanea superba* (haha) *Cyrtandra dentata* (ha`iwale) *Delissea subcordata* (no common name) *Diellia falcata* (no common name) *Dubautia herbstobatae* (na`ena`e) *Euphorbia haeleeleana* (`akoko) *Flueggea neowawraea* (mehamehame) *Hedyotis degeneri* (no common name) *Hedyotis parvula* (no common name) *Hibiscus brackenridgei* (ma`o hau hele) *Lepidium arbuscula* (`anaunau) *Lipochaeta tenuifolia* (nehe) *Lobelia niihauensis* (no common name) *Lobelia oahuensis* (no common name) *Neraudia angulata* (no common name) *Nototrichium humile* (kulu`i) *Plantago princeps* (ale) *Sanicula mariversa* (no common name) *Schiedea hookeri* (no common name) *Schiedea nuttallii* (no common name) *Silene lanceolata* (no common name) *Spermolepis hawaiiensis* (no common name) *Tetramolopium filiforme* (no common name) *Tetramolopium lepidotum ssp. lepidotum* (no common name) *Viola chamissoniana ssp. chamissoniana* (`olopu; pamakani)	"While we believe that some of these [plant] species specific actions may control threats in the short term, **we do not believe that these measures are sufficient to address the primary threats to all of the species reported from Makua Military Reservation at this time**... However, we cannot at this time find that management of this land under Federal jurisdiction is adequate to preclude a proposed designation of critical habitat." 67 Fed. Reg. 37108, 37162-37163 (May 28, 2002).

Army's Makua Military Reservation, O`ahu (continued)	Bird: *Chasiempis sandwichensis ibidis* (O`ahu `elepaio)	"To date, **no military installation on O`ahu has completed a final INRMP that provides sufficient management and protection for the elepaio.**" 66 Fed. Reg. 63752, 63762 (Dec. 10, 2001). **"We have determined that current management [at Makua Military Reservation] does not adequately address the conservation needs of the Oahu elepaio...."** 66 Fed. Reg. at 63768.
Army's Schofield Barracks East Range, O`ahu	Plants: *Chamaesyce rockii* (`akoko) *Cyanea acuminata* (haha) *Cyanea koolauensis* (haha) *Cyanea longiflora* (haha) *Cyanea st.johnii* (haha) *Cyrtandra subumbellata* (ha`iwale) *Gardenia mannii* (nanu) *Hesperomannia arborescens* (no common name) *Isodendrion laurifolium* (aupaka) *Lobelia gaudichaudii ssp. koolauensis* (no common name) *Lobelia oahuensis* (no common name) *Phlegmariurus nutans* (wawae`iole) *Phyllostegia hirsuta* (no common name) *Pteris lidgatei* (no common name) *Sanicula pupurea* (no common name) *Tetraplasandra gymnocarpa* (`ohe`ohe) *Viola oahuensis* (no common name)	"Proposed management actions identified for listed plant species in 2001 INRMP are 'subject to available funding'. **We do not believe that the current management measures are sufficient to address the primary threats to these species, nor do we believe that there are sufficient assurances that appropriate conservation management strategies will be adequately funded or effectively implemented.** Therefore, we cannot at this time find that management of this land under Federal jurisdiction is adequate to preclude a proposed designation of critical habitat." 67 Fed. Reg. 37108, 37163 (May 28, 2002).
Army's Schofield Barracks East Range, O`ahu (continued)	Bird: *Chasiempis sandwichensis ibidis* (O`ahu `elepaio)	"To date, **no military installation on O`ahu has completed a final INRMP that provides sufficient management and protection for the elepaio.**" 66 Fed. Reg. 63752, 63762 (Dec. 10, 2001). **"We have determined that current management [at Schofield Barracks] does not adequately address the conservation needs of the Oahu elepaio...."** 66 Fed. Reg. at 63768.

Army's Schofield Barracks Military Reservation, O`ahu	Plants: *Abutilon sandwicense* (no common name) *Alectryon macrococcus* (mahoe) *Alsinidendron trinerve* (no common name) *Cenchrus agriminioides* (kamanomano) *Ctenitis squamigera* (pauoa) *Cyanea acuminata* (haha) *Cyanea grimesiana ssp. grimesiana* (haha) *Cyanea grimesiana ssp. obatae* (haha) *Cyanea superba* (haha) *Delissea subcordata* (no common name) *Diellia falcata* (no common name) *Diplazium molokaiense* (no common name) *Eragrostis fosbergii* (no common name) *Flueggea neowawraea* (mehamehame) *Gardenia mannii* (nanu) *Isodendrion longifolium* (aupaka) *Labordia cyrtandrae* (kamakahala) *Lepidium arbuscula* (`anaunau) *Lipochaeta lobata var. leptophylla* (nehe) *Lipochaeta tenuifolia* (nehe) *Lobelia niihauensis* (no common name) *Lobelia oahuensis* (no common name) *Neraudia angulata* (no common name) *Nototrichium humile* (kulu`i) *Phyllostegia hirsuta* (no common name) *Phyllostegia mollis* (no common name) *Plantago princeps* (ale) *Schiedea hookeri* (no common name) *Schiedea nuttallii* (no common name) *Solanum sandwicense* (popolo `aiakeakua) *Stenogyne kanehoana* (no common name) *Tetramolopium lepidotum ssp. lepidotum* (no common name) *Urera kaalae* (opuhe) *Viola chamissoniana ssp. chamissoniana* (`olopu; pamakani)	"Proposed management actions identified for listed plant species in the 2001 INRMP are 'subject to available funding'. **We do not believe that the current management measures are sufficient to address the primary threats to these species, nor do we believe that there are sufficient assurances that appropriate conservation management strategies will be adequately funded or effectively implemented.** Therefore, we cannot at this time find that management of this land under Federal jurisdiction is adequate to preclude a proposed designation of critical habitat." 67 Fed. Reg. 37108, 37163 (May 28, 2002).

Army's Schofield Barracks Military Reservation, O`ahu (continued)	Bird: *Chasiempis sandwichensis ibidis* (O`ahu `elepaio)	"To date, **no military installation on O`ahu has completed a final INRMP that provides sufficient management and protection for the elepaio**." 66 Fed. Reg. 63752, 63762 (Dec. 10, 2001). "[T]he threat to elepaio at Schofield Barracks of wildfires resulting from training activities has not been managed adequately. Larger scale rodent control and improved fire management will be necessary to meet the long-term conservation needs of the elepaio. **We have determined that current management does not adequately address the conservation needs of the Oahu elepaio**...." 66 Fed. Reg.at 63768.
Naval Computer and Telecommunications Area Master Station Pacific Radio Transmitting Facility at Lualualei, O`ahu	Plant: *Marsilea villosa* (`ihi`ihi)	"One [plant] species, *Marsilea villosa*, occurs on land at the Naval Computer and Telecommunications Area Master Station Pacific Radio Transmitting Facility at Lualualei and we believe this land is needed for the recovery of this species. Some management actions to protect and maintain the population are included in the 2001 INRMP but these actions have not been adequately funded or effectively implemented (HINHP Database 2001; Navy 2001a). **Therefore, we cannot at this time find that management of this land under Federal jurisdiction is adequate to preclude a proposed designation of critical habitat.**" 67 Fed. Reg. 37108, 37164 (May 28, 2002).

Naval Magazine Pearl Harbor Lualualei Branch, O`ahu	Plants: *Abutilon sandwicense* (no common name) *Alectryon macrococcus* (mahoe) *Bonamia menziesii* (no common name) *Chamaesyce kuwaleana* (`akoko) *Diellia falcata* (no common name) *Flueggea neowawraea* (mehamehame) *Hedyotis parvula* (no common name) *Lepidium arbuscula* (`anaunau) *Lipochaeta lobata* (nehe) *Lipochaeta tenuifolia* (nehe) *Lobelia niihauensis* (no common name) *Marsilea villosa* (`ihi`ihi) *Melicope sanit-johnii* (alani) *Neraudia angulata* (no common name) *Nototrichium humile* (kulu'i) *Phyllostegia hirsuta* (no common name) *Plantago princeps* (ale) *Sanicula mariversa* (no common name) *Schiedea hookeri* (no common name) *Tetramolopium filiforme* (no common name) *Tetramolopium lepidotum* (no common name) *Urera kaalae* (opuhe) *Viola chamissoniana ssp. chamissoniana* (`olopu; pamakani)	**"We do not believe that these measures are sufficient to address the primary threats to these species on this land, nor do we believe that appropriate conservation management strategies have been adequately funded or effectively implemented.** Therefore, we cannot at this time find that management of this land under Federal jurisdiction is adequate to preclude a proposed designation of critical habitat." 67 Fed. Reg. 37108, 37164 (May 28, 2002).
	Bird: *Chasiempis sandwichensis ibidis* (O`ahu `elepaio)	"The primary threats to the elepaio, predation by alien rats and diseases carried by alien mosquitoes, have not been addressed on Navy lands.... **After reviewing the draft INRMP for NAVMAG Pearl Harbor Lualualei Branch, we have determined that it does not provide for adequate protection or management for the Oahu elepaio.** The draft INRMP does not include a management strategy for the Oahu elepaio and does not provide an evaluation of population distribution, quality and quantity of nesting habitat, threats, and management needs for recovery." 66 Fed. Reg. 63752, 63767 (Dec. 10, 2001).

Army's Fort Shafter, O`ahu	Bird: *Chasiempis sandwichensis ibidis* (O`ahu `elepaio)	**"To date, no military installation on Oahu has completed a final INRMP that provides sufficient management and protection for the elepaio."** 66 Fed. Reg. 63752, 63762 (Dec. 10, 2001).
Army's Pohakuloa Training Area, Island of Hawai`i	Plants: *Asplenium fragile var. insulare* (no common name) *Hedyotis coriacea* (kio`ele) *Neraudia ovata* (no common name) *Portulaca sclerocarpa* (po`e) *Silene hawaiiensis* (no common name) *Silene lanceolata* (no common name) *Solanum incompletum* (popolo ku mai) *Spermolepis hawaiiensis* (no common name) *Tetramolopium arenarium* (no common name) *Zanthoxylum hawaiiense* (a`e)	"However, **current management is not sufficient to address many of the factors inhibiting the long-term conservation of any of these ten [plant] species and thus provide conservation benefits to the species. In addition there is no guarantee of long-term funding for on-going or future management actions**.... Therefore, we can not at this time find that management on this land under Federal jurisdiction is adequate to preclude a proposed designation of critical habitat." 67 Fed. Reg. 36968, 37002 (May 28, 2002).

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DOD HAS USED MISLEADING ANECDOTES TO JUSTIFY ITS PROPOSAL TO EXEMPT ITSELF FROM THE ESA'S CRITICAL HABITAT PROTECTIONS

The Department of Defense (DOD) is again pursuing exemptions from key environmental laws. A legislative package with these exemptions has been sent to Congress, which will soon be casting crucial votes. If this legislation is approved it will greatly reduce DOD's obligations under the Endangered Species Act (ESA), Marine Mammal Protection Act, Clean Air Act, Superfund, and Resource Conservation and Recovery Act.

The DOD is requesting these exemptions even though the General Accounting Office concluded, based on a review of DOD's own readiness reports, that the military is at a high state of readiness and that DOD has never demonstrated that adhering to environmental laws has significantly impeded training.

What justification has DOD offered sweeping exemptions from the ESA? It turns out that *the only evidence* by DOD has consisted of highly misleading anecdotes.

The ESA's Critical Habitat Protections Have Not Significantly Impeded Training

An analysis of DOD's ESA anecdotes shows that sweeping exemptions from the ESA are unwarranted -- DOD has been able to carry out its training mission while complying with the ESA. Due to successful negotiations, DOD frequently persuaded the U.S. Fish and Wildlife Service (FWS) to exclude DOD lands from critical habitat designations. In the rare cases where critical habitat has been designated, DOD has never identified an obstacle to achieving readiness. DOD has never found it necessary to utilize the "national security" exemption procedure provided by the ESA.

Camp Pendleton, California

DOD ASSERTION: "At Camp Pendleton, proposed critical habitat under the Endangered Species Act would cover 57% of the base . . . ." (Congressional Testimony of Raymond F. DuBois, Jr., Deputy Undersecretary of Defense, March 13, 2003.)

THE REST OF THE STORY: Such proposals were rejected two years ago by the FWS in its final rules, which **excluded all but 875 acres of Camp Pendleton's approximately 120,000 acres of training land from its final critical habitat designations.** Camp Pendleton encompasses 125,118 acres, roughly 5,000 acres of which are leased for various non-military purposes, such as California's San Onofre State Park and agricultural operations. FWS's critical habitat designations have been focused almost entirely on these non-training lands.

The following list provides the number of acres originally proposed and actually designated for each of the five species with proposed critical habitat designations at Camp Pendleton. Some of these species share the same habitats, so acreage totals should not be combined to derive total acres designated as critical habitat.

San Diego Fairy Shrimp Critical Habitat:
12,829 acres were proposed but only 40 acres were designated. **The entire 40 acres designated are within San Onofre State Park and are not used for training.**

Coastal California Gnatcatcher Critical Habitat:
50,992 acres were proposed but only 3,773 acres were designated. **None of the 3,773 acres designated are used for training: 2,960 acres are within San Onofre State Park and the remainder are leased for agricultural purposes.**

Tidewater Goby Critical Habitat:
731 acres were proposed but 959 acres were designated. **Less than 875 acres of designated lands are potential training lands; the remaining 84 acres are within San Onofre State Park.** Camp Pendleton has the only remaining population of this endangered fish in the region.

Riverside Fairy Shrimp Critical Habitat:
5,567 acres were proposed but only 770 acres were designated. **All of the 770 acres designated are in San Onofre State Park or otherwise in leased areas that, according to FWS, are "used minimally, if at all, by the Marines for training."** As a result of a building industry lawsuit, this designation has now been vacated and a more extensive economic impact analysis is now being prepared.

Arroyo Toad Critical Habitat:
38,210 acres were proposed but only 2,680 acres were designated. **According to FWS, all of these designated acres are either in San Onofre State Park or on agricultural leased lands that are "used minimally, if at all, by the Marines for training."** As a result of a building industry lawsuit, this designation has now been vacated and a more extensive economic impact analysis is being prepared.

In summary, despite the presence of 18 threatened and endangered species on Camp Pendleton, less than one percent of the training lands on the base – not the reported 57 percent – is designated as critical habitat for any species.

DOD ASSERTION: "At Camp Pendleton, proposed critical habitat under the Endangered Species Act would cover 57% of the base, *including all 17 miles of the beach that is critical to training operations . . . .*" (Congressional Testimony of Raymond F. DuBois, Jr., Deputy Undersecretary of Defense, March 13, 2003. Emphasis added.)

THE REST OF THE STORY: The biggest limitation on training is not critical habitat designation but the presence of Interstate 5, a railroad, the San Onofre Nuclear Generation Plant, and other topographic access limitations. **The ESA only limits large-unit amphibious landings on two to three miles of the 17-mile beach** and only during the five- to six-month nesting seasons of the endangered Western snowy plover and California least tern.

DOD essentially concedes that the training restrictions to protect the Western snowy plover and California least tern are not a significance to training. Camp Pendleton's successful efforts to protect the snowy plover were recently celebrated in DOD's "We're Saving a Few Good Species" poster campaign, with DOD declaring that "an elite military force can train in environmentally sensitive areas and protect a threatened species at the same time." The exemption from the ESA's critical habitat provisions proposed by DOD would not even affect the restrictions related to the snowy plover and the least tern – those restrictions are in place pursuant to the ESA's jeopardy and take prohibitions. Neither species has designated critical habitat on Camp Pendleton.

DOD ASSERTION: *The proposed amendment is narrowly tailored and will only apply to portions of Camp Pendleton and other military bases needed for training.*

THE REST OF THE STORY: The amendment would apply to land owned by the military even if used for non-military purposes. In the case of Camp Pendleton, the amendment would apply to San Onofre State Park, which is leased to the State of California by the Marine Corps. San Onofre is the 10th most popular park in California and currently is home to several endangered and threatened species and their designated critical habitat. However, because the Park is "owned" by the Department, the amendment would preclude any designation of critical habitat on park property.

Naval Base at Coronado, California

DOD ASSERTION: *"When Navy SEALs land on beaches at Naval Base Coronado during nesting season, they have to disrupt their tactical formation to move in narrow lanes marked by green tape, to avoid disturbing the nests of the Western snowy plover and California least tern."*

THE REST OF THE STORY: Of the base's 5,000-yard ocean coastline, the presence of these two endangered birds only restricts the use of one, 500-yard training lane and the restriction is only in place for the birds' five- to six-month nesting season. And, as the

Navy acknowledges, this nest-marking "work around" has been important to species recovery.

San Clemente Island, California

DOD ASSERTION: *The presence of the endangered loggerhead shrike shorebird has curtailed "the use of illumination rounds or other potentially incendiary shells during shore bombardment exercises at San Clemente during the six-month loggerhead shrike breeding season."*

THE REST OF THE STORY: The loggerhead shrike first became imperiled on the island due to the Navy's introduction of a goat that decimated the bird's habitat. As a result of conservation efforts on the island, the shrike's population, once as low was 13 birds, now consists of 106 birds.

The use of live ordinance is restricted from June to October (not during the February-June breeding season) because of the risk of fire, but this could be remedied by the use of inert ordinance. The sole reason provided by the Marine Corps for its failure to use inert ordinance is that its inventory of this kind of ordinance is limited.

Vieques Island Naval Range, Puerto Rico

DOD ASSERTION: *ESA protections for the endangered hawksbill and leatherback sea turtles have restricted training at this range, including the possibility of "halting the entire training exercise for a Carrier Battle Group in the event of observing a single sea turtle."*

THE REST OF THE STORY: As a result of formal consultation under the ESA, the Navy agreed to institute precautionary conservation measures. In response, FWS issued a no-jeopardy Biological Opinion allowing battle group exercises to go forward without fear of delay due to the ESA. The Navy's conservation measures, such as the relocation of turtle eggs to a hatchery during amphibious landings, have resulted in the successful hatching of over 17,000 hawksbill and leatherback sea turtle eggs.

Barry M. Goldwater Air Force Range, Arizona

DOD ASSERTION: *"In the calendar year 2000, almost 40 percent of the live fire missions at the Goldwater Range were canceled."*

THE REST OF THE STORY: This base is home to the last remaining Sonoran pronghorn in the United States – with just 99 animals left, it is one of the most endangered species of large mammals in the world. The pronghorn's continued existence is threatened by air and ground maneuvers, including bombing, strafing, artillery fire and low-level flights. Despite this fact, DOD's proposed legislation would not address the situation at Goldwater, as FWS has not designated any of the range as critical habitat for the pronghorn out of fear that doing so "could seriously limit the Air Force's ability to

modify missions on its lands." In return, the Air Force is participating in a regional ecological study with the Department of the Interior, the Nature Conservancy, and the Sonoran Institute as a starting point for their conservation efforts.

Fort Hood, Texas

DOD ASSERTION: *"Only about 17% of Fort Hood lands are available for training without restriction."*

THE REST OF THE STORY: Endangered species conservation measures are singled out for blame in the limitation of training exercises at Fort Hood, yet over 74 percent of the base's 217,600 acres are currently restricted in order to accommodate large-scale cattle operations. Conversely, less than 34 percent of Fort Hood's training land has faced limited restrictions because of the presence of two endangered birds, the black capped vireo and the golden cheeked warbler. Even on these restricted lands, however, many training activities are still allowed. In certain "core areas" within the endangered birds' habitat, the use of chemical grenades, artillery firing and digging are limited.

DOD has successfully worked with the ESA to achieve its military readiness objectives while conserving imperiled species. Please ask your lawmakers to oppose any proposals providing exemptions from the Endangered Species Act and other environmental laws!

For more information, contact Corry Westbrook, NWF Legislative Representative, at 202-797-6840, westbrook@nwf.org, *or John Kostyack, NWF Senior Counsel, at 202-797-6879,* kostyack@nwf.org.

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DOD HAS A LONG HISTORY OF WORKING SUCCESSFULLY WITH THE ESA

The Department of Defense (DOD) is again pursuing exemptions from key environmental laws. A legislative package with these exemptions has been sent to Congress, which will soon be casting crucial votes. If this legislation is approved it will greatly reduce DOD's obligations under the Endangered Species Act (ESA), Marine Mammal Protection Act, Clean Air Act, Superfund, and Resource Conservation and Recovery Act.

Last year, the Administration requested exemptions from six environmental statutes, and Congress settled on an exemption from the Migratory Bird Treaty Act.

DOD and ESA Success Stories

DOD has argued, and intends to do so again, that the ESA is too inflexible and that a sweeping new exemption is needed. However, this argument is not based on having encountered insurmountable hurdles complying with the ESA. In fact, the General Accounting Office has concluded, based on a review of DOD's own readiness reports, that the military is at a high state of readiness and that DOD has never demonstrated that the ESA has significantly impeded training.

Nonetheless, without any public debate, DOD sought to bypass the ESA's careful balancing between military training needs and conservation of imperiled wildlife. The facts show that this would be an unfortunate and unnecessary departure from DOD's long history of working successfully with the ESA.

Marine Corps Air Station Miramar, California

In an effort to protect the station's ten endangered species, the U.S. Fish and Wildlife Service (FWS) initially proposed to designate 65 percent of Miramar's land area as critical habitat. FWS later exercised its discretion under existing law and withdrew this proposed designation after the Marine Corps established a framework to protect and preserve the station's endangered species, guaranteed the plan would be implemented, and defined measures to judge the plan's effectiveness. According to DOD, in so doing, "the plan made military readiness activities and endangered species protection mutually compatible."

Mokapu Peninsula of Marine Corps Base Hawaii

Among the 50 species of birds that call this island home are all four of Hawaii's endangered waterbirds: the Hawaiian stilt, Hawaiian coot, Hawaiian gallinule, and the Hawaiian duck. Management activities at the base have more than doubled the number

of stilts on the base over the past 20 years. The growth of non-native plants, which can decrease the waterbirds' reproductive success, is controlled through annual "mud-ops" maneuvers by Marine Corps Assault Vehicles (AAVs). Just before the onset of nesting season, these 26 ton vehicles are deliberately deployed in supervised plow-like maneuvers that break the thick mats of invasive plants, improving nesting and feeding opportunities while also giving drivers valuable practice in unusual terrain.

Air Force in Alaska

In 1995 FWS found that the Air Force's low-level, high speed training flights in Alaska had the potential to disturb the three North American subspecies of endangered peregrine falcons. After the Air Force consulted with FWS under the ESA, the Air Force agreed to protective "no-fly" zones around dense peregrine nesting locations. The peregrine falcon has since recovered to the point that it has been removed from the ESA's list of threatened and endangered species, and FWS has declared that "the knowledge gained by Air Force research projects was important in the recovery process."

Marine Corps Base Camp Lejeune, North Carolina

Initially 10 percent of this base was restricted in order to protect the red-cockaded woodpecker, but now only 1 percent of the base is restricted for that purpose, as the number of breeding pairs of the bird have doubled in the past ten years. The Marines attribute the success of its conservation efforts to its partnership with FWS, the State of North Carolina, academic experts, and environmental advocacy groups.

Fort Bragg, North Carolina

Fort Bragg contains important habitat for the red-cockaded woodpecker, enabling the base to proudly claim that "this single species has survived because of the havens provided by our installations' training land and ranges." Working with the Nature Conservancy and others, DOD has created buffers around its installations and training areas, lessening restrictions on training while enabling the endangered red-cockaded woodpecker to move closer to recovery.

DOD has successfully worked with the ESA to achieve its military readiness objectives while conserving imperiled species. Please ask your lawmakers to oppose any proposals that exempt DOD from the ESA and other environmental laws!

For more information, contact Corry Westbrook, Legislative Representative, National Wildlife Federation, at 202-797-6840, westbrook@nwf.org.

Senator ENSIGN. Mr. Siegel.

STATEMENT OF LENNY SIEGEL, EXECUTIVE DIRECTOR, CENTER FOR PUBLIC ENVIRONMENTAL OVERSIGHT

Mr. SIEGEL. Good morning, Mr. Chairman, members of the subcommittee. Thank you for the opportunity to address the challenge of balancing the competing yet compatible objectives of military readiness, environmental protection, and community development. My organization, the Center for Public Environmental Oversight, works with community groups across the country.

I have six main points to make today. The first is that the Readiness and Range Preservation Initiative purports to resolve problems that really have not been documented. In the cases of the CAA, RCRA, and CERCLA, there are no documented examples of those laws ever interfering with training or other military readi-

ness activities. In fact, people do not even realize it, but the CAA does not even directly apply to the flight of military airplanes. There is no direct regulation. They are only subject through the conformity plans. In addition to presidential exemptions, the CAA has a series of stepping stones through which military readiness activities may be exempted from the CAA if indeed there ever were a situation where those were proposed to get in the way.

In the case of RCRA and CERCLA, the military has pointed to a case in Fort Richardson in Alaska. If you look carefully at the case, there is nothing in RCRA or CERCLA in that lawsuit which would prevent the military from continuing training at the Eagle River Flats Training Area.

The second point is that the military's initiative appears to be designed to do other things than the protect readiness. In the case of RCRA and CERCLA, they appear to be limiting the military's obligation to conduct and pay for the cleanup of contamination. If you compare the Readiness and Range Preservation Initiative language with the military munitions rule, you see there is a big difference. It has to do with munitions constituents such as perchlorate and Royal Demolition Explosive (RDX). That is what the issue is, not readiness.

In the case of the CAA, the military itself has said it is about the basing of aircraft. To me that is an issue for base realignment and closure; it is not an issue of readiness. Those are important issues. They need to be discussed, but I think they are not part of the readiness debate. These laws that I am addressing today—RCRA, CERCLA, and the CAA—are not interfering with readiness.

The Pentagon's language would endanger public health and the environment. Even if the language were narrowed to exclude the Las Vegas Wash and to exclude the chemical weapons facilities in places like Arkansas and Colorado, you still have operational ranges, which include inactive as well as active ranges, where contaminants such as perchlorate have been found to be migrating off the ranges and contaminating our water supplies at places like the Aberdeen Proving Ground and the Massachusetts Military Reservation.

Changing these laws would severely handicap the ability of regulatory agencies using the statutes that they normally use to oversee the characterization of those sites and for the military to fund the cleanup through the processes that they normally use. So it is not—while the threat to readiness as far as I am concerned is purely theoretical or hypothetical, the threat to public health and the environment which would be caused by changing these laws is real, it is happening now.

The next point is that the language is poorly drafted. I have read testimony by attorney generals from eight States suggesting that the language could apply to the Las Vegas Wash, it could apply to Arrow Jet in Sacramento, it could apply to any facility where any research, development, test, and evaluation is being carried on. The language needs to be cleaned up. The Defense Department says it is their intent to confine it to operational ranges. I would like to see them change the language, put it in plain English so everybody can understand.

The fifth point, many of you Senators may be aware of what I consider to be the real threat to military readiness activities, and that is urban sprawl. You can see it at the proposal to build the North Hills Development in the pathway for the planes from Nellis Air Force Base. You can see it in the subdivisions that have been creeping up against Luke Air Force Base in Arizona. You can see it in development which has occurred near Fort Sill in Oklahoma.

This is a problem that I agree—when I go around the country and talk to community groups, I say, environmentalists, neighbors of military bases, and the military can all attack a common enemy, and that is urban sprawl. There are steps that you could take to support State initiatives in Arizona, California, Oklahoma, to deal with sprawl that interferes with readiness. That would go a lot further than any of these changes in the environmental laws to allow our troops to train and fly and conduct other activities.

There are specific things you can do. The States are doing it. The local installations are trying to do it. Help them out.

The final point I have to make, I have taken part in a series of dialogues with the military where you bring together regulators, the military, community groups, and other stakeholders from around the country to try to solve problems. The national dialogue on military munitions came up with a set of principles from outside the military that the military brought into two directives even before we finished our work as a dialogue. I think a lot of the issues that we are seeing here today, things which are not even covered by the Pentagon's legislative language, could be resolved by the establishment of a national commission on sustainability and readiness.

Those of us on the outside want to work with the military to solve these problems. We are nervous about rolling back the environmental laws, but we agree that there are problems that need to be resolved. Encourage the military to continue the small steps that it has made to establish that dialogue.

Again, we all agree that there are threats to military readiness. We just do not believe that this legislation that the Pentagon has put forward is the way to go. Thank you.

[The prepared statement of Mr. Siegel follows:]

PREPARED STATEMENT BY LENNY SIEGEL

SUMMARY

> "Defense and the environment" is not an either-or proposition. To choose between them is impossible in this real world of serious defense threats and genuine environmental concerns. The real choice is whether we are going to build a new environmental ethic into the daily business of defense. . ."—Dick Cheney, 1990 [1]

Mr. Chairman, members of the subcommittee, thank you for the opportunity to address the challenge of balancing the competing, yet compatible, objectives of military readiness, environmental protection, and community development. My organization, the Center for Public Environmental Oversight, works with the people who live and work on or near current and former military bases and ranges throughout the U.S., from Puerto Rico to Alaska, from Maine to Hawaii.

[1] Dr. James Arnold Miller, "Moving Toward a Comprehensive and Long-Term Department of Defense Environmental Strategy: The Report of the Forum on Our Nation's Defense and the Environment," Department of Defense, Office of the Deputy Assistant Secretary of Defense (Environment), September 6–7, 1990, p. 8.

Secretary Cheney's vision is realistic, but the Department of Defense's new Readiness and Range Preservation Initiative (RRPI), proposed as section 316 of the National Defense Authorization Act for Fiscal Year 2004, is a giant step in the wrong direction. Instead of making the Defense Department a leader in "environmental compliance and protection," the RRPI would give the military special treatment that is not necessary for it to fulfill its mission.

- The RRPI purports to resolve problems that have not been documented.
- The RRPI appears designed to limit the Defense Department's obligations in areas unrelated to readiness.
- The RRPI would endanger public health and the environment.
- The RRPI is poorly drafted.
- The RRPI fails to support cooperative efforts of military officials, environmental organizations, and State, tribal, and local governments to address a common enemy, urban sprawl.
- The environmental challenges to military readiness would be best addressed by one or more continuing, multi-stakeholder dialogues.

I have been asked today to address the proposed changes to the Clean Air Act (CAA), as it applies to State Implementation Plans, and the Resource Conservation and Recovery Act (RCRA) and Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as they apply to munitions and explosive constituents. I have seen no evidence that these three laws have ever interfered with readiness. The impact of these laws on training and other readiness activities is purely hypothetical. In fact, even if regulatory agencies or third parties were to challenge training or other readiness activities using these statutes, they already provide the flexibility to balance environmental and military requirements on a site-by-site basis.

Furthermore, these proposals appear to address Defense Department objectives other than readiness. The language dealing with munitions response seems designed to minimize the Department's responsibility for cleaning up not only unexploded ordnance, but explosive constituents such as perchlorate. Even if the language is modified to clearly apply only to active munitions ranges, it would prevent regulatory agencies from addressing contamination that threatens public health and the environment—until it's too late—and it would undermine incentives for pollution prevention on ranges.

Similarly, the language exempting military pollution from conformity requirements under the CAA seems more related to the military's plans for base closure and realignment than to readiness. Our population's right to breathe clean air should be a factor in decisions where to base or fly aircraft, and current law provides more than enough flexibility to accommodate public health concerns with military readiness activity.

The subsection of the proposal dealing with munitions and explosive constituents—what the military not so long ago called ordnance and explosive wastes—continues an inglorious Pentagon tradition of addressing a significant, complex problem through convoluted definitions that invite litigation while failing to resolve genuine, significant issues. It doesn't help resolve disputes over whether an inactive range is closed. It opens up a loophole in the oversight of open burning/open detonation (OB/OD) facilities on operational ranges. It appears to ignore ordnance and explosive wastes that were never used on operational ranges. According to some legal experts, it still doesn't definitively exclude former ranges from the exemptions the Department says it is seeking only for operational ranges.

While the threat of these laws to military readiness is purely theoretical, the risk to public health and the environment at operational ranges is real. For example, a dozen years ago, Army researchers at Fort Richardson's Eagle River Flats range in Alaska, concluded that military munitions containing white phosphorous caused high waterfowl mortality. At the Massachusetts Military Reservation, Royal Demolition Explosive (RDX) and perchlorate are poisoning an aquifer that is the sole source of drinking water for hundreds of thousands of people. At the Aberdeen Proving Ground, the public water supply comes, in part, from on-base wells, and those wells are also contaminated with perchlorate. These are hazards that should be addressed at the source, not when they cross arbitrary boundary lines.

Section 2018 of the Defense Department initiative would make air pollution from certain military activities invisible to the agencies responsible for protecting our air. Four of the five exemptions in the proposed law would be permanent. It could potentially expose tens of millions of Americans to unhealthy levels of air pollution. State and local air quality officials would be forced to allow ongoing exposure to dirty air or to restrict private economic activity to compensate for unchecked military pollution. Furthermore, because the list of routine activities excluded from "military

readiness activities" does not include power plants, it's conceivable that the Defense Department expects to shoehorn these polluting activities into the proposed readiness exemptions.

Despite the military's sweeping efforts to rewrite the Nation's foundational environmental laws to suit its convenience, environmental and community groups, as well as State and local governments, are willing to work with Congress, the military, and other Government agencies to counter "encroachment"—that is, the impact of community development on military readiness activities. I believe that encroachment is interfering with the armed services' ability to train, test, fly aircraft patrols, and conduct other readiness activities. Contrary to the official Pentagon message, military officers and officials in the field suggest that the threat comes from urban sprawl, not laws designed to protect human health. In my home State of California, a wide range of stakeholder groups supported legislation, proposed by the Navy on behalf of the armed services, to require local jurisdictions to consider military readiness in their planning activities. That law, S.B. 1468, is now on the books, but it is not being implemented yet, because the Pentagon has not yet figured out how to provide a small amount of funding. I've heard estimates that it would cost only $500,000 a year.

Environmental groups, community organizations, and others in California and many other States stand ready to implement cooperative initiatives that promote smart growth, to create or sustain livable communities, to protect the environment, and to enhance the sustainability of military operations. I call upon the Defense Department to focus on the real problem, development that encroaches upon military bases and ranges, rather than use readiness concerns to undermine the health of the people and natural resources that it is sworn to protect. Furthermore, I call on the military to work with other stakeholders, in a continuing dialogue, to resolve conflicts among readiness, community development, and the environment.

I. The Readiness and Range Preservation Initiative Purports to Resolve Problems That Have Not Been Documented.

In my visits to military facilities across the country, I have been convinced that encroachment is hampering, and is likely to further restrict, the U.S. Armed Forces' ability to train, test, and fly aircraft. But I have never seen, nor have I heard of any limitations on military readiness activities caused by the CAA, the RCRA, or the CERCLA.

RCRA/CERCLA

Department of Defense officials warn that a lawsuit brought by Alaska Community Action on Toxics and others against the Army, at Fort Richardson, Alaska, could set a precedent constraining munitions training throughout the United States. I've read that complaint, and I've consulted legal experts and Alaska regulators. The only element of that lawsuit that in any way might impact training is a plea that the Army seek a permit, not under RCRA but the Clean Water Act.

I am familiar with one location where environmental regulators have issued a cease-fire order, Camp Edwards on the Massachusetts Military Reservation (MMR). When it was shown that explosive constituents were poisoning the sole-source aquifer that provides drinking water to hundreds of thousands of Cape Cod residents and visitors, U.S. EPA issued an order halting the use of high-explosive weapons on that range. Though RCRA has played a small role at MMR, the order restricting training invokes the Safe Drinking Water Act.

Even if, through some unprecedented regulatory action or third-party litigation, these laws were to threaten military readiness activities, the President has the clear authority to issue an exemption. In fact, Presidents Clinton and George W. Bush have repeatedly invoked the RCRA section 6961(a) exemption at Nevada's Groom Lake range. There wasn't a threat to readiness at Groom Lake. The proposed application of RCRA at this site dealt with the management of toxic wastes, not military munitions.

Finally, some might argue that the requirement to conduct cleanup on operational military ranges in itself might, in some unprecedented circumstances, threaten readiness, if munitions and explosive constituents are considered a hazardous waste. However, both RCRA Corrective Action and CERCLA provide decisionmakers with the flexibility to consider a wide range of factors in setting cleanup goals and selecting remedies. Dozens of military airfields, for example, are undergoing remediation with minimal interference to flight operations. Moreover, the Air Force routinely clears unexploded ordnance from its ranges, and the Marine Corps does the same at its Twentynine Palms, California training facility, because they believe ordnance clearance actually supports readiness by sustaining and extending the life of

training ranges. Even at Camp Edwards, national guardsmen continue to train despite the ongoing EPA-directed environmental response.

Clean Air Act (CAA)

As for the CAA, I've never even heard of inaccurate examples of that law getting in the way of readiness. Remember, aircraft emissions are not directly regulated. Unlike power plants, for example, private and military airfields don't obtain permits for pollution from aircraft. Still, should the conformity provisions unexpectedly pose a threat to readiness, section 118 of the CAA provides the President with the authority to exempt Defense activities from the law upon a finding of "paramount national interest." But that's not all. The general conformity regulations allow the Defense Department to override clean air requirements in national emergencies such as war and terrorists attacks. On top of that, the Defense Department may conduct "routine movement" of ships and aircraft, activities already exempt from Clean Air permitting requirements, without regard for their impact on Implementation Plans under the law.

When the Defense Department proposed these same CAA exemptions last year, the Nation's non-partisan associations of State and local air pollution control officials declared the amendments unnecessary. They pointed out that the CAA already provides the Defense Department ample flexibility to carry out its mission, and importantly, that "the significant adverse air quality impacts that could result from such exemptions could unnecessarily place the health of our Nation's citizens at risk." (I have attached a copy of that letter.)

II. The Readiness and Range Preservation Initiative Appears Designed to Limit the Defense Department's Obligations in Areas Unrelated to Readiness.

So why then, is the Defense Department investing in the passage of these provisions of the RRPI? I believe it is hoping to use the growing concern over encroachment to buy relief from some of its more long-term environmental challenges.

RCRA/CERCLA

As a growing number of Members of Congress are recognizing, millions of acres of our land are contaminated with ordnance and explosive wastes. People are finding old bombs and shells in new subdivisions in Texas and North Carolina. Parklands and wildlife refuges, from California to Indiana to Maryland and New York, are literally minefields of unexploded ordnance. Last year the Defense Department estimated the cost of cleaning up or restricting access to former ranges—"closed, transferred, and transferring" ranges in the regulatory vernacular—at $15 billion. I think we're all hoping that the inventory of such sites, due for report to Congress this spring, will provide an accurate accounting of the sites, their acreage, and their projected response costs.

Legal experts, including a bipartisan group of 33 State Attorneys General, challenged the Defense Department's 2002 proposal, stating that the proposed exemption of operational ranges from hazardous waste laws would carry over to ranges when they were closed. That is, the RRPI proposal could undermine the already contested oversight authority of regulators at former ranges.

Defense officials assert otherwise, and this year they added a clause that seems to restrict the restriction on oversight to responses on operational ranges only. However, the new language submitted by the Defense Department does not do the job. It's hard to comprehend the convoluted language in the Defense proposals, but here's how it falls short.

- The new language refers only to one subparagraph in the RCRA section of the legislation.
- The proposed language still exempts from oversight certain munitions and explosive constituents—used in research and development, for example—that were never on operational ranges.
- The military can avoid environmental response at closed ranges on active installations simply by continuing to consider them "inactive," a subset of operational ranges. This is not a hypothetical suggestion. In 2000, a U.S. EPA survey suggested that many inactive ranges across the country should be assessed and probably classified as closed:

> The Redstone Arsenal in Huntsville, Alabama, is a facility that contains 23 ranges, 22 of which are inactive. This facility provides several good examples of ranges that have been inactive for years, but which have not been officially closed by DOD. For example, the Inactive Mustard Gas Demilitarization Site/Range at the Redstone Arsenal was last used in the mid- to late-1940s and is currently forested and partially underwater. Given current environmental conditions, nearby populations, and today's more strin-

gent regulatory framework, it is highly unlikely the facility will be used for mustard gas demilitarization again.[2]

Even if these loopholes were fixed, the RRPI proposal would still prevent regulatory agencies from doing their job—protecting public health and the environment—on operational ranges. Rarely has anyone proposed requiring the widespread clearance of munitions or explosive constituents from active ranges. Even at Fort Richardson, the plaintiffs are merely seeking a remedial investigation and feasibility study under CERCLA, steps that are unlikely to lead to full-scale ordnance clearance as long as the range remains active. Yet there are instances—I provide examples below—where regulators should act.

The key point here, however, is that the Defense Department has proposed the new, restrictive definition of when munitions and explosive constituents become hazardous wastes because it is attempting to eliminate potential cleanup requirements, not to enable our Nation's Armed Forces to conduct essential readiness activities. This applies not only to ordnance itself, but to the energetic chemicals known as "munitions constituents" in the Defense proposals.

Clean Air Act (CAA)

In the Department of Defense's sectional analysis of section 2018, it finally provided a clue as to what it felt is "broke" and needs fixing. It wrote, "Under the requirements of current law, it is becoming increasingly difficult to base military aircraft near developed areas." That is, as it moves toward a new round of base realignment and closure (BRAC), the Defense Department doesn't want the impact of air squadron transfer to be a factor in its decisions. This was the issue in the mid-1990s, when the Navy shifted attack aircraft squadrons to the Lemoore Naval Air Station, in California's polluted Central Valley. Though the aircraft, additional mobile ground equipment, and increased employee vehicular traffic were not subject to air permits, they were all evaluated as part of the base's conformity with the Implementation Plan. The new basing arrangement was approved only after the Navy obtained emission reduction credits from a nearby, closing installation, Castle Air Force Base.

Long-term changes in the deployment of military aircraft are an important issue, but they are not directly a readiness issue. They should be debated in the context of BRAC or military construction, not authorized in an initiative that the Pentagon asserts is designed to shield military readiness activities from encroachment.

III. THE READINESS AND RANGE PRESERVATION INITIATIVE WOULD ENDANGER PUBLIC HEALTH AND THE ENVIRONMENT.

In RRPI, the Department of Defense proposes to roll back key statutes that form the foundation of America's bipartisan framework of environmental protection. The requirements that the Department seeks to relax are not merely technicalities or check-off boxes. They target identifiable hazards to public health, public safety, and our natural ecosystems.

Like many other institutions, the Department of Defense has a legacy of environmental mismanagement. According to the Defense Environmental Restoration Program Annual Report to Congress for Fiscal Year 2001, the military's 126 most costly sites, contaminated with toxic substances as well as munitions, will cost well over $28 billion to address. We, as taxpayers, will be paying the bill on that legacy for decades to come. Over the past two decades, however, it has made important strides forward. Congress has appropriated funds for environmental security. Individuals within the Department have shown genuine leadership. Regulatory oversight has brought along those who have not seen environmental protection as a priority.

The laws and programs that bring cleanup not only deal with legacy wastes; they encourage the prevention of future problems. Under pressure from outside, elements of the military are integrating pollution prevention and environmental management into their operations, as Secretary Cheney suggested in 1990.

Environmental regulation is necessary, not only to encourage reluctant officials to do their jobs properly, but to see that competent, motivated military leaders can obtain funding for their projects. Environmental compliance projects at the Defense Department, such as improvements in RCRA-governed treatment, storage, and disposal, are funded not simply on need, but according to the level of external regulatory requirements that they address.

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[2] Used or Fired Munitions and Unexploded Ordnance at Closed, Transferred, and Transferring Military Ranges: Report and Analysis of EPA Survey Results, U.S. Environmental Protection Agency, Office of Solid Waste and Emergency Response, EPA–505–R–00–01, September 2000, p. 11.

RCRA/CERCLA

While the threat to readiness from these environmental laws is theoretical, the impact of munitions and explosive constituents on the environment is real. Under the Defense Department's proposals, regulatory agencies would be unable to insist on access controls to keep the public off military ranges—to prevent incidents such as the death of a Mississippi teenager near Camp Shelby in 2000. Under its proposal, States would no longer be able to regulate the operation of open burning/open detonation pits located on operational ranges, such as Fort Carson in Colorado. It appears that communities would be unable to question proposed OB/OD permits, as the neighbors of the Makua Military Reservation, Hawaii did a decade ago.

Pentagon lawyers hypothesize that a Fort Richardson lawsuit could hamper readiness, but they don't explain why Alaskan communities are concerned. In the early 1990s, the Army itself concluded that white phosphorous from munitions on the Fort's Eagle River Flats artillery range was killing substantial numbers of waterfowl. Though that problem was successfully addressed, cooperatively by Alaska State regulators and the Army, under CERCLA, RRPI would remove that regulatory authority. (I have attached an Army article documenting this history.) In fact, as a result of that effort, the Army no longer uses munitions containing white phosphorous at Eagle River Flats, and it limits when it trains with high explosives to avoid the re-suspension of residual white phosphorous wastes.

Perhaps the most pernicious aspect of this particular language is the Defense Department's proposal to exempt contamination from the Nation's hazardous waste laws until it has migrated across the boundary line of the range upon which it has been deposited. Please note that explosives and propellants are toxic chemical compounds. Some of the Nation's most contaminated public and private properties—on EPA's "Superfund" list—are Army Ammunition Plants and facilities that have produced, tested, and demilitarized military rockets.

There is growing evidence that most current and former military munitions ranges, not just production sites, are polluted with explosive chemicals such as trinitrotoluene (TNT), RDX, and perchlorate. As I mentioned earlier, EPA restricted military exercises involving the use of high explosives at Camp Edwards, Massachusetts Military Reservation, under other statutes, because RDX and perchlorate have poisoned Cape Cod's drinking water supplies. Similarly, two distinct communities adjacent to the Aberdeen Proving Ground in Maryland have learned recently that their drinking water is contaminated with perchlorate emanating from that installation. (I have attached articles about MMR and Aberdeen.)

Since the military has found perchlorate on typical infantry ranges, not just rocket and ordnance plants, further investigation may show some level of contamination at hundreds of locations. The Defense Department has conducted a nationwide survey that likely shows widespread use of ordnance containing perchlorate, but it has not shared the results of that survey with other parties. All those sites should be investigated and perhaps sampled, but I fear that Defense Department lawyers will argue, if the proposed RRPI language is enacted, that there is no legal requirement.

RRPI would prevent State and Federal regulators from using RCRA and CERCLA—the laws that govern routine characterization and remediation of contamination—to address such sites until the pollutants have migrated off base. In fact, even after the plumes have crossed facility boundary lines, source areas, under RRPI, would remain off limits to the regulatory agencies. Furthermore, since a Federal health standard for perchlorate seems years away, it appears that the RRPI proposal would directly undermine public health by making it difficult, if not impossible for States to utilize their own, health-based standards on any property covered by the legislation. Ironically, if this proposal is enacted, the military might even argue that regulators have no authority to protect military personnel and their families from contaminated water supplies that never leave their bases.

Furthermore, it's unlikely that this happened by accident. In preparing my testimony, I compared the Defense Department's RRPI language with the EPA's Military Munitions Rule, the current legal authority on the subject. As you may recall, EPA promulgated the Munitions Rule in 1997, as directed by Congress in the Federal Facilities Compliance Act of 1992, to determine when munitions become a hazardous waste. Defense Department lawyers drew from the Munitions Rule, which does not cover munitions constituents, in developing the RRPI language, so they must have made conscious decisions to include munitions constituents among the classes of items to be excluded from the hazardous waste laws. It appears that the Department is looking for one more way to absolve itself of its massive projected liability—reportedly billions of dollars nationally—for the characterization and remediation of perchlorate and other energetic contamination, at the expense of public health.

Clean Air Act (CAA)

The case against the CAA modifications is much more simple. Emissions from military aircraft and other readiness activities would be exempt from the most significant regulatory tool for addressing them, potentially exposing tens of millions of people to dirty air. That is, military pollutants would infiltrate our lungs and be visible in our skies, but they would disappear from the bi-partisan regulatory framework we have built to protect ourselves.

The CAA exemptions in this bill are not simply unjustified, they represent sweeping and unprecedented permission for military air pollution—unlike other sources of air pollution from industry, government, or even the public—to escape regulation under the CAA. Air pollution from military readiness activities would be allowed to cause or contribute to violations of health-based air quality standards for smog, soot, and carbon monoxide; to increase the frequency or severity of such violations; or to delay timely attainment of the standards or interim milestones. Worse, to cover up the harm caused by these exemptions, the bill actually defines dirty air to be clean.

Under this legislation, States and local communities would lose their ability to influence new military basing plans, such as those forthcoming under the 2005 BRAC round, based upon their air pollution impact. Unable to influence the growth of military operations, they might be forced to restrict private growth—or place the public at risk of even more exposure to unhealthy air.

While I recognize the military's prerogative to override community concerns when absolutely necessary for paramount national security interest or national emergencies, I believe it is imperative that clean air and other natural resource concerns remain a factor in decisions on the long-term basing of military aircraft.

IV. The Readiness and Range Preservation Initiative is Poorly Drafted.

Earlier I warned that the proposed RRPI language leaves ambiguous the Department's intent to restrict the changes in the law to operational ranges. I challenge any mere mortal—that is, someone who is not a lawyer specializing in hazardous waste law—to sort through the maze of paragraphs and clauses in this section.

That language is confusing because a Federal agency has once again resorted to the modification of definitions instead of directly addressing a problem. I have repeatedly suggested that the Department, regulators, and representatives of the affected public cooperatively describe the unique features of munitions-related waste, and once they determine what must be done to protect both the public and response personnel from explosive hazards, that they together propose statutory or regulatory solutions. This language not only fails to identify and resolve key issues, but it invites, through its web of interlocking definitions, years of litigation.

The CAA amendment suffers from its own complexities, but I wish to call your attention to a simple, fixable problem with the wording. In defining routine installation support functions not subject to the proposed statutory changes, the definition of "military readiness activities" excludes schools, housing, recreational facilities, etc., but it does not specifically exclude from readiness activities the installation function that has generated the most heat in interagency debates over air pollution: electrical power plants. If indeed the Defense Department is not using readiness to address yet another problem, it should have no problem adding such facilities to the exclusion in the definition.

V. The Readiness and Range Preservation Initiative Fails to Support Cooperative Efforts of Military Officials, Environmental Organizations, and State, Tribal, and Local Governments to Address a Common Enemy, Urban Sprawl.

I first learned about encroachment a few years ago when I was invited to address Air Force Explosive Ordnance Disposal (EOD) specialists, from throughout the country, at Luke Air Force Base in Arizona. I had been invited, by the way, to explain the public's concern about ordnance and explosive wastes on military ranges. My driver, an EOD Sergeant, pointed out, one-by-one, the new residential developments that stretched across the desert toward the base. A few more, he said, and the jets wouldn't be able to fly.

Across the country, from Fort Stewart, Georgia to Nellis Air Force Base, Nevada, to the Navy SEALS' Camp La Posta mountain training base in the southern California desert, development or proposals for development are threatening the Armed Forces ability to fly planes, maneuver, and conduct other readiness activities. Unchecked urban growth, not environmental protection, is the problem. At some locations, such as Beale Air Force Base, community leaders have already made the link. In February, I took part in a community meeting in Marysville, California, in which local officials and residents of the semi-rural communities adjacent to the base opposed the construction of a new city on the base's fenceline, both because it would

undermine their lifestyles and because it would encroach upon the Air Force's operations.

Last year environmental and community organizations supported the buffer zone provisions of RRPI, and they stand prepared to support additional measures designed to resolve encroachment problems constructively. Some States have passed, or are considering legislation designed to integrate readiness into local planning activities. For example, my own State of California, on the front lines of the encroachment battle, enacted S.B. 1468 last year. This legislation, proposed by the armed services, drew widespread support and no visible opposition.

Admiral J.L. Betancourt, Commander of the Navy Region Southwest, wrote Governor Gray Davis urging him to sign the bill. He explained, "We applaud this as an effort to finally recognize that long-term operations of military installations must involve a partnership between State and local agencies and the military. In addition to providing critical protection for military installations at a time of unprecedented growth in California, S. B. 1468 provides needed consideration of designated air space and military training routes." (I have attached the entire letter.)

This initiative from the field deals not with hypothetical problems, such as those addressed by the RCRA/CERCLA and Clean Air language in RRPI, but genuine threats to military operations. For example, developers are proposing to build 14,000 housing units just north of Camp Pendleton in southern California. One section of this proposed development, with 1,400 housing units and over 1.2 million square feet of commercial space, would border the base's northern boundary and appears to underlie special use airspace. It is my understanding that the Marines oppose this development because it threatens readiness, and environmental groups oppose because it represents the worst in urban sprawl.

S.B. 1468 would provide the military, environmental organizations, and local planning agencies with the tools to question the proposed development, as well as other California development proposals likely to impact readiness. But S.B. 1468, as designed by its military proponents, does not come into force unless the Defense Department provides a small amount of funds to support the additional local planning required—it's the whole issue of unfunded mandates. As I understand it, $500,000 this year in Federal funds could leverage influence over development plans involving investments that are several orders of magnitude higher!

Similarly, in Nevada, another developer proposes a new city, including parks, schools, and 30,000 homes in the flight corridor through which Air Force planes laden with ordnance depart from Nellis Air Force Base. Again, both the Air Force and environmental groups oppose the proposal. I believe Defense Department support for considering readiness in local planning activities would encourage Nevada to adopt a program of its own, and that would encourage developers to invest in plans for development in more suitable locations.

If Congress really wants to fight encroachment where it counts, legislation and appropriations to support S.B. 1468 and similar initiatives in other States—already in place or under consideration in Arizona, Texas, and Florida, for example—would go much further than RRPI.

VI. The Environmental Challenges to Military Readiness Would be Best Addressed by One or More Continuing, Multi-Stakeholder Dialogues.

While I have seen no evidence that the Defense Department's proposals to modify the CAA, RCRA, and CERCLA would enhance readiness, I believe that there are numerous existing or potential community development and environmental protection challenges to training, aircraft use, and other military readiness activities. Many of these challenges are beyond the scope of RRPI. But our country will need to address them, whether or not Congress enacts the proposed legislation. If you ask the armed services, environmental regulators, land management agencies, environmental and community organizations, tribes, and local governments who should design the solutions, you're asking for a political brawl.

However, if you ask those parties to sit down in the same room to devise common strategies, everyone will be surprised by the opportunities for win-win solutions. This is the experience of the Army-sponsored National Dialogue on Military Munitions, which developed the Principles for Sustainable Range Use/Management in the late 1990s. Participants in that dialogue, from the Department of Defense and its critics, will affirm its success. Even before the dialogue issued its final report, the Department used its work as the basis for two directives. I have appended my article on that dialogue, published in the Winter 2003 Journal of Policy Analysis and Management, to my testimony.

Congress could help resolve the encroachment debate by asking the Defense Department to establish a new dialogue or dialogues to establish constructive communication channels among stakeholder groups. I envision such a body establishing

models for conducting sampling for explosive contaminants on active military munitions ranges, or it might develop standard approaches for keeping trespassers out of operational range areas. Such a group could look into the Army's concerns at Fort Irwin and perhaps elsewhere, about the impact of new particulate standards on future training. It could build national models for evaluating the impact of sprawl on readiness that discourage developers from investing in unsuitable projects.

In calling for such a dialogue, Congress could establish guidelines that would make it easier for the Defense Department to create formal environmental advisory groups, under the Federal Advisory Committee Act, without triggering some of the burdensome bureaucratic requirements designed to facilitate advice on acquisition and military technical issues.

In conclusion, the CAA and munitions sections of RRPI would do nothing to enhance readiness; they appear designed to deal with the Pentagon's concerns over cleanup and base realignment; and they would subject the public and the environment to more unhealthy contamination. Instead of taking on environmental organizations, the communities who live near military installations, and State regulatory agencies, Congress, and the Department of Defense should encourage problem-solving dialogue and join these groups in fighting a common enemy, urban sprawl.

STAPPA / ALAPCO

STATE AND TERRITORIAL
AIR POLLUTION PROGRAM
ADMINISTRATORS

ASSOCIATION OF
LOCAL AIR POLLUTION
CONTROL OFFICIALS

S. WILLIAM BECKER
EXECUTIVE DIRECTOR

May 2, 2002

The Honorable Bob Stump
Chairman
Armed Services Committee
U.S. House of Representatives
2120 Rayburn House Office Building
Washington, DC 20515

The Honorable Ike Skelton
Ranking Member
Armed Services Committee
U.S. House of Representatives
2120 Rayburn House Office Building
Washington, DC 20515

Dear Congressman Stump and Congressman Skelton:

On behalf of the State and Territorial Air Pollution Program Administrators (STAPPA) and the Association of Local Air Pollution Control Officials (ALAPCO) – the two national associations representing state and local air pollution control officials – I write to you today to express concerns regarding potential changes to Clean Air Act (CAA) provisions as they relate to activities of the U.S. Department of Defense (DOD), and to urge against such potential changes during upcoming floor debate over DOD's authorization legislation for FY 2003.

It is our associations' understanding that, as part of your Committee's deliberations over H.R. 4546 – the National Defense Authorization Act for Fiscal Year 2003 – amendments to various environmental and public health statutes were considered. These amendments, which were based on recommendations by DOD, would provide broad statutory exemptions for purposes of military readiness. We are pleased that your Committee rejected many of these changes, including those to Section 176 of the CAA, relating to the conformity of federal actions (including those of DOD) to federal or state implementation plans for attaining health-based National Ambient Air Quality Standards. STAPPA and ALAPCO believe that such exemptions are unnecessary, in that the CAA already provides DOD ample flexibility to carry out its duties during times of war and

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emergency, and we urge you and your colleagues to continue to reject these exemptions as you take up DOD's authorization legislation on the House floor next week.

Under Section 118 of the CAA, the President may exempt DOD from any requirements of the Act upon finding that it is of "paramount interest of the United States to do so." Further, the federal regulations implementing the CAA's "general conformity" provisions from which DOD specifically seeks exemption, also allow DOD to suspend compliance in the case of emergencies (which, by definition, include terrorist activities and military mobilizations) and further, permit DOD to conduct routine movement of material, personnel and mobile assets, such as ships and aircraft, provided no new support facilities are constructed.

In light of the broad statutory and regulatory flexibilities already provided, we do not believe that additional CAA exemptions are necessary in order for DOD to conduct military readiness activities. Further, we believe the CAA exemptions sought by DOD would, essentially, serve only to allow routine, non-emergency activities that require the construction of additional support facilities to skirt important environmental requirements. The significant adverse air quality impacts that could result from such exemptions could unnecessarily place the health of our nation's citizens at risk.

STAPPA and ALAPCO urge you and your colleagues to reject actions to exempt DOD from CAA requirements. If, however, such actions are to be further pursued, we respectfully request that Congress allow for full participation by all interested parties, including state and local air pollution control officials, and that other congressional committees with jurisdiction over CAA issues also be included.

If you have any questions, or if STAPPA and ALAPCO can provide any further information, please do not hesitate to contact me at (202) 624-7864.

Sincerely,

S. William Becker

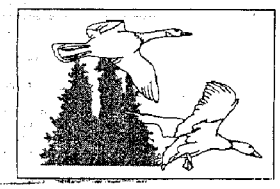
cc: The Honorable W.J. "Billy" Tauzin
The Honorable John D. Dingell
The Honorable Joel Hefley
The Honorable Solomon Ortiz

White phosphorus linked as cause of waterfowl deaths at Alaskan firing range

Cold Regions Research and Engineering Laboratory
Public Affairs Office

HANOVER, N.H.--After a year-long study, researchers at the Cold Regions Research and Engineering Laboratory (CRREL) and Dartmouth Medical School have determined the cause of high waterfowl mortality at the Army's Eagle River Flats artillery range in Alaska.

The cause of death for many of the ducks and swans appears to have been the ingestion of white phosphorus particles left from smoke-producing shells fired into the range.



Eagle River Flats, a salt marsh wetland and Army artillery range, is on Fort Richardson, 15 miles north of Anchorage. Thousands of artillery rounds have been fired into the area since the early 1940s.

Beginning in the early 1980s, biologists began observing unusually high mortality rates among waterfowl who feed and nest in this area during spring and fall migrations.

Once careful observations of the impact area began, the biologists estimated that as many as 1,000 birds (primarily pintails, mallards and teals) and a lesser number of swans were dying in the area each year.

Sediments and bird carcasses were examined for pesticides, heavy metals, and other pollutants, but no such contaminants were found.

Last spring, CRREL biologist Dr. Charles Racine, chemist Marianne Walsh and geologist Charles Collins were called in by USATHAMA to assist in the investigation of the problem.

Working on the hypothesis that munitions were causing the waterfowl mortality (when earlier studies has discounted disease or injury related to firing), they began an extensive program of water and sediment sampling on the flats.

During this observation and collection period, the researchers used innovative field techniques developed at CRREL for detecting explosives in sediments and water. Over 250 sediment and water samples were collected and analyzed, and the collection sites were precisely located. Water, sediment and vegetation characteristics were mapped throughout the flats with the computerized Geographical Resources Analysis Support System developed by the U.S. Army Corps of Engineers' Construction Engineering Research Laboratory (USACERL), located in Illinois.

Residues of explosives were not found in the samples by field analysis, but subsequent laboratory analysis did reveal the presence of chemical propellants.

The researchers also began to examine the soil for white phosphorus after a soil sample containing an unknown chemical started smoking when it was opened in the lab.

By summer, Dartmouth toxicologist Dr. Bill Roebuck and local avian ecologist Dr. Leonard Reissma had joined CRREL researchers in Alaska to carry out field observations of dying waterfowl and to collect tissue samples.

These field observations and additional laboratory tests by Roebuck and Walsh strongly indicated that white phosphorus was the contaminant responsible for the waterfowl mortality. The researchers theorize that particles of unoxidized phosphorus from the smoke-producing shells became embedded in the salt sediments where waterfowl feed. White phosphorus is highly toxic to birds and other animals.

According to Walsh, researchers will return to Alaska this spring and fall to determine the extent of the contamination and test remediation strategies.

Although firing of white phosphorus over Eagle River Flats has been halted, the material can persist for years in anaerobic sediments.

Remediation might include covering the phosphorus particles with soil or geotextile fabrics that would make the particles inaccessible to waterfowl and still allow normal plant growth.

Another possible means of neutralizing the phosphorus would be by adding an oxidizing chemical, such as hydrogen peroxide, to the salt marsh.

Based on information presented in a report written by the CRREL and Dartmouth researchers, USATHAMA has sent a memorandum to Headquarters, Department of the Army recommending that white phosphorus no longer be fired into Army wetlands.

> USATHAMA has sent a memorandum to HQDA recommending that white phosphorus no longer be fired into Army wetlands.

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Guard reverses contamination stand

Military concedes testing may have a role in base pollution.

By KEVIN DENNEHY
STAFF WRITER

As more results emerge from soil and water testing at Camp Edwards, it turns out that federal environmental officials and the military might not be that far apart on one conclusion: High-fire training was a likely factor in years of base pollution.

National Guard officials now agree that high-explosive training, not just improper disposal of munitions, might have played a part in Upper Cape groundwater contamination, something long asserted by the federal Environmental Protection Agency.

Preliminary data taken from monitoring wells near known targets on the "impact" area show high levels of Royal Dutch Explosive, or RDX, in the soil, and in the groundwater where the particles would have likely migrated.

Of 21 wells installed in early March, 14 have shown high levels of the explosive material, said Lt. Col. Joseph Knott, the MMR project officer with the National Guard Bureau. A team of Army scientists is scheduled to visit the base next month to confirm the data.

Knott also said that a meticulous archaeological search will confirm whether unexploded ordnance buried on the range long ago was another contributor to contamination.

The military, he says, has been charged to clean up the base, has been allocated the money to do it, and will now commit itself to do just that. He estimates it will cost about $300 million.

It's an approach Knott admits is markedly different from previous approaches taken by the Guard, which previously denied that the firing caused any pollution.

Now, the military is confronting the results.

Congressional meeting today

"If it's bad for the Army, so be it," Knott said. "We want to clean (MMR) up. We've already agreed to clean up whatever's there ... Now we have to prove what is there, how big and how wide, and what's the best way to clean it."

Guard officials will explain the latest findings in the regular meeting with staff members from the Massachusetts Congressional delegation today in Washington.

At the meeting, the military will also update legislators on recently emerging reports from defense contractors that describe troubling environmental procedures on the Cape base through the years.

One report from defense contractor Textron Systems detailed years of inappropriate waste disposal and depleted uranium loading under little military oversight.

While groundwater pollution has been a given for years, Guard officials have argued that the past practices of disposing of munitions - usually burying them or blowing them up - was the sole cause.

Federal EPA officials, however, have contended that training also contributed to the contamination.

"It's hard to explain the contamination coming from the high-use target range from anything but training," said Elizabeth Higgins of the EPA.

Potential new attitude

Higgins said she hopes the military's acknowledgment that training might have been a problem will mark a new attitude at the base.

"We hope it represents a shift in the Department of Defense's attitude about how to grapple with these contamination problems," she said.

"We'll all get to the cleanup a lot quicker if we're not arguing about the causes of it."

The military fired high-explosive weapons at the base until 1985, and mortar rounds until 1997.

Knott said yesterday that the Guard has long acknowledged that training might have been a cause, but would not comment until there was scientific data.

For some legislators, the latest data are no big surprise.

"From past meetings and reports, it has seemed quite evident that training has had an impact," said Mark Forest, an aide to U.S. Rep. William Delahunt.

Over the next month, the Guard will undertake a $4 million archaeological dig for unexploded ordnance, or UXO, in what Knott calls a first-in-the-nation test. Workers will carefully dig into impact area soil in two four-acre lots. They'll separate scrap and ordnance and test the soil and water.

"That way, we'll be able to say, for MMR, this is what UXO are doing in the ground," he said.

Knott commended the EPA and area activists for their scrutiny of base activities, saying that they contributed to the ongoing cleanup. "They're making us work aggressively and fast," he said. "And that's why we're here."

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Bourne wells ordered shut

Traces of contaminant from base detected in Monument Beach.

By KEVIN DENNEHY
STAFF WRITER

BOURNE - Traces of a carcinogen used in rocket propellants has already reached one of Bourne's water supply wells, forcing the town to shut down the well indefinitely.

While the level of contamination is barely measurable, military officials are concerned that the chemical perchlorate has migrated from Camp Edwards to community water supplies.

The chemical, which has been found all over the heart of the base, a legacy of decades of military training, was found in a well that tested clean just a few weeks ago. At that time, Bourne water officials shut down that well, and another nearby supply well, as a precaution, since several monitoring wells hinted that the troubling chemical was creeping off base.

The two wells will remain shut down indefinitely.

Two other Monument Beach supply wells, about 3,000 feet to the west of the others, have shown no trace of perchlorate and remain open.

While the military scrambled to find the extent of perchlorate contamination after the monitoring well detections last month, officials hoped they would have more time to respond before it reached the drinking water.

Combined, the four supply wells in Monument Beach provide about 70 percent of the drinking water for the Bourne Water District.

"We will not allow the pumping of any well that tests positive for a substance that may pose a health risk to our people," the Bourne Water District commissioners wrote to customers in a paid advertisement printed in today's Cape Cod Times.

Effects on thyroid

According to the federal Environmental Protection Agency, perchlorate is now considered a carcinogen, a substance that can cause cancer. The chemical can affect the thyroid gland, which can slow metabolism, growth and development.

Ralph Marks, the district's superintendent, said the two affected supply wells will remain shut down until more information is known.

Meanwhile, the military will continue to drill new wells in the area to determine the extent of contamination, the direction it is heading, and how close it is to the two remaining supply wells.

While it is unclear how widespread the contamination is, groundwater engineers know the contaminated water is moving toward Bourne at about a foot per day.

Less certain is where it is in the aquifer, the sole source of groundwater for the Upper Cape towns.

"It's certainly looks like (the perchlorate) is a little farther than we had hoped," said Ben Gregson, program manager for the Impact Area Groundwater Study Office that is running the Camp Edwards cleanup.

Environmental regulators say it is wise to shut down the two wells nearer to the contamination.

"Everything that can be done, which is to be extremely cautious, is being done," said Elizabeth Higgins of the EPA's regional office.

Dave Terry, the director of the state Department of Environmental Protection's drinking water program, agreed.

"Since they don't need the water right now, why run it at this point?"

The Bourne Water District includes neighborhoods in Cataumet, Pocasset, Monument Beach and along the Cape Cod Canal. The district used about 460 million gallons of water last year.

Finding a standard

Since science has been able to detect perchlorate at low levels in the groundwater only recently, environmental regulators are still working out a safe drinking-water standard. Nationally, the EPA is pushing for a standard of one part per billion.

In the meantime, on Camp Edwards, where the military is spending $300 million to clean up after decades of artillery and mortar firing, the standard being applied is 1.5 parts per billion.

The recent finding at the Bourne water supply well was about .4 parts per billion, just above the detectable limit, Gregson said.

Four of 12 planned monitoring wells - which can test water at 10-foot intervals down the water table - have already been drilled, Gregson said.

While the threat to the Bourne supply remains unknown, water superintendent Marks says the town must look quickly for alternative water supplies in case of emergency. The town doesn't need all four water supply wells right now. But summer may bring greater demand.

In response, the district is looking for a quick hook-up to the Upper Cape Water Supply Cooperative, which will provide three million gallons of water per day for the towns surrounding the Massachusetts Military Reservation. The Pentagon paid to find and tap into that water supply after base pollution contaminated billions of gallons of Upper Cape groundwater.

A year ago, Bourne was the only Upper Cape town that opted to not join the cooperative.

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http://www.sunspot.net/bal-water04.story

From Friday's Sun

Group calling for cleanup of perchlorate in Aberdeen

1 well shut after chemical was detected this week

By Lane Harvey Brown
Sun Staff

October 3, 2002, 10:32 PM EDT

The community watchdog group that monitors environmental cleanup at Aberdeen Proving Ground called on the Defense Department Thursday to authorize an immediate cleanup of chemical contamination found in the town of Aberdeen's wells.

The call was made after tests this week found perchlorate, a chemical used in rocket fuel and explosives, in the town's treated drinking water at a level of 1 part per billion, the state's maximum allowable level.

The test results spurred city officials to shut down one well and halve production at two others.

"The Aberdeen well field is contaminated with perchlorate from military activities, and this contamination must be treated now," the Aberdeen Proving Ground Superfund Citizens Coalition said in a statement.

The Army is in "constant discussions with EPA" about the perchlorate issue, and is very concerned about avoiding public health hazards, John Paul Woodley Jr., assistant deputy undersecretary of Defense for environmental matters, said Thursday. He added that the Environmental Protection Agency has not issued a regulatory standard for perchlorate. "The first question is if the levels that have been found are hazardous to the people who are exposed to it," he said.

EPA spokeswoman Robin Woods said Thursday that it could be five years before a regulatory standard is adopted, but that the agency could alter that schedule.

Steven R. Hirsh, an EPA remedial project manager, said the agency can order a site cleanup without a regulatory standard. Asked whether such a measure is being considered at APG, he said, "Yes, that's a possibility."

Woodley said that if the EPA or the state identified hazards and recommended ways to deal with them, the Department of Defense "would be anxious to avoid a hazardous condition whether there was an order or not."

APG officials acknowledge that the perchlorate is probably the result of training exercises using smoke grenades and explosive devices in the northern corner of the training ground.

Perchlorate was discovered at the installation in March last year, and two still poorly defined "plumes" containing the chemical, ranging from 10 parts per billion to 20 parts per billion, have gravitated to some of Aberdeen's production wells, which are along the post boundary.

Perchlorate interferes with thyroid function and can cause neurological damage to fetuses, newborns and children, experts say. In some cases, prolonged exposure to perchlorate has been linked to thyroid cancer.

Thomas Zoeller, a professor of biology at the University of Massachusetts Amherst, said much remains to be learned about perchlorate. That is why advisory levels such as Maryland's tend to be low, he said.

The city and Army tested the finished water three times this week. One test detected the chemical in the water at 1 part per billion. The two subsequent tests found levels lower than the reporting limit of 1 part per billion.

Randolph C. Robertson, Aberdeen's director of public works, said Thursday he is confident that the city can maintain a safe supply of drinking water by curtailing the flow from the contaminated wells and using more county water.

"The water is safe," he said. "We wouldn't put it out if it weren't."

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IN REPLY REFER TO:
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The Honorable Gray Davis
Governor of California
State Capitol
Sacramento, CA 95814

Dear Governor Davis:

RE: SB 1468 (Knight): SUPPORT

On behalf of all military installations in California, and as the Department of Defense Regional Environmental Coordinator, I am writing to state strong support for SB 1468's pioneering effort to address an issue critical to continued military readiness in California. For the first time, SB 1468 requires that key elements of City and County General Plans consider the military mission. We applaud this as an effort to finally recognize that long-term operations of military installations must involve a partnership between state and local agencies and the military. In addition to providing critical protection for military installations at a time of unprecedented growth in California, SB 1468 provides needed consideration of designated air space and military training routes. These areas are essential for our training of pilots and continued research, development, test and evaluation of military hardware.

As the sponsor of this bill through the legislative process, the military has worked closely with groups including the League of Cities, California State Association of Counties and the American Planning Association. We accepted clarifying amendments, where concerns were expressed. We also worked closely with your Office of Planning and Research (OPR) and agreed to several amendments suggested by OPR staff. In all, we are pleased that this bill has received strong bi-partisan support. After consideration by five committees, SB 1468 did not receive a single "No" vote in committee or on the floor of either house.

Absent the provisions embodied in SB 1468, long-term encroachment can severely impact, if not preempt, military land uses. We strongly support the bill to reflect the greater scope of the military mission in California, including significant training, research, development, test and evaluation, and operations comprising

DoD's $29 billion direct contribution to the California economy. We ask that you support and sign SB 1468.

Sincerely,

J. L. BETANCOURT
Rear Admiral, U.S. Navy
Commander, Navy Region Southwest

Copy to:
Senator Pete Knight
Senator Dede Alpert
Mr. Tal Finney
MGEN (Retired) William Jefferds

the cases described here, the policy performance stakes appear to have been very high, and the variability of potential outcomes substantial. The seemingly high costs of engagement were probably worthwhile, therefore; but this will not always be true. In any case, I offer the contributions in this symposium mainly to provoke interest in public engagement among those who now think little about it.

Engaging the public is only one dimension along which policy analysis as a field of professional practice is "opening up" relative to its practices of, say, 35 years ago, when it was just coming into being. Other dimensions concern who does it, where it is done, the forms it takes, the methods it employs, and what its purposes might be. The next issue of Professional Practice will explore the opening up of policy analysis in all these, and other, ways.

THE SUCCESS OF A NATIONAL DIALOGUE ON SUSTAINABLE MILITARY RANGE MANAGEMENT

Lenny Siegel

Military munitions are the silent giant of hazardous waste management and cleanup in the United States. From 5 to 10 percent of the bombs, shells, rockets, grenades, and other ordnance do not explode, as designed, when dropped, fired, or launched. They litter the surface or lie buried under as much as tens of millions of acres, not only posing the threat of detonation, but also long-term toxicity as munitions or unburned explosive chemicals leach into surface and groundwater.

The Defense Department is slowly addressing the problem, spending nearly $180 million this year on former ranges, and an undetermined sum on environmental and explosive management at active ranges. But fearing a drain on its budget and experiencing increasing environmental constraints on operations, testing, and training, it has long argued that unexploded ordnance is not generally a hazardous waste, subject to cleanup orders from U.S. Environmental Protection Agency (EPA) and state and tribal regulatory agencies.

Toward the end of the first Clinton administration, the Navy and Air Force prevailed upon the Army—the armed service with the biggest ordnance problem—to consider co-sponsoring a formal dialogue on military munitions facilitated by the Colorado-based Keystone Center. The dialogue on the ordnance problem would, it was hoped, build on a previous success with respect to the investigation and remediation of industrial hazardous wastes on its current and former properties. Along with the Energy Department—the other major federal polluting agency—Defense had taken part in the Federal Facilities Environmental Restoration Dialogue Committee in the early 1990s. Through this committee, it had agreed to a partnership approach with federal, state, and tribal environmental regulatory agencies. Based on the resulting recommendations, it had established nearly 300 community-based Restoration Advisory Boards and initiated its own Technical Assistance for Public Participation program in support of those boards.

Immediately after Clinton's second inauguration, to determine the scope of the problem, the armed services and U.S. EPA convened in Alexandria, Virginia, the

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National Dialogue on Military Munitions, including many of the stakeholder groups from the previous dialogue. The military not only brought in its environmental officials, but it made range "operators" regular participants. This slowed dialogue startup because many of these people are suspicious of outsiders. Some had never met environmentalists, but convenors correctly concluded that operator support was essential if the dialogue were to succeed. It took several months to convene this meeting, and three meetings over about a year to establish enough trust to move forward.

The dialogue consisted of 30 full members, including 7 from the military, 5 from other federal agencies, 5 from states, 2 from tribes, and 11 from environmental, community, and environmental justice constituencies (including myself and a colleague from the Center for Public Environmental Oversight). Military organizations sent numerous support staff as well as official members to both plenary and working group meetings; thus they became the constituency with the greatest consistent representation. Typically at these meetings, members sat at tables linked in a rectangle, with the constituencies interspersed. Support personnel and observers usually sat in chairs behind the lead participants. Facilitators from the Keystone Center organized and ran each meeting. The Dialogue held seven plenary sessions before it disbanded in 2000.

The dialogue organized itself into three working group: Management, Technology, and Communications. I was an active member of the Management Working Group, whose draft product influenced Department of Defense policy even before the language was finalized.

In 1998 the Management Working Group undertook to draft a list of Principles for Sustainable Range Use and Management. "Sustainability" suggests that resources are used in a way that tends to preserve them for future use. At the time, I explained it with the old backpackers' motto: "Take only pictures, leave only footprints."

Environmentalist members of the group offered a statement of purpose for the principles:

- to assure that military munitions ranges are used in a way that protects human health and the environment,
- to enable continuing use of the same ranges for military training and testing missions, and
- to allow, when the military no longer requires their use, the return of these ranges to other purposes.

That offering, in itself, was a compromise, recognizing the Defense Department's primary concern—the ability to continue training on its ranges. In fact, the military replied by proposing—successfully—to move the second purpose to first place, even though no formal ranking was implied. Those three goals survived a long drafting process, with only minor wording changes, and a fourth one, focusing on responses on former ranges, was added.

It may seems strange to apply the concept of sustainability to the use of products designed to destroy, but that initial agreement made possible the eventual listing, by consensus, of nine principles on explosives safety and nine principles on toxic and radioactive releases.

In drafting the principles, the environmentalist members again took the lead. We proposed, for example, that munitions releases be recorded permanently and that the firing or dropping of ordnance be "timed and targeted to protect sensitive

wildlife and habitat." We suggested, for example, "Depleted uranium weapons should not be fired into the same areas as explosive ordnance."

Military representatives responded positively, recognizing that the initial list recognized best practices and innovative policies within the military. However, they initially saw the principles as potential outside mandates. One Defense participant called them "Lenny's principles." While I usually like to take credit for my work, this worried me, and I countered that, as a group, we were unlikely to get much done if our ideas were seen as coming from one person or even one constituency.

Gradually, as equals at the table, the working group as a whole absorbed "ownership" over the list. Some ideas were added, some dropped, some moved; and the language was modified. For example, the habitat statement quoted above was changed to "timed and targeted to protect sensitive natural and cultural resources."

Participants and their staff wrote explanatory text for each principle. That's what took the most time. Military representatives wrote primarily about existing Defense Department policies and accomplishments, and the group integrated that language into explanations of the need for additional progress. Each constituency had the opportunity to raise its issues. For example, because the habitat principle bore directly on the turf of federal land management agencies, representatives of the Departments of Interior and Agriculture were given extra time to vet the language within their agencies.

Dialogue negotiations differed from legislative deliberations because most of the participants realized that implementation would be voluntary. If Congress enacts a law, the military has to at least attempt to carry it out. Therefore, winning the debate—that is, passing language that says what one wants—is critical. In the dialogue, however, those of us who were critical of the military's past environmental performance sought to come up with improvements that the Pentagon could—in fact, would want to—implement.

Thus, I sought to determine the military's satisfaction with each new proposal or idea as it arose. Getting something great on paper wouldn't do us much good if it were simply ignored. Perhaps I went too far: when a high-level Army participant returned to a dialogue meeting after an appointment elsewhere, his staff dutifully reported that I had been looking out for the Army's interests.

By the spring of 1999, the principles were nearly in final form. The other working groups were still hashing out their sections, and some Defense officials questioned whether the dialogue was in full compliance with the Federal Advisory Committee Act (FACA). The full dialogue did not meet for over a year, but its final report, issued in September 2000, contained a strong set of principles, endorsed by all participating constituencies, on Sustainable Range Use and Management (CPEO, 2000).

The dialogue also helped build working relationships between military officials and their critics. As they continue to tackle related issues, such as the funding of range cleanup, people who took part in the munitions dialogue work closely together even today.

IMPLEMENTATION

Defense Department leadership must have been pleased with the constructive criticism embedded in the principles. On August 17, 1999, while FACA issues put the dialogue in limbo, Deputy Secretary of Defense John Hamre signed two new internal directives. Directive 4715.11, "Environmental and Explosives Safety Management on Department of Defense Active and Inactive Ranges within the United

States" closely followed the recommendations being developed by the dialogue. Directive 4715.12, addressing U.S. bases overseas, was somewhat weaker, but foreign bases were not ever the focus of the dialogue.

Directives are policies that are supposed to be implemented by the armed services. They are not statutory requirements enforceable by outside agencies or the courts. Still, in promulgating them, Defense leadership set a new standard for the operation of military ranges, even where the military does not acknowledge legal obligations. Like other military directives, 4715.11 has been implemented unevenly. Some installations were already in compliance, others moved quickly to comply, and still others have received critical reviews from Defense Department audit agencies over their failure to comply.

The key result, however, is that by sitting down with environmentalists, regulatory agencies, and others, military environmental officials and range operators learned that they could manage their ranges better, protecting the environment and reducing the obstacles to continued training. On behalf of the Defense Department, Deputy Assistant Secretary of the Army Ray Fatz thanked members of the Munitions Dialogue: "We believe the Dialogue has established a solid foundation of mutual respect and understanding that will result in a meaningful and lasting contribution to sustain both the military of our Nation and our environment over the years to come."

A NEW CHALLENGE: ENCROACHMENT

With two dialogue-induced successes under its belt, the Pentagon is now considering applying the process to yet a third issue, that of encroachment. In the spring of 2001, Pentagon flag officers (generals and admirals) raised a larger series of range management issues. In a series of congressional hearings, they warned that urban sprawl and environmental laws, particularly those designed to protect species and habitats, were severely constraining the armed services' ability to train, test, and operate—fly planes, for example. They cited successful efforts to work with natural resource management agencies, environmental regulators, and their neighbors, but they argued that this "encroachment" was impairing military readiness. A number of members of Congress and the Senate asked how they might weaken the nation's environmental laws to facilitate readiness activities, but the administration hesitated to recommend changes in those laws. Other agencies were reluctant to put the Defense Department above the law—recognizing that most environmental laws contain provisions for presidential national security waivers.

At the Center for Public Environmental Oversight, where we constantly monitor every nuance of military environmental behavior, we saw conflict on the horizon. We were feared that a legislative proposal would trigger a knock-down-drag-out fight over who has ultimate authority to make military environmental decisions—environmentalists and regulatory agencies, on the one hand; the military on the other. The two sides would devote significant resources to a bloodletting that would solve few problems. We were also concerned that legislation focused on habitat preservation issues would not solve many of the land use conflicts that impair training.

Therefore we suggested an alternative approach: a dialogue on sustainable range management. The new dialogue would apply the goals of sustainable range management, as codified by the Munitions Dialogue, to the broader issues raised at the hearings. In cooperation with participants and high-level supporters of the

Munitions Dialogue, both within and outside the Defense Department, we took the proposal to key decisionmakers at the Pentagon, EPA, and other agencies. We received a seemingly positive response.

Many advocates of the dialogue approach believe that urban sprawl, not environmental protection, is the greatest threat to military readiness. Former Assistant Secretary of the Army Ray Clark wrote, "The real battle for the Army is poor development of communities around its installations. It is time for one of America's great institutions to get engaged in the fight to help stem the tide of sprawl." If the military focuses on smart growth, not rolling back the Endangered Species Act and the Clean Air Act, it may find that environmental organizations are its best allies, not its nemeses.

On March 14, 2002, Deputy Undersecretary of Defense Ray Dubois told a congressional committee that the department planned a balanced response, ranging from land-buying partnerships to dialogue to statutory relief. He promised to work with critics, testifying: "We have begun the necessary planning that will lead to the start of a national-level stakeholder involvement effort to discuss our range sustainability challenges. We are hopeful that such a process, which we hope to begin later this year, will not only lead to a greater understanding of our problems but that it will also lead to development of 'win-win' solutions for everyone."

Still, in the wake of the September 11, 2001, terrorist attacks and the U.S. "War on Terror," pressure for statutory relief increased. Pentagon appointees—above the environmental decisionmakers in the bureaucracy—ordered an internal task force to quickly develop a legislative fix. In April 2002, the Defense Department submitted a legislative package to Congress, essentially suggesting that certain aspects of environmental protection are unpatriotic. If enacted, this legislation would exempt or roll back enforcement of several environmental laws that affect military readiness. However, national environmental organizations that usually ignore the Pentagon and state environmental officials quickly mobilized to oppose the legislation, arguing that national security and environmental protection are compatible, and that there are ways to solve the problems of "encroachment" without weakening environmental laws. For now most of the military's proposals seem stalled.

The Pentagon's approach has created some mistrust from non-federal stakeholders, but it has also gotten their attention. There is still time to establish a constructive dialogue. As Dubois suggested, we at CPEO believe that a win-win outcome is indeed possible, based upon our experiences with the Munitions Dialogue and the earlier Federal Facilities Environmental Restoration Dialogue Committee. Inviting the public "adversaries" of powerful government agencies to the table to solve mounting problems might not always work, but it has a solid record of success dealing with military environmental issues, and that performance can easily be extended if Defense political leaders decide to continue the effort.

LENNY SIEGEL is the Executive Director of the Center for Public Environmental Oversight (http://www.cpeo.org) and a long-time community activist in Mountain View, California.

REFERENCE

CPEO [Center for Public Environmental Oversight]. (2000). Munitions dialogue report. Available at: http://www.cpeo.org/pubs/Munitions%20Dialogue.pdf. Accessed August 2002.

Senator ENSIGN. Well, thank you very much, each one of the panelists.

I want to start. First of all, Ms. Young, you mentioned that the Defense Department was looking for an exclusion. I think Dr. Lent addressed that in your testimony when she talked about—and Dr. Ketten, you mentioned it as well—that while the DOD only in-

cluded defense language, that Dr. Lent was looking at making this definition continue broadly across so that there is a good, scientifically sound definition.

I want to start with that for Dr. Ketten and Ms. Young. First of all, Dr. Ketten, are you aware—I know you are—of the Surface Towed Array Sonar System (SURTASS) Low Frequency Active (LFA)? If you are around the military you know you have to have acronyms. Without acronyms the military cannot operate, or any of this body around here.

Do you think that there is—or do you know of any credible scientific evidence of physical harm to marine mammals from SURTASS LFA?

Dr. KETTEN. Yes, I am fully aware of SURTASS LFA. There is, let me be clear, there is no data that demonstrates any harm from LFA. There were extensive behavioral experiments carried out by several of my colleagues. I did not work on those directly. I do physiology, anatomy, and trauma analyses.

What has happened is that traumas that occurred coincident with the use of mid-range sonars in two genera of beaked whales only have been extrapolated. That is a classic example of over-interpretation or extrapolation from one event to another. It is worse than mixing apples and oranges. It is one type of sonar with what appears to be particularly susceptible species, not for acoustic trauma, but possibly for panic and secondary effects.

Having moved that effect into the domain of LFA is inappropriate. For LFA there is no data that demonstrates any physical harm from its deployment.

Senator ENSIGN. Ms. Young, just to follow up on that—and by the way, just so you all know where my—I am a big, strong supporter of the military, but I am also a veterinarian by profession and grew up watching Jacques Cousteau and all of that and thought that that was what I was actually, when I lost my 1998 Senate race, that was what I was going to do. I was going down to work with the veterinarians down at Sea World and I was going to oversee a large aquarium. So this is something that I have a very strong interest in and I care deeply about these issues.

But I also come at it from a scientific perspective and I like science to determine what we are doing here, and because I also know that emotions can get involved. I mean, everybody, especially when it comes to marine mammals, everybody, they just evoke very strong emotions in people.

So along those lines, Ms. Young, are you aware of any peer reviewed scientific evidence that the LFA causes any problems amongst marine mammals? I emphasize "peer reviewed" because I know what that means.

Ms. YOUNG. I think Dr. Ketten speaks from an expert point of view on LFA, and LFA is not really the issue here that is more important. What we get back to is the definition of harassment and how that change in the definition of harassment will significantly raise the threshold to what types of military activities would be authorized or would require an authorization for a permit.

With that threshold being raised so significantly, many of the military activities that normally would be required to get a permit would no longer be required to do so. They could simply evade the

process. When that happens, we lose important scientific research, such as the research surrounding LFA that was undertaken by the military. That research helped us to understand the impacts to these animals. All of that will be lost. We will lose the monitoring capability, we will lose the mitigation capability, and I believe that is what we need to focus on because we know so little about these animals. We cannot afford to lose the science that is associated with that permitting process.

Senator ENSIGN. Just real briefly, Dr. Ketten, when the definition—and you mentioned—and I do not know, basically biological significance, however you want to describe that. Can you comment on what Ms. Young has just said about the definition of harassment? Because in your opening statement you commented on the whole idea of biological significance and why you think that there needs to be, not a rollback, but something fairly objective to measure from from a scientific perspective. That is what I think is important here.

Dr. KETTEN. Yes, I would like to make several comments along those lines. First of all, in terms of harassment, changing that definition, I would underscore my reasoning of the bill is that in subsection (2), section (a)(1), it states explicitly that the Secretary of Defense must have predetermined that there will be no significant impact or negligible impact to individuals, no harassment.

That has to have been determined, and my understanding is that it was explicitly placed in the hands of the Secretary of Defense so that there was the option for review, that it not be presidential, which would eliminate review. Therefore I have to disagree—Nina and I have known each other for a number of years and I suspect she knows this is coming—I have to disagree with her interpretation that this eliminates the oversight element. Oversight is repeatedly stated within this bill.

Second, the issue of harassment. It has been very broadly—it is difficult—you know better than I, it is really damned hard to write legislation clearly enough. The MMPA was written very broadly and has been interpreted, as we have heard, literally to be the case of an animal turns its head. We do not put that in the perspective of how often it turns its head from its own natural exposure from its con-specifics, that is from other animals in its own pod or group.

As you have pointed out, we are dealing with charismatic megafauna. People look at dolphins and think that that permanent smile they have means that they have a great deal of intelligence and that they have a great deal of appeal, and we are making a lot of our decisions based on that notion.

As far as interfering with readiness also, I cannot think of anything that impacts our readiness more greatly than to have ship shock trials stopped cold, as in the case of the John Paul Jones, or the LFA deployment and training that is not going forward. LFAs—the LFA-dependent research gave us a great deal of information, but now that information is not being used to allow training, but rather to stop it.

I think I may have lost one of the points that you wanted me to address. Sorry.

Senator ENSIGN. That is fine. My time has expired and I need to turn it over to Senator Akaka.

Senator AKAKA. Thank you very much, Mr. Chairman.

My question is to Ms. Clark and Dr. Pirie. The Clinton administration addressed proposed critical habitat designations on military lands through case-by-case negotiation between the military services and the FWS. The FWS would take the existence of an integrated natural resource management plan for a military installation into consideration in determining whether to designate critical habitat, but the existence of such a plan was not determinative.

In many cases, military lands were excluded from critical habitat designation only after DOD agreed to revise its INRMP to ensure adequate protection for endangered species.

Dr. Pirie, do you believe that DOD needs an automatic exemption for lands covered by INRMPs or would you support legislation codifying the case-by-case approach taken by the DOD and the Department of the Interior in the last administration?

Dr. PIRIE. The case-by-case approach has been challenged in court and may not indeed hold. The integrated natural resource management plans are just one of the tools which FWS can use to assure itself that the activities that are going on on a particular military installation are not adversely affecting threatened or endangered species.

The ESA applies to the DOD whether or not there is an integrated natural resource management plan or whether or not there is critical habitat. So in essence, the regulators have a first level of defense, that is the act itself; a second level, the integrated natural resource management plans which the regulators must approve; and it seems to me that that is a fairly high level of protection for the species.

Senator AKAKA. Ms. Clark, I understand that you oppose the automatic exemption for military lands covered by INRMPs in the legislation before us. But would you also oppose codification of the case-by-case approach taken by the Clinton administration, Ms. Clark?

Ms. CLARK. Yes, I appreciate the opportunity to chat about this a bit since a lot of the standards and the requirements and the sideboards by which we would evaluate INRMPs happened while I was at the FWS working with the DOD.

But if I could, just one more clarifying point about this lawsuit and this case in the southwest that seems to make people concerned about constraining the FWS's flexibility. All interpretations of this law—excuse me—of this court case suggest that the only thing the FWS did wrong, if in fact there is a declaration of wrong, is they relied on the wrong piece of the act to do what they ultimately did and that was upheld. They took the definition of critical habitat and the notion of special management area as a rationale when in reality they had all the flexibility in the world under section 4(b)(2), the exclusion paragraph, to balance out the lands that they ultimately balanced out.

So that the notion—the lands that they balanced out ultimately were upheld and I think, if nothing else, it sent a message to the FWS and the Department of the Interior is that they need to clarify in their rulemaking the rationale by which they balance out. But they have tremendous flexibility under section 4(b)(2). We had

a definitional problem that the judge brought attention to in the court case.

While I was at the Service, we spent a lot of time working with the Defense Department, given the sensitivities of the military mission and the defense readiness needs, and we worked up an administrative way to evaluate these INRMPs. Now, I think it is important to note that not all INRMPs are created equal. There is no such thing as a cookie-cutter integrated natural resource management plan. While I was director, we signed an MOU with the Defense Department that laid out the procedural expectations of collaboration and cooperation in the development of these integrated plans.

The fact of the matter is, both for Defense and the FWS, successful implementation of these reviews and development of these INRMPs were heavily dependent on available funding to both agencies to be able to conduct and carry out. But nonetheless, we were very clear from a policy standpoint, and it radiated throughout the FWS, that if an INRMP that was developed for a military installation provided a net conservation benefit to the species and that there were assurances from the military it would be implemented and funded, because a plan is only a plan unless it is implemented, and that there was some scientific recognition or belief that the conservation strategies that were laid out in the integrated plans would be effective. So you had to provide benefit, you had to guarantee implementation of the plan, and you had to be assured that the conservation benefits would be effective. Then it was clearly a candidate for exclusion from critical habitat designation, and I would welcome that clarification in any way possible.

Senator ENSIGN. Senator Inhofe.

Senator INHOFE. Mr. Chairman, I would temporarily defer to Senator McCain, who has some other commitments.

Senator MCCAIN. I thank my colleague from Oklahoma and I thank Senator Ensign.

I will not try to establish my environmental credentials here, particularly as far as the State of Arizona is concerned.

Senator ENSIGN. Senator McCain, if you need a couple extra minutes go ahead and take them right now.

Senator MCCAIN. Thank you. I will let my record speak for itself. But I am concerned about our ability to train our men and women to engage in combat, and as also a former member of the military, I know the importance of being able to train with the use of live ordnance.

I note with some interest, Ms. Clark, your "rest of the story" stuff here. Somebody has to get these reconciled. We have to get some objective person in here or entity, because they differ wildly. But one that I do not think there is a lot of difference of concerns the Barry Goldwater Range. The DOD assertion is that in calendar year 2000 almost 40 percent of the live-fire missions at the Goldwater Range were cancelled, and the rest of the story is that we have 99 animals, 99 Sonoran pronghorns, in the United States.

You cannot run a military efficiently, Ms. Clark, by cancelling 40 percent of the training that is being conducted. You cannot do that. Now, are we faced here with a choice between the pronghorn, Sonoran pronghorn, and conducting realistic training for our men

and women who as we speak are in harm's way? Is that our choice here?

Ms. CLARK. No, Senator McCain.

Senator MCCAIN. What are our choices?

Ms. CLARK. It is not and it should not. But again, the facts of this case need to be evaluated. I am painfully aware of the role that Barry Goldwater Range plays in sustainability of the Sonoran pronghorn antelope population. But again——

Senator MCCAIN. Are you aware of the importance of the Barry Goldwater Range in maintaining the readiness of our military?

Ms. CLARK. Yes, sir, I am. But again, the proposal by the Defense Department does not address the conflict at Barry Goldwater at all because there is no critical habitat designated for the Sonoran pronghorn and the Defense proposal is talking about exempting critical habitat. I believe there is a lot of work that needs to be done and conflicts to be worked out.

Senator MCCAIN. Do you think there is a lot of work that needs to be done so that 40 percent of the training missions do not have to be cancelled as we speak?

Ms. CLARK. Yes, I do.

Senator MCCAIN. Then what is your answer to getting this issue resolved, Ms. Clark?

Ms. CLARK. We need to set aside what the discussion is today because today's represent does not accomplish anything to help the Barry Goldwater Range achieve military readiness. I do believe it is going to require—the military at Barry Goldwater and the FWS, the State of Arizona, have been working together on a very significantly comprehensive Sonoran conservation strategy to try to take pressure off the Barry Goldwater Range and to radiate out the species conservation needs and the conservation strategy for that part of Arizona beyond the military borders.

I believe support of that initiative, with some high-level expectations of forward movement, would be very well warranted.

Senator MCCAIN. When would we expect this agreement to be reached, Ms. Clark?

Ms. CLARK. I think that is something you will have to address to the military and the Secretary of the Interior, Senator. I would gladly work to see that move forward.

Senator MCCAIN. Since the year 2000 they have not been able to reach any high level agreement and 40 percent of our training missions are being cancelled. That is not acceptable.

Ms. CLARK. I agree.

Senator MCCAIN. Then I hope you would withdraw objections which are lodged by your organization which would prevent these training missions from being conducted. Are you ready to do that?

Ms. CLARK. I am ready, on behalf of my organization, to work on a common sense solution that ensures that the Sonoran pronghorn do not go extinct while trying to radiate pressure away from the military installation, Senator.

Senator MCCAIN. So we have pretty well established your priorities, Ms. Clark.

Dr. Pirie, do you have anything to say about that, including the allegation that operations, by Ms. Clark's organization, operations at Camp Pendleton have basically been unimpeded?

Dr. PIRIE. My information is that had critical habitat been declared at Camp Pendleton, that operations would have been very significantly reduced there. Critical habitat, after all, changes the burden, the question of what goes on in these areas, from military training to protection of species. If a place is declared critical habitat, its primary purpose is to protect the endangered and threatened species that are located on that property, not to do the training.

So it was certainly General Hanlon's take on it when he negotiated the original agreement to let the INRMP be the protection for the species at Camp Pendleton. It was his appreciation of the matter that he would be very substantially shut down were critical habitat to be declared for numerous endangered species on Camp Pendleton.

Mr. SIEGEL. May I add something, Senator?

Senator MCCAIN. In your view, Dr. Pirie, would any cleanups at any installation—significant cleanups, are going and bases have been closed—be affected by this legislation, by this proposed legislation?

Dr. PIRIE. Not cleanups, not at all, Senator.

Senator MCCAIN. Thank you.

I really believe that, with Vieques being shut down for live ordnance training, I am not sure where else there is in the country besides the Barry Goldwater Range and that area, and we simply cannot afford to have the delay in our training where 40 percent of the missions are cancelled. That is not an acceptable situation.

I want to preserve the Sonoran pronghorn as much as other living Americans, perhaps more since I am a resident of the State of Arizona. But I am also interested in winning conflicts and not sacrificing needlessly young Americans' lives. This issue of the Goldwater Range needs to be resolved and it needs to be resolved quickly, and I hope that we will do so, and I will do whatever is necessary to resolve it as quickly as possible. My priorities are the safety and efficiency of our military.

When the Goldwater Ranges was set up, we were fully aware of where the Goldwater Range was and what the habitat was and what animals lived there and what did not. We are not going to shut down the Goldwater Range for any reason that I know of beyond an issue of national security because of the criticality that they pose, the criticality of the role that they play in training the men and women of the United States Navy, Marine Corps, and Air Force.

I thank you. I thank you, Mr. Chairman.

Senator ENSIGN. Thank you.

Senator Pryor.

Senator PRYOR. Mr. Chairman, I would like to defer to Senator Warner.

Senator WARNER. Mr. Chairman, I thank this gentleman very much.

I would like to ask one question of Ms. Clark. Ms. Clark, at one time you were with the Department of the Interior and the FSW, am I not correct?

Ms. CLARK. Yes, Senator, I was Director from 1997 to 2001 and an employee of the FWS from 1988 until that time.

Senator WARNER. Did you not work on the formulation of legislation which is very much like what is before this committee now?

Ms. CLARK. I worked with the late Senator Chafee on an isolated piece of legislation that dealt with critical habitat, I did, sir.

Senator WARNER. In terms of the military bases and so forth?

Ms. CLARK. We worked on administrative proposals to clarify how INRMP requirements could be framed in a way to allow for the balancing out through the relevant provisions of the ESA.

Senator WARNER. Mr. Chairman, I am going to go back and research that period, because it seems to me the current measures before this subcommittee are not unlike what you worked on when you were in that position, and yet somehow I feel today you have come around full circle and are now opposing it.

Ms. CLARK. No, Senator. As I mentioned before you arrived, what I am opposing is a full-scale, across the board, no holds barred national exemption, as opposed to specific requirements, administrative work-arounds, taking advantage of the current law. I should have responded to Senator McCain, if in fact there is an irreconcilable conflict at Barry Goldwater, the Secretary of Defense has all the authority he needs in the ESA today to declare an exemption, which does not even bring in the critical habitat issue.

But I would be happy to work that out with you.

Senator WARNER. Would you prefer the site-specific exemption approach rather than the amendment of the law or the regulation?

Ms. CLARK. I do not think either is necessary. I believe that what is necessary is a clarification of what the requirements of an appropriate INRMP at each specific installation should comprise, that would allow the FWS to make use of current law and exclude military bases from critical habitat designation.

I do not think you need a national, broad, sweeping exemption. I do not think you need a site-specific exemption. The law today allows for the appropriate address of military needs as long as the administrative sideboards and the expectations of INRMPs are clear to all the agencies involved.

Senator WARNER. I thank my colleague, Senator Pryor, for your courtesy. I thank the chair.

Senator ENSIGN. Senator Inhofe. You yielded to Senator McCain. Pryor yielded to Warner.

Senator PRYOR. That is fine, Senator Inhofe.

Senator INHOFE. That is fine.

First of all, let me just ask a general question to Dr. Pirie. Dr. Pirie, during the Clinton administration you served as Assistant Secretary of the Navy, Installations and Environment, in 1994, Under Secretary of the Navy in 2000, Acting Secretary of the Navy in 2001. Now, the administration's legislative proposals have been characterized as a rollback of major environmental laws.

The question, of course, that Senator Warner was getting to was, these are essentially the same as were proposed during your service in the Clinton administration. Based on your experience, is it a fair characterization to say that the legislative proposals are a rollback of major environmental laws?

Dr. PIRIE. No. No, Senator Inhofe, I would not say that they are a major rollback. I would say that they are rather specific and par-

ticularly targeted requests for amplification or clarification of congressional intent in particular instances.

Senator INHOFE. Do you believe that the DOD commitment to environmental protection and stewardship will decrease if these legislative proposals are enacted?

Dr. PIRIE. No, I do not believe that at all, sir.

Senator INHOFE. Ms. Clark, you have mentioned Camp Lejeune and General Mize and I would like to have you repeat what you have said in your statement about his comments on the red-cockaded woodpecker at Camp Lejeune. You do not have to have it exactly, just what do you recall that he said?

Ms. CLARK. I have the direct quote. It says: "I can say with confidence that the efforts of the natural resource managers and the training committee have produced an environment in which endangered species management and the military training are no longer considered mutually exclusive, but are compatible."

Senator INHOFE. That is really interesting because—and I am going to follow up with him to see when he said this and what the circumstances were. I chaired this Readiness and Management Support Subcommittee for a number of years and I made several trips to Camp Lejeune. Each time I went—I will say this, that the military have been great stewards of the environment. In fact, they have done such a good job that they are their own worst enemy.

Mr. Chairman, I can remember going into the Camp Lejeune and seeing the areas where, because of suspected critical habitat, they were not able to train and then go back 2 years later and they have used up even more of it. So this does concern me because without exception on the trips that I have made down there they all say that this is having a very bad effect on our quality of training and we are not able to do the things we should be able to do.

This means a lot to me. Senator McCain talked about live-ordnance training and those of us who have been in the military understand that it is very significant. In my opening statement I said that we have a—in the case of Vieques, when we lost the range there, there was an accident that occurred on the Daru Range in Kuwait that actually had the effect, it killed five people, four of whom were Americans. The accident report specifically said that that was the result of not having live-range training.

This really concerns me, particularly when you look at one of the few live ranges left as being the one in Arizona losing perhaps 40 percent of its capability.

Now, let me just ask you a question. Where are we going to go and find areas for live training if all these court decisions go against us and if these current problems that we have continue?

Ms. CLARK. Well, first, Senator—and I am painfully aware of the amount of litigation surrounding the ESA. It was huge when I was still with the Department and I suspect it is pretty high today. But again, the court decision that everyone is referring to does nothing to constrain the flexibility of the FWS as it addresses critical habitat.

Another point about Camp Lejeune or Fort Bragg or Fort Benning or Avon Park, all those installations that have red-cockaded woodpeckers in the Southeast, is, like Barry Goldwater and the Sonoran pronghorn, the proposal before this committee by

the Defense Department really does not do anything to address those conflicts because there is no critical habitat designated for the red-cockaded woodpecker, though I would agree with you that there are some pretty significant challenges at those installations in the southeast that need a very different kind of work-around solution.

But today's discussion on critical habitat and the outcome of the deliberations on this will have nothing to do with solving any of the challenges at Camp Lejeune or any other installation with red-cockaded woodpeckers.

Senator INHOFE. But you had brought up Camp Lejeune and General Mize and the statement that he made.

Ms. CLARK. Correct.

Senator INHOFE. I wanted to make sure that we pursued that a little bit.

Ms. CLARK. Absolutely.

Senator INHOFE. Because I have spent some time there.

Let us look into a real operational situation. What would be the result—we were talking about the LFA, Dr. Ketten. What would be the result if the judge in the final decision rules in June against the DOD in terms of what our capabilities would be? First of all, can we utilize the wartime exemption under the Marine Mammal Protection Act?

Dr. KETTEN. Actually, sir, I am not an appropriate person to address that.

Senator INHOFE. Or Ms. Clark? I think we cannot; is that correct?

Ms. CLARK. Ms. Young.

Ms. YOUNG. I will be happy to respond, Senator. There is an exemption that is afforded to the Secretary under the Armed Forces Code that could be utilized in that situation. Also, the court case is germane to the testing of LFA. It could go forward during time of war as we are in now. So LFA can and probably is being used in this instance and is not impeded in any such way.

Also, I would like to go back to a couple of statements that were made earlier with regard to the ship shock trials. The John Paul Jones ship shock trial was not stopped. It was merely moved out of the Monterey Bay sanctuary.

Senator INHOFE. I am going to interrupt you because that is not the question I asked you. Now, the MMPA does not have the national security exemption that the others have; is that correct?

Ms. YOUNG. That is correct.

Senator INHOFE. All right. So let us look and see what kind of exposure we would have. If we cannot use the SURTASS LFA sonar, can our fleet adequately detect a quiet diesel submarine operating on battery power without using that?

Ms. YOUNG. They can, because they can use the exemption under the Armed Forces Code.

Senator INHOFE. Dr. Ketten?

Dr. KETTEN. Senator, the reason I deferred the question off of me is that your question was about what would be the alternatives and I think that is actually an appropriate question for NOAA Fisheries or for any of the regulatory agencies, rather than anyone on this

immediate panel to answer in terms of speculations, from the knowledge that we do have.

I would have to disagree that we could effectively detect diesel subs. They are not detectible by conventional sonars readily and the advantage to LFA is being able to detect them long-range.

Senator INHOFE. Detect diesel subs?

Dr. KETTEN. Well, to detect all types of subs, but explicitly diesel, which do not have an acoustic signature that is readily detectible.

So the issues of what would happen if LFA—I do not think that anyone here, certainly—well, possibly Dr. Pirie would be, but—is qualified to say if we would have other adequate techniques, but my familiarity with subs and their detection techniques would suggest that we do not.

Senator INHOFE. Maybe I am wrong, but I have been told that the LFA is the only way you are going to be able to detect a diesel sub, and if you are not able to use that for any of the restrictions that we are talking about there is no other way it can be detected. Am I wrong, Dr. Pirie?

Dr. PIRIE. The issue is very quiet submarines, in shallow waters particularly, Senator Inhofe, and there the LFA is a major improvement of our capability, I would say an order of magnitude improvement of our capability. We would really need that.

Dr. KETTEN. If I might interject, it is specifically using lower frequencies, longer wavelengths, greater distances. While you can detect it nearby with conventional sonars, it is too late. Therefore I do not think we have an alternative.

Senator INHOFE. So the lives of sailors on a ship not able to use this type of sonar could be jeopardized?

Dr. PIRIE. I think that is fair, Senator. A wartime exclusion, while it would be welcome, if you had not been able to use the equipment and train on it and get the sailors familiar with it before the war started, you would not have a very effective organization employing it.

Senator INHOFE. I am sorry, Mr. Chairman. I went way over my time.

Senator ENSIGN. Senator Pryor.

Senator PRYOR. Yes, thank you, Mr. Chairman.

Ms. Clark, I think you mentioned this in your statement a few moments ago, but in your opinion what is DOD's track record when it comes to environmental issues?

Ms. CLARK. DOD has been really terrific environmental stewards over the long haul. They have a very serious commitment to environmental stewardship, from everything that I can tell when I was an Army biologist to when I was at the FWS. I believe that the solutions being worked out at the local level, at the installation levels with the field offices of the FWS, demonstrate that track record.

Senator PRYOR. But even given that background, you are still reluctant to agree with what DOD wants at this point?

Ms. CLARK. Those are two different issues. I think that the installation, FWS, field office kind of local, tailored solutions case by case, species by species, military training activity, however it works out, you end up with dovetailed solutions that work for military readiness and species conservation being worked out among ex-

perts in military training and species conservation, and you have that appropriate check and balance along the way.

To do a broad-scale national exemption that says, you have an INRMP you are exempt, does not lend itself to the site-specific evaluations that are conducted.

The flexibility of the ESA is really unbelievably clear. If for some reason there was a—you know, you can work it out. You balance out the critical habitat through the section 4(b)(2) exclusion, and the Secretary of Defense always has that hole card. He does not have to go to the President. The Secretary of Defense always has that trump card of national security exemption as contained in section 7(j).

So I believe that the appropriate checks and balances are in the law, the appropriate flexibilities are in the law, and the ability at the local level to work these issues out has been demonstrated over and over again.

Senator PRYOR. Dr. Ketten, you are a scientist. I was curious about the science relating to the sonar. Scientifically, what evidence is there that it is adversely affecting marine life?

Dr. KETTEN. Senator, you are referring to sonar in general, or mid-range?

Senator PRYOR. Well, I am talking about the LFA sonar.

Dr. KETTEN. There is no evidence related to LFA of physical harm to any marine mammal, to the best of my knowledge.

Senator PRYOR. Not physical harm. What about changing in behavioral patterns or mating habits or moving out of waters where it is being used? Tell the subcommittee about that.

Dr. KETTEN. The behavioral studies that were done indicated that at the anticipated received levels, there were no significant behavioral changes. Going back to the question of biological significance as opposed to individual impacts, which Senator Ensign had asked before, biological significance means that you impact the population, the ability of the species locally or more broadly to survive, to grow, or to prosper. It does not mean that a single individual has a temporary or permanent effect on it.

The conclusion of the studies from the LFA behavioral trials where the sources were being used at lower than operational levels, but still the received level at the animal is the critical issue, not the source level, was that there were no indications of significant behavioral effects.

Senator PRYOR. So is it your opinion then that it has no adverse effect on marine life?

Dr. KETTEN. It is my opinion that we have no data indicating there would be an adverse effect if deployed as it has been described.

Senator PRYOR. Okay.

Ms. Young, do you recognize the importance of detecting this new generation of diesel submarines? Do you recognize that as an important military purpose?

Ms. YOUNG. Yes, I do. We have not stopped the use of LFA. We have restricted its use. It is still being used. It is still being tested in an area that is restricted from what was originally proposed. So we have not stopped its use. We recognize its importance.

But I think what we need to focus on here is the changes that we are talking about in this legislation and the term is "biological significance" and I have heard discussions about animals turning their heads. That is not what this is about. We are talking about sweeping changes that would modify the definition of harassment and incidental take to such an extent that many of these activities would no longer be required to get a permit.

We are not talking about the agency issuing permits for animals that have turned their heads. There have been over 20 permits issued to the military. What we are talking about in terms of permits that have been issued to them are for ship shock trials where thousands of pounds of explosives have been used and so we needed to monitor and mitigate that activity.

We are also talking about missile firings where animals stampede and pups are killed or other animals are killed, when an entire population is flushed into the sea. What we do not know scientifically when we are talking about biological significance or insignificance—people like the Marine Mammal Commission acknowledge that we can not distinguish between activities that will have significant long-term effects and those that will not. We cannot really distinguish between biological significance and insignificance.

To show you the problems that we have in some areas such as Hawaii, we have 20 species of animals in Hawaii, 8 of those have no population estimates whatsoever. We know virtually nothing about them. We do not even know what the human impacts or level of harassment are to those animals. So we cannot assess negligible impact. We cannot even begin to assess what the military activities, let alone other human activities, will have to the survival and reproduction and recovery of these animals.

Senator PRYOR. Dr. Pirie, I have one quick question for you. You mentioned the encroachment on Pendleton and later a witness—I believe it was Ms. Clark—said that there was something about the DOD claiming it was 57 percent and then now it is actually just 1 percent. Could you talk about that?

Dr. PIRIE. I am not really current, Senator Pryor, in this area. I could only repeat what I knew as of the time I left the Department, and that was that General Hanlon, who was then commander out there, felt that 57 percent of his available area would be impacted in one way or another by one or another of the critical habitat designations for various different endangered and threatened species.

Mr. SIEGEL. Senator, may I add something about Camp Pendleton?

Senator PRYOR. Yes.

Mr. SIEGEL. The major threat to Camp Pendleton today is urban sprawl. There is a proposed new city at Mission Viejo just on the northern boundary of the base, underlying significant military air space. The State of California has passed legislation which would require the locality to consider military readiness in evaluating that, but thus far the Defense Department has not come up with the funds that the Navy had asked for to implement that.

The facility wants to buy a buffer zone there. There are solutions to these problems out there, and again they are not necessarily in

the legislation proposed by the Defense Department. Camp Pendleton is being encroached upon, no doubt about it.

Senator PRYOR. Mr. Chairman, if you will indulge me just for another 30 seconds just to follow up on that. This is really for whoever wants to take it or all of you. As I understand, Camp Pendleton's situation is there is a lot of urban encroachment, suburban development all around it, but also there are—and certainly there are environmental issues related to it. But there are also cultural issues about Native American remains, and there is a whole range of issues.

So from my perspective—and tell me if I am wrong—the environmental piece of the puzzle is an important piece to Camp Pendleton, but it would be misleading to say it is the only piece. There are a lot of different issues that relate to Camp Pendleton.

Do you agree with that?

Dr. PIRIE. I certainly agree. It is part of the last green space in southern California and to a large degree a victim of its own success, because it is the habitat that is left and it has been very successful in protecting the species that are there.

Senator PRYOR. Do you agree with that?

Ms. CLARK. If I could just add one thing, Senator Pryor. Camp Pendleton has been in neon blinking lights for a number of years because of its visibility in southern California as being one of the last green spaces, and lots of credit to the military for keeping it that way for sure. It is like flying over the Chesapeake Bay when you see big green spots: Aberdeen Proving Ground and Fort Mead.

It is just, as Mr. Siegel said, it is what is happening in this country today. There are two conflicting issues or competing stories on the Camp Pendleton issue as it relates to endangered species. One is the critical habitat issue. I think facts will show, because the final regulation of critical habitat demonstrates, less than 1 percent balanced out the military.

The other issue that I think came up earlier had to do with the amphibious landing and the amount of shoreline that is compromised allegedly because of endangered species, when in effect I think Mr. Siegel's comment is really well taken here and that the impacts to amphibious landings comes from Interstate 5, they come from a railroad, they come from a nuclear generation plant. The only ESA conflict comes from a few months a year—and it does exist—where two endangered birds are nesting on the beach, and so there is a work-around for that.

But the significant conflict on the shores of Camp Pendleton come from urban sprawl, not from ESA.

Senator ENSIGN. I think we are going to go at least with a brief round of—it is a very interesting discussion that we are having here and so if the panel will indulge us to go at least with a brief round of second questioning by the Senators here.

I want to make a couple of comments. Mr. Siegel—and I appreciated what you said about working together. I have certainly found in southern Nevada working first with Senator Bryan and then second with Senator Reid that we have been able to put together broad groups between environmentalists, the multi-use people, developers, everybody together, working together to come up with legislation that has been very good in southern Nevada. No-

body ever got totally what they wanted, but everybody agreed it was very good legislation and took a good balance.

I think that that is what we are trying to achieve here, is balance. I think that these issues are some of the most difficult issues to deal with. Any time you deal with environmental issues—and I think Senator Inhofe mentioned it—we have wildly diverse testimony on the same issue. Some of that just comes from a different perspective that people address issues with.

But Ms. Clark, when you said that the military has been—and you pointed out in your last a little bit of testimony with Senator Pryor about that the military really has done a very fine job in so many ways protecting the environment, especially I think in the last 20 years—there were mistakes made before. The military readily acknowledges that.

The point is, how do we go forward here? The military is telling us—and they are the experts on readiness. Even Senator Inhofe and Senator Akaka, they have been on this subcommittee the longest and have probably the most expertise of any of the Senators sitting up here. But none of us are experts on military readiness and, other than Dr. Pirie, none of the rest of you probably are.

But the military is telling us that there is a serious problem going forward, that they think that it has worked well using occasional exemptions, by using the INRMPs, as they call them. The biggest fear that they have, though, is the litigation, and there is a difference of opinion, Ms. Clark, from the current FWS on what some of this litigation has meant and what potentially—up in Alaska, there are some differences, Mr. Siegel, on some of your statements versus what the military is viewing.

So I guess the challenge for us as lawmakers is to filter through all of what everybody is telling us, to come up with that delicate balance, understanding, though, that military readiness cannot be compromised. We are talking about lives. When we are talking about the low frequency radar, it is critical to the lives and to the defense of our country. If we have quiet subs that can come up into the shallow waters along the United States, that is not acceptable. I mean, there are rogue regimes out there, that we just cannot have that kind of thing happening, compromising the defense of the United States of America.

Because the military I think has earned the respect of what they have done with the environment, that if they are telling us that the litigation going forward is going to hurt the readiness, I think we have to listen to them. At the same time, I think that the military does have to be willing to sit down and say: Okay, these are our proposals; are there ways that we can tweak them?

You mentioned, Mr. Siegel, about the Lake Mead and the Las Vegas Wash and the perchlorate. The EPA testified today that they feel that they have all the power—and I talked to Administrator Whitman last night and she feels that the EPA can absolutely—this proposal will not affect going forward with the cleanup of the Las Vegas Wash in any way whatsoever. You seem to have a little disagreement with that. But just in case it does, they are going to tighten up the language on that, just to make sure that it does not.

They also testified, the EPA did, that they do not feel that this legislation in any way is going to hurt them from enforcing the en-

vironmental regulations in this country whatsoever, that they will be able to enforce the environmental laws in this country.

So there is a lot of disagreement, is the point I am making, between what we are hearing from some people and what we are hearing from other people, and there is a huge challenge, I guess, for us to filter through what the truth is or at least what the supposed truth is. I would invite your comments. Mr. Siegel?

Mr. SIEGEL. First on the issue of perchlorate, there are two things. One is whether the language can be tightened so that properties other than operational ranges are no longer covered by this legislation.

Senator ENSIGN. By the way, operational ranges are still covered. The Safe Drinking Water Act is not affected by this.

Mr. SIEGEL. The Safe Drinking Water Act controls water at the wellhead. It is not always available as a reasonable method for controlling cleanup going onto ranges, characterizing it and protecting the ground water.

Senator ENSIGN. The EPA also testified that if they think that there is a threat going off base—it does not even have to be going off base—if they think that there is a threat to going off base, the EPA felt—that was his testimony this morning by Mr. Suarez—that they can step in and stop it from happening.

Mr. SIEGEL. There are two things. One is, without CERCLA in the normal way State standards, which California is developing for perchlorate, would not be Applicable and Appropriate Relevant Standards (AARS), and it would make it difficult to enforce State standards. We do not have a Federal standard for perchlorate. So it would get in the way in that point.

You have to recall Senator, that EPA reports to the President. EPA officially has taken the position supporting this legislation. If you want to look at the technicalities, you are going to have to ask the EPA to supply the critiques that were supplied by their staff of the various aspects of this legislation.

My understanding is that the staff at EPA said things very similar to what the attorneys general who have criticized the legislation. It is going to make it difficult for the States, who are usually the bodies who enforce these hazardous waste laws, to enforce them, to provide a protective standard, particularly for contaminants like RDX and perchlorate, where the military says there is no standard that they have to obey because there is no MCL—that is Maximum Contaminant Level—under the Safe Drinking Water Act.

Now, I want to add, the question to me is not whether or not environmental laws—do we have an environment, do we have readiness? The question is can we find a middle ground between being allowed to do military activities anywhere, any time, in any fashion whatsoever, and finding a way to look at them in a way that still allows the military to do its job, yet protects the environment.

I think it is probably possible to find a timing to use the Goldwater Range, yet still protect the antelope. I am not an expert on that. I think the people who are have to sit down and get that taken care of right away. But eliminating all restrictions are going to get us back to the place where we were, where the military created billions and billions of dollars in liabilities by messing up our

country, not just in terms of ordnance and contamination by letting goats go wild on islands like Kahalava and San Clemente.

The military is doing a good job today because we got together, we passed some laws, and people found solutions. Let us not abandon that because of the fear that somehow we are going to totally give up on readiness, when the real threat to readiness is not from the environmental laws.

Senator ENSIGN. Dr. Pirie, if you could make a comment based on some of the things I said, and then I need to turn it over to Senator Akaka.

Dr. PIRIE. I think Mr. Siegel and I simply disagree as a matter of degree. I do not think what is proposed constitutes an abandonment of commitment to the protection of endangered species or protection of the environment. I think it is really an attempt to find a balance, which we, the DOD, have worked out with the appropriate regulators, but which keeps being disturbed by litigation from other parties.

Senator ENSIGN. Senator Akaka, just one comment.

I would advise this. If people want to work together—and Mr. Siegel, with all due respect, the last comment that you made about "doing away with" is not helpful, because we are not doing away with. They are trying to strike a balance here. I mean, certainly I do not think that anybody would say that INRMPs are doing away with environmental protection.

Ms. Clark, you were a big supporter of INRMPs. INRMPs have been one of the hallmarks of how the Defense Department has protected endangered species. What the military, from what they are telling me is that it has worked well. What the new lawsuits threaten—they think that they threaten things like INRMPs, so that if they have to go with the exemptions, exemptions provide less protection than INRMPs do. I think everybody agrees with that.

Everybody says, well, just go with the exemptions. The military even says the INRMPs provide more protections than going for the exceptions. The exceptions basically say they do not have to comply with anything. The INRMPs actually put a plan in place with a balance that everybody says—everybody on the panel has talked about balance and the INRMPs seem to be, at least for the endangered species, one of the places that the balance has occurred.

The military is saying the courts are going to do basically—are afraid, and so is Fish and Wildlife. They are afraid that the INRMPs are going to be done away with or at least severely hurt as far as putting those in place and have to go more with the exemptions.

I am sorry, Senator Akaka, if when you are following up with his, if you have time—I have taken too much time.

Senator AKAKA. Dr. Ketten and Ms. Young, 2 years ago I asked the National Academies to assess the state of science with regard to marine mammal bio-acoustics. Earlier this year, the National Academy's Ocean Studies Board concluded its survey, in which the Navy participated, as follows, and I am quoting: "For 119 species of marine mammals, as well as for other aquatic animals, sound is the primary means of learning about their environment and of communicating, navigating, and foraging. The possibility that

human-generated noise could harm marine mammals or significantly interfere with their normal activities is an issue of increasing concern. Although the stranding of beaked whales provides a tangible and alarming picture of the potential effects of high energy mid-range sonar, there are very limited observations concerning the effects of most kinds of ocean noise on marine mammals. "Potential effects include changes in hearing sensitivity and behavioral patterns, as well as acoustically-induced stress and effects on other animals, such as fish, in the marine habitat. Most existing data are limited, short-term, nonrepeatable observations of marine mammal responses to human activity."

Would you agree that the science regarding the impact of ocean noise on marine mammals is still in its infancy and that we should proceed with caution in this area, going step by step and carefully monitoring the results of our actions to ensure that we do not make any serious mistakes, Dr. Ketten?

Dr. KETTEN. Yes. Senator, as a member of the panel and as an individual who assisted specifically in writing that paragraph, I can address the intent clearly. Further, I am the person who did the assessments of trauma in the beaked whales.

Yes, I agree with that statement and that we should go forward with caution. But to go back to the wording, the terms "balance" and "perspective," beaked whale issues have two very relevant cases for this committee. First of all, in terms of perspective, there have been an estimated 8 to 10 episodes in the last 60 years of strandings of beaked whales that involved 350 individuals, of which fewer than half of the animals died.

So we are talking about approximately 175 animals that may have died associated with military sonar exposures in 60 years, compared to thousands of animals, of beaked whales specifically, that die each year in fisheries. How many others are impacted acoustically particularly?

One of the things that the National Academy of Scientists (NAS) panel was concerned about is shipping, especially in our heaviest lanes, the North Atlantic and the North Pacific. There is no monitoring of that at the moment. So our perspective is being drawn, largely by public opinion, from dramatic, single, intense events.

I would point out as the primary researcher on the beaked whale issues that we do not yet know the mechanism and there is every indication it is not a direct acoustic impact. There is little question, no debate really, that sonars were a contributory element. But again, they are relatively rare events involving multiple ships in particular areas with two species that particularly seem to be hazarded.

The other issue was Vieques. Although Vieques was closed down for a variety of reasons, very complex ones, beaked whales entered into that. I examined every beaked whale that stranded in the area, particularly in the area of Vieques, for the last 2 years and there was no animal with any indication of an acoustic trauma or physical trauma that could be demonstrated. Yet that was still brought before the Puerto Rican legislature as an issue for the ordnance practices in Vieques, completely inappropriately based on the data.

We need to go forward with caution, but we do not need to stop cold. We have to look at the possibility of 175 animals over 60 years stopping LFA, completely inappropriately in my opinion.

Senator AKAKA. Ms. Young.

Ms. YOUNG. Thank you. I think we do need to go forward with caution. In many cases we have been talking today about beaked whales, we have been talking about acoustics. We know very little about beaked whales. Many of these species have not been described until probably the last 15, 20 years. We know virtually nothing about their population sizes. We know nothing about what the impacts of mortality associated with military activities, fishing activities, any of those activities, have on these animals.

We are not stopping. We are moving forward. We are moving forward with the use of LFA, we are moving forward with ship shock. I think what we have here, especially when it comes to acoustics, is a boogeyman. We have a fear about acoustics and what it is going to do, and it is a fear of the unknown. Other than Dr. Ketten, there are very few people who understand the acoustic impacts to marine mammals. It has caused a breakdown in communication between the scientific community and the conservation community and that is what needs to stop.

What we have before us is a need to distinguish between our experience to date with the authorization process and the fear of potential future litigation and what the military believes that litigation could potentially stop military readiness activities. We do not want to impede military readiness activities and we are not in really the position to evaluate the issue, but the experience that we do know shows that the military has been applying for permits, they have been receiving those permits, and that is not the problem.

What we do need to do is enter into a dialogue with the military, with scientists, to understand better where the problems exist, to work with them within the permitting process, to alleviate those problems. But the bill before us here is not going to do that. It is going to introduce more interpretation ambiguity that is going to arguably result in greater lawsuits.

If we just move forward with the definition of harassment that is before us, we have no guarantee that we are going to fix the process. Scientists can debate significance forever. But what we do need to do is get the scientists to sit down with the DOD and other stakeholders to decide what is the most sound conservation-minded way to move forward.

Senator AKAKA. Mr. Chairman, I know my time has expired. May I proceed with just one more question?

Senator ENSIGN. Yes.

Senator AKAKA. I would like to get to Mr. Siegel. Mr. Siegel, when the first panel testified I asked Mr. Suarez for his reaction to an internal EPA memorandum recommending that the agency oppose DOD's proposed exemptions from the CAA and the cleanup statutes on the ground that the proposed exemptions were unnecessary and would have an adverse impact on the environment.

My simple question to you is: What is your response to Mr. Suarez's comments on these two issues?

Mr. SIEGEL. First, it is fairly clear that none of these statutes have interfered with military readiness activities. Second, they

would limit the ability of regulators to regulate military activities as they normally do. In the case of the CAA, there are five provisions in the proposed legislation. Only one of them has a 3-year sunset clause. The other are permanent redefinitions of dirty air as clean air, and really only to allow the relocation of military air squadrons under base realignment or the deployment of new weapons systems, not an immediate readiness issue—an important issue that has to be addressed.

But there is no need—basically, if the military is going to consider where to deploy new squadrons, where to relocate squadrons, I think clean air should be part of the equation that they look at. It is not the only factor, but it should be included.

In the case of RCRA or CERCLA, I think the military, if they correct the language to limit it to operational ranges, then it appears what they are targeting is the ability of regulatory agencies using their normal methods, that is using the normal funding provided through the Defense Department, to control contaminants such as RDX and perchlorate from those operational ranges that are contaminating our drinking water supplies, and I think their hands would be tied.

That is the information I am getting from people within the EPA at the staff and regional level who work these things on an ongoing basis. The military is concerned that perchlorate is going to cost billions and billions of dollars to clean up in this country, and whether it is at contractor sites or military sites they are worried that they are going to be footing the bill. That is an important question for you folks to resolve, as to how we should spend resources in the defense budget. But that to me is not a readiness issue.

Senator ENSIGN. Senator Inhofe.

Senator INHOFE. Mr. Chairman, I know we have a third panel and I will just make this really brief and summarize a couple of things.

First of all, Dr. Ketten, I appreciate your comments about Vieques. Yes, there are a lot of factors that were there and there are a lot of phoney issues that were used. One was the issue on the mammals that you described. Another one was nonsound science having to do with anything to do with different types of diseases that you could get or cancers, and all of that has been refuted.

It was a political problem there and we have a political solution that is just deplorable. As a result, as I mentioned, we have lost American lives.

So the whole issue here is live-fire training. I would love to think that I would live long enough to see the day where it is not going to be necessary to do that. Unfortunately, I do not think that is going to happen. So right now we are losing our ranges. The loss of Vieques is having a rippling effect, not just in the Navy, Dr. Pirie, but also all the Services, because you go around and you go from Okinawa to Cape Wrath and the rest of them, we are losing the capability. In Capa de Lotta, we are restricted as to how we can and how many days a year that we can train. So it is really critical, and that is why this is such a significant issue.

Just real briefly, Mr. Chairman. On this idea of using the national security exemption as a reason not to be doing these things, first of all, as far as CERCLA and RCRA are concerned, that takes the presidential action. You are going to have to have a president, and that is good for 1 year. Now, if you take all of the training ranges we have and present all these cases, that is all this guy would be doing, would be signing these exemptions.

The same thing is true with the ESA. That is the Secretary of Defense that does that. Then there is none in the MMPA.

Let me just make this one comment. I think it needs to go into the record. The administrative actions adversely affecting military training and other readiness activities, I was chairman of this subcommittee when this went into the statutes and this is something that is so bogged down in timing that this does not correct the problem. I am just going to read this one thing:

"The Secretary shall submit a written notification of the action and each significant adverse effect to the head of the executive agency taking or proposing to take the administrative action. At the same time, the Secretary shall transmit a copy of the notification to the President, to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives."

Now, you can see if you try to exercise that provision as an exemption it is just not going to work.

Mr. Chairman, I appreciate the time that we have had for this particular second panel. I know we need to get to the third panel.

Senator ENSIGN. Thank you, and I really—I have other questions we will submit to you, if you could get them back for the record. But I appreciate the discussion. I think it has been very healthy, and I want to thank Senator Akaka for suggesting that we include an airing out, I guess, of the issues, because they are complex, and we appreciate you, and excuse this panel of witnesses and call our third panel of witnesses, to include: Douglas H. Benevento, Executive Director of Colorado Department of Public Health and the Environment; Benedict S. Cohen, Deputy General Counsel, Environment and Installations, DOD; and David Mears, Senior Assistant Attorney General, State of Washington. [Pause.]

If you could all summarize, once again, in under 5 minutes and allow some time for questions, is the time we really get into it. So your full statements will be made part of the record.

Mr. Benevento.

STATEMENT OF DOUGLAS H. BENEVENTO, EXECUTIVE DIRECTOR, COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Mr. BENEVENTO. Thank you very much, Mr. Chairman. My name is Doug Benevento and I am the Executive Director of the Colorado Department of Public Health and Environment. In that position, I am responsible for oversight of the State's air, water, waste, as well as the bulk of the State's health programs. Also I am a member of the Environmental Council of States (ECOS) and serve on that body's executive committee, and I am chair of the ECOS DOD Forum, which is designed to open communications with DOD for the purpose of working through issues such as this one. I do want

to make clear today, though, that I am speaking for the State of Colorado and not ECOS or the DOD Forum.

I am grateful that the States are being asked by this subcommittee for their opinions early on. I believe that, based upon the early outreach and the willingness that DOD and congressional staff have expressed to me with respect to working on this issue, we can craft language that meets the needs of all parties.

I am here today to try and offer some suggestions that would be helpful in resolving some of the issues surrounding the proposed amendments to certain environmental laws. The suggestions that I offer today are based upon the principle that no harm to the public would be acceptable to the State of Colorado, DOD, or this subcommittee, and I believe the suggestions I will offer are consistent with this criterion.

With some changes, in general, I think Colorado would be comfortable with the goal stated by the Armed Services Committee staff and DOD of ensuring that essential training activities can be accomplished and that public health is protected. My understanding of what DOD is proposing is certain exemptions and time extensions from portions of the CAA, exemptions from RCRA on operational ranges, and some clarification with respect to definition of what is a release under CERCLA.

First I would like to address RCRA. I want to say at the outset that I do not know of any State that issues RCRA permits or attempts to regulate normal training activities of the military. Colorado has worked well with DOD on training activities on their sites in our State and I think that the proposed legislation attempts to codify a generally good relationship with Colorado and other States on these issues.

I have had several conversations with DOD and Armed Services Committee staff on this topic and I think that I understand what they are attempting to accomplish and I think their goals in RCRA should be supportable by States. What DOD is seeking are protections for their training activities on a range. They are not, according to my conversations with them, seeking to exempt themselves from any impact caused by training off a range.

At the outset I want to state that, like most environmental laws, RCRA is relatively old and almost every word in the statute has a meaning applied to it, either through adjudication, regulation, or common understanding. The current proposal before you seeks to change definitions in RCRA to exempt out certain training activities.

The first issue I would raise with respect to the language as drafted is that it allows for exemptions at operational ranges. I cannot find a definition of an operational range in current law or regulation and therefore do not know to what ranges this section would apply.

Second, it is also unclear from the drafting whether the activities exempted must be on operational ranges or whether certain activities can occur anywhere and still be exempted. My understanding from talking with DOD is that they are seeking exemptions from RCRA at operational ranges for legitimate DOD training activities. If so, this language can be clarified to meet that goal.

Third, ground and surface water protection are also a concern in this regard and, depending upon the soil type and how near the ground water training would occur, there is the possibility of some contamination by constituents of spent or live ordnance. Off-site impacts could be created from these activities and these should be addressed. It is my understanding that DOD's proposal would not affect their obligations under the Safe Drinking Water Act and we would just recommend that this be stated explicitly in any legislation.

I would like to make the following suggestions to DOD's language with respect to the RCRA portion of it for your consideration. First, do not change current definitions that are in current law. Instead, create an exemption under a new section of RCRA.

Second, limit the exemption to active and inactive ranges and the munitions on those ranges. My understanding after talking with DOD is that they are seeking protection on active ranges and that they are seeking to preserve their ability to use inactive ranges in the future.

Third, the exemption for inactive ranges may be controversial. However, the way it was explained to me by DOD was that these ranges are potentially useful in the future and the military does not want to give up their potential use because training sites are often difficult to find. Therefore, an exemption in both areas makes sense. However, from a State perspective it would be helpful if every few years the military was forced to go through a review process on these inactive ranges and, after seeing public input, determine whether they should remain inactive, go to active status, or move to cleanup status.

Fourth, limit the exemption with tight language so that we know what we are exempting.

Fifth, allow for some additional ground water monitoring to ensure that if there is some contamination and it is moving off site we know that and can deal with that before it does.

Sixth, state clearly that in no way does this section impact cleanup responsibility of DOD once a site no longer meets the definition of an inactive or an active range.

Seventh, just mandate good recordkeeping. It is much easier to do a cleanup when there is good recordkeeping as to what was shot, how many duds were fired. We have had some experience in Colorado where the records were not as good as we would have liked and it really causes a lot more expense in the future to go and do the survey.

I think, with these suggestions, that you would meet the intent of DOD and would allow the States to be comfortable that we are working together with them on environmental issues.

The next exemption in the language surrounds an exemption from the term "release" as used in CERCLA. Again, the suggestion I would make here is that you use active and inactive ranges as the operational wording, as opposed to operational range. This is really a limitation on Federal authority. Therefore, if you were to make the active-inactive change, it would make—I think the States should be comfortable with that.

Finally, I would like to address the proposed changes in the CAA. Now, this is the most difficult issue to work with because you

are dealing with potential offsite impacts. The legislation would exempt the military from meeting a general conformity test, that no Federal action will cause or contribute to the violation of the NACs, and would waive non-attainment caused by certain military readiness activities.

There are numerous ways to handle this. My initial suggestion to fix this problem would be to exempt military readiness activities altogether, instead of for merely 3 years. However, you should still require that the emissions budgets be developed as envisioned by this proposal and then require offsets on other non-military readiness activities in the impacted areas from DOD sources. If this would not offset the emissions increase, then they could be required to purchase emissions credit from other sources in the area.

The downside to this proposal is that it could be expensive and there is not often a developed trading program in a lot of areas.

Another alternative would be to direct EPA to expand their natural events policy to include military activities. This allows—we use this quite a bit in the State of Colorado. This allows for a certain—it allows exemptions for certain activities, mainly natural activities. In Colorado it is a lot of wind-borne dust, PM–10 exceedances. It does require that there be some public outreach and that there be some restrictions on certain activities where applicable, but it gets you out of a non-attainment status in an area.

The downside of this proposal, of course, would be that off-site impacts from training would still occur and may raise the concern of the community.

I would be willing to continue to explore solutions to the issue brought up by DOD, but at this point I would encourage the subcommittee to proceed cautiously, at least with the CAA portion of this. I do think a lot of these issues are resolvable. We deal with very difficult issues in the State when we are regulating and this, frankly, is a difficult one, but it should be resolvable. We should be able to provide the relief to the military that they seek and we should still be able to protect public health and the environment.

Thank you for asking me to testify. I will take any questions.

[The prepared statement of Mr. Benevento follows:]

PREPARED STATEMENT BY DOUGLAS BENEVENTO

Good morning, my name is Doug Benevento and I am the executive director of the Colorado Department of Public Health and Environment. In that position I am responsible for the oversight of the State of Colorado's air, water, solid waste, and hazardous waste programs as well as the bulk of the State's health programs. The majority of the programs that I am responsible for on the environmental side are programs that are delegated to the State through the CAA, the Clean Water Act, or the Resource Conservation and Recovery Act. Also, I am a member of the Environmental Council of States and serve on that body's executive committee. Also, I am also a co-chair of ECOS' DOD forum, which is designed to open communications with DOD for the purpose of working through issues like this one. I do want to make clear though that today I am speaking for the State of Colorado and not ECOS or the DOD forum.

It is a great honor for me to be testifying before the United States Senate. Prior to moving back to Colorado in June of 1999 I had worked for almost 10 years for Senator Allard in a variety of staff positions and it is truly a great honor to be testifying before a subcommittee he serves on. Also, I spent some time in the mid-1990s working for both Mr. Allard and Mr. Roberts on the House Agriculture Committee when Mr. Roberts chaired the full committee and Mr. Allard chaired a subcommittee. I am equally honored to be testifying before a subcommittee he serves on. Throughout the time I spent working in Congress I predominately worked on envi-

ronmental issues and given the number of active and inactive military sites in Colorado, working on issues surrounding Federal facilities was a major issue.

Since returning to Colorado to first run the environmental programs and subsequently to run the entire agency my involvement in Federal facilities has increased dramatically both from the standpoint of day-to-day cleanup and oversight of these facilities to such non-routine matters such as how to handle sarin nerve gas bomblets manufactured decades ago at the Rocky Mountain Arsenal and found in a junk pile at the site.

My experience on both Capitol Hill and in State government has given me a unique perspective on environmental issues as they impact the military. Those who have a background developing environmental laws or those who are environmental regulators tend to automatically react negatively to any change in the laws that could provide more flexibility to the military. This conclusion is reinforced for me by reviewing testimony from a hearing on this issue last year where colleagues of mine in environmental regulation did a superb job of pointing out every potential and actual shortfall in a similar proposal without offering any suggestions for making the proposal viable.

On the other hand, the proponents of more flexibility tend to develop their proposals in isolation and then spring them out at the last moment, professing surprise that there would be any questions that would arise. A good example of this was also last year when final language was proposed and States learned about it at about the time it was being considered in Congress. Last year we did not feel like our advice was being seriously sought or considered.

This year is different and I am very grateful that States are being asked by this committee for their opinions early on. I believe that based upon the early outreach and the willingness that DOD and congressional staff have expressed to me with respect to working on this issue we can craft language that meets the needs of all parties.

Much of the credit for this is due to the outreach that this committee and other committees are engaging in on this topic. I also want to thank DOD for spending a lot of time with me over the past week and walking through the issues they face. My experience is that these issues are resolvable so long as the lines of communication are open. I commend the subcommittee for helping open those lines of communication.

I am here today to try and offer some suggestions that would be helpful in resolving some of the issues surrounding the proposed amendments to certain environmental laws. These amendments are called the Readiness and Range Preservation Initiative and seek to provide greater flexibility for the military so that they ensure that their training is done in a fashion that is timely and not hindered by unnecessary environmental requirements. I offer my suggestions today in the spirit of allowing DOD to reach that goal while at the same time ensuring that offsite impacts are prevented or mitigated.

The suggestions that I offer today are based upon the principle that no harm to the public would be acceptable to the State of Colorado, DOD, or this subcommittee. I believe that the suggestions that I will offer are consistent with this criterion.

Specifically, I would today like to address the proposal of DOD with respect to the changes they are seeking to CERCLA, RCRA, and the Clean Air Act (CAA). These are the environmental laws that my agency is either responsible for implementing through a delegation or, in the case of CERCLA, a law which we partner with EPA on implementing.

With some changes in general I think Colorado would be comfortable with the goals stated by Armed Services Committee staff and DOD of ensuring essential training activities can be accomplished and that public health is protected.

I would like to spend the rest of my time defining what I see as the issues and then offer suggestions on how those issues can be resolved in a fashion that ensures military training can be done without unnecessary delay while also ensuring that public health and the environment is protected. I don't have statutory language to offer at this time but would be happy to draft something for the subcommittee if it would be helpful.

After reading the statutory language and prior testimony on this issue it appears as if DOD is seeking exemptions from certain portions of environmental laws including: the Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and seeking time extensions from compliance with portions of the Clean Air Act. My understanding of the intent of the DOD in seeking these exemptions under RCRA and CERCLA is to allow for training at specifically identifiable sites. As I understand, DOD is not seeking to be excused from any cleanup obligations under RCRA or CERCLA for contamination it causes, nor from any off-site impacts, nor from obligations under

the Safe Drinking Water Act. Finally, DOD is not seeking a permanent exemption from hazardous waste management requirements under RCRA at the defined sites. Under the CAA my understanding of the intent of the DOD is to allow for movement of planes and other mechanized material between bases without triggering immediate applicability of portions of the CAA. In short:

1. They are seeking time extensions from portions of the Clean Air Act.
2. Also, they are seeking exemptions from RCRA on operational ranges where the military is actively undertaking military training where, "explosives, unexploded ordnance, munitions, munitions fragments, or constituents thereof," could be found.
3. Finally, they are seeking a clarification of the definition of what is a release under CERCLA.

I would like to comment on the proposed changes to RCRA, CERCLA, and the CAA and to offer some suggestions that from my perspective would make all three proposals more workable.

First, I would like to address RCRA. I want to state at the outset that I don't know of any State that issues RCRA permits or attempts to regulate normal training activities of the military. Colorado has worked well with DOD on training activities on their sites in our State. I think the proposed legislation attempts to codify a generally good relationship with Colorado and other States on these issues.

I have had several conversations with DOD and Armed Services Committee staff on this topic and I think that I understand what they are attempting to accomplish and I think their goals in RCRA should be supportable by States. What DOD is seeking are protections for their training activities on a range. They are not, according to my conversations with them, seeking to exempt themselves from any impact caused by training off of a range.

For example, in conversations with DOD they were clear that under RCRA they are not seeking a change to permitting of open burning or open detonation (OB/OD) when used as a disposal activity. Colorado currently permits such activities and will continue to permit such activities even under their proposed concept. However, under this law an OB/OD activity that is a necessary part of training would be exempt. That is legitimate and currently the practice in Colorado and other States.

At the outset I want to state that like most environmental laws RCRA is relatively old and almost every word in the statute has a meaning applied to it either through adjudication, regulation, or common understanding. The current proposal before you seeks to change definitions in RCRA to exempt out certain training activities on certain DOD sites.

The first issue that I would raise is that the language as drafted allows for exemptions at operational ranges. I can't find a definition of an operational range in current law or regulation and therefore don't know to what ranges this section would apply. There is no limitation on what is an operational range and that obviously causes some concern.

Second, it is also unclear from the drafting whether the activities exempted must be on an operational range or whether certain activities can occur anywhere and still be exempted. My understanding from talking with DOD is that they are seeking exemptions from RCRA at operational ranges for legitimate DOD training activities. If that is correct this language is too broad and should be narrowed to accomplish the end they are seeking—assurances that sites they operate on would not be subject to RCRA permitting that could interfere with their training.

Third, ground water and surface water protection are also of concern in this regard. Depending upon the soil type and how near the ground water is to the surface there is the possibility that ground water could be contaminated by constituents of spent or live ordnance. Offsite impacts could be created from these activities and these should be addressed. It is my understanding that DOD's proposal would not affect their obligations under the Safe Drinking Water Act. It would be helpful if the legislation stated this explicitly.

Therefore, I would like to suggest the following changes to the language that has been provided to the subcommittee. First, don't change current definitions or any current law; instead create an exemption under a new section of RCRA. Second, limit the exemption to active ranges and inactive ranges and the munitions on those ranges. My understanding after talking with DOD is that they are seeking protection on active ranges and that they are seeking to preserve their ability to use inactive ranges in the future. I would avoid creating new terms, such as "operational range" because it isn't clear what that means. Instead, what I would recommend is that you create an exemption based on current definitions. Third, the exemption for inactive ranges may be controversial. However, the way it was explained to me by DOD was that these are ranges that are potentially useful in the future. The

military does not want to give up their potential use because training sites are becoming difficult to find. Therefore, an exemption in both these areas makes sense. However, from a State perspective it would be helpful if every few years the military was forced to go through a review process of these inactive ranges and, after seeking public input, determine whether they should remain inactive, go to active status, or move to cleanup status. Fourth, limit the exemption with tight language so that we all understand what we are exempting and what we are not exempting. Fifth, I would recommend that some kind of additional ground and/or surface water monitoring be required if conditions dictate that to be appropriate. If the monitors did catch contamination, then appropriate actions to prevent an environmental or public health concern could be required by States. Sixth, state clearly that in no way does this section impact cleanup responsibilities of DOD once the site no longer meets the definition of an active range. Seventh, mandate that DOD maintain good records of activities that take place on the range so that we know what was used on the site and what will be necessary for cleanup, without an expensive remedial investigation. Finally, it should be made clear that the exemptions are available only to DOD and not to contractors or other private parties.

What this gets you is a solution to the expressed concern that RCRA could impact military training. What it does not do is expose the public to contaminants from ordnance. In this regard, I would also suggest the subcommittee strike the part of proposed §2019(a)(1)(A)(i)(III) that allows material that goes off-site to be addressed under CERCLA before States can take action under their authorities to protect public health and the environment. There is no military readiness rationale for DOD to be given this priority for off-range material, and States need to be able to exercise their authority to protect the public. We have examples in Colorado from sites like the Rocky Mountain Arsenal where we have found it important to have the ability to exercise State authority over potential off-site impacts.

A better approach may be one that several States have already worked out with DOD in a collaborative effort called the "Munitions Response Committee." In this subcommittee we have agreed with DOD to identify key decision points in the clean up process for which we will seek consensus on decisions. If that can't be achieved, there would be an expeditious dispute resolution process. If agreement still can't be achieved, each party would rely on their existing CERCLA and RCRA authorities for action. This approach preserves both DOD's and States' existing authorities while making every effort to reach agreement. Further, since there is some agreement on this issue currently, it should not require a statutory change to RCRA or CERCLA.

Finally, there has been considerable work and thinking over the last several years on the role of enforceable land use controls on sites where contamination remains. One example is Colorado's environmental covenants law. Mechanisms like Colorado's law give communities and regulatory agencies comfort that contamination is being monitored and that controls to protect public health and the environmental are established and enforced. This kind of approach should be considered for munitions that remain on DOD ranges.

With the above caveats and changes I don't think that this type of narrow exemption under RCRA should cause a concern for human health or the environment. This exemption would meet DOD's need to conduct readiness activities without regulatory hindrance.

The next exemption in the language that I have seen surrounds an exemption from the term "release" as used in CERCLA for the purposes of triggering action under that law. The exemption from release would apply to explosives, ordnance, etc. on operational ranges but would not apply to releases offsite of an operational range.

As with RCRA conceptually I would agree that there should be some middle ground that could be reached on a narrow exemption under the same criteria I outlined above for RCRA.

Again I would encourage the subcommittee to abandon any rewrite of the body of CERCLA and instead encourage adding on an exemption to CERCLA.

The change being sought by DOD is really a limitation on Federal power. Since Superfund is not a delegated law, this limitation would apply to an action by the Federal Government. The only recommendation we would have is that the exemption should apply, as with RCRA above, to active and inactive ranges and not operational ranges because as I noted above, there is not yet an established definition of operational range and therefore what that term would apply to is uncertain. There is a definition of active and inactive range that should have some common understanding amongst both the military and environmental regulators that should provide some certainty as to what is being exempted.

Finally, I would like to address the proposed changes to the CAA.

This portion of the proposal is the most difficult to work with because it involves offsite releases. As I mentioned earlier in my testimony the principle that I ran these proposals through was whether any exemption would allow for an offsite release. Within the borders of a training area I think that statutory flexibility is appropriate. However, as Colorado's top public health official I must be concerned about offsite releases from any activity and then I must try and ensure that those impacts are minimized.

There are two applicable air quality sections of the proposed legislation.

The first is conformity. There are two parts to conformity; the first is the concept of general conformity, and the second is transportation conformity.

This legislation would exempt the military from meeting the general conformity test that no Federal action will cause or contribute to the violation of the National Ambient Air Quality Standards (NAAQS). Under the proposal within 3 years after starting a military readiness activity, DOD would have to come into compliance with the requirements of the applicable law. The general conformity requirements would apply to any non-attainment or maintenance area of a State. In Colorado for example, this would most likely apply to the Colorado Springs area and the Denver area.

The general conformity provisions would most likely apply in Colorado to fog oil or fire that could lead to particulate non-attainment situations. An area would have to develop a full SIP showing that all other measures are being taken to meet attainment including adoption of any mandatory Federal programs prescribed for that type of non-attainment area.

My concern with this language is first and foremost the offsite impacts of the activities and the 3-year exemption from addressing those offsite impacts. However, I am also slightly confused by how this section would be implemented. The language says that there is a 3-year exemption but the administrator must approve the plan. I assume that the administrator and the States would have to show at some point that within years some control of the emissions from the military readiness activity had occurred. Second, I would like further information as to when the 3-year clock would start running. Section 2018(a)(3) states that, "within 3 years of the date new activities begin" the activity must conform to the requirements of the CAA. I think it would be important to have a common understanding on when these activities begin to avoid confusion. For example, if planes are being brought into an area is that a military readiness activity that triggers this section or does the activity begin when the new planes start arriving or when they are all on site?

Also, I think there may be an important practical problem with this approach. My responsibility is to protect public health and environment in Colorado. Therefore, if for example the Denver Metro Area were to fall into noncompliance with the NAAQS, my goal would be to put controls in place as quickly as possible to protect air quality in the area. Therefore, if there were a 3-year restriction on controls at any military readiness activity we deemed was contributing to the problem my response would be to make my restrictions on other sources more stringent to make up for what the military was not contributing. As a practical matter, what I would want to do in this situation is put control in place to ensure an area's air quality was safe. Because I would have to wait 3 years for certain exempted activities it would make sense for me to merely shift whatever burden turned out to be to other sources. This you can imagine would not be welcomed by those sources that felt they were being disproportionately controlled.

I don't want to appear to be hypercritical of this proposal but I think it is important that it be fully understood prior to implementation so that States and EPA know fully what to expect. Also, it is important that DOD understand the potential impact from this change.

My initial suggestion to fix this problem would be to exempt military readiness activities altogether instead of for merely 3 years. However, you should still require that the emissions budgets be developed as envisioned by this proposal and then require offsets on other non-military readiness activities in the impacted area from DOD sources. For example, requiring stricter controls at any power plants on military bases or require stricter controls for non-exempt vehicle fleets. If this would not offset the emissions increase then they would be required to purchase emissions credits from other sources in the area.

This would meet the intent of DOD. However, this approach also has its own shortcomings that I want to be certain to point out. First, it could require the expenditure of significant amounts of money depending upon the offsets. Second, the offsets may not be available in a given area or may not be sufficient. Third, purchasing credits is a good market based approach but in many areas there is not a well-developed credit-trading program or credits may not be available in a given area.

Another alternative would be to direct EPA to expand their natural events policy to include military activities. As you may know, EPA has a policy that allows States

to avoid non-attainment due to natural events. This policy has been used by Colorado to avoid PM–10 non-attainment in certain areas of the State that experience significant windborne dust and that result in attainment problems. The purpose of the policy is to first recognize that there are certain uncontrollable events that can cause non-attainment that should not lead to non-attainment designation. However, this policy does have certain mitigation and notification requirements that could be burdensome. Further, the policy would likely have to be adjusted so that it would meet the needs of the military better.

The downside to this proposal of course would be that offsite impacts from training would still occur and may raise the concern of the community.

I would be willing to continue to explore solutions to the issues brought up by DOD but at this point I would encourage the subcommittee to proceed cautiously with this portion of the proposal.

I understand that one of the motivations behind DOD's present proposal is concern about citizen suits potentially impacting its military readiness activities. Consistent with my overall comments, if this is a concern that Congress wishes to address, I suggest an exemption from citizen suits for readiness activities on active ranges rather than the definitional changes to the environmental laws proposed.

Finally, as you are well aware, the question of sovereign immunity for DOD's waste management and cleanup obligations has been dealt with several times over the years by Congress. This has been necessary due to the narrow interpretation given such waivers by the courts. In the interest of preserving the current state of the law and just narrowly addressing DOD's concern, the committee may wish to affirm that any exemption granted not enlarge the universe of current sovereign immunity.

Thank you for your time and for asking me to testify. I would like to finish by re-emphasizing my belief that most of the issues brought up by DOD are resolvable with appropriate statutory changes. However, the one difficult area I would encourage some caution is with changes to the CAA.

Senator ENSIGN. Thank you.

Mr. Cohen.

STATEMENT OF BENEDICT S. COHEN, DEPUTY GENERAL COUNSEL, ENVIRONMENT AND INSTALLATIONS, DEPARTMENT OF DEFENSE

Mr. COHEN. Thank you, Mr. Chairman. It is a privilege to be here to discuss the Readiness and Range Preservation Initiative.

I would like at the outset to try to define what is and is not at issue in our legislative package. Press accounts have suggested that the Defense Department is broadly on the offensive, seeking sweeping exemptions from the environmental laws. It has been suggested that we seek such exemptions for our closed ranges, our contractors, our non-readiness activities, and our existing cleanup obligations concerning chemicals like perchlorate.

None of these assertions accurately reflect our actual intent. We have already revised our proposal to clarify that it has no effect on closed ranges. Working with EPA, we have developed further language clarifying that it has no effect on our contractors, and we stand ready to work with this subcommittee or anyone else to further clarify the sole focus of our proposal: the Department's testing, training, and military operations.

In reality, our proposals are strictly defensive in nature, designed to shore up existing State and Federal regulatory policies that are facing courtroom challenges. It is others who seek a sweeping change in longstanding environmental policies with respect to the military. They believe that military readiness activities have been dramatically underregulated and they seek through litigation to overturn existing State and Federal regulatory policy and to im-

pose new and unprecedented burdens on our core military readiness activities.

That, Mr. Chairman, is what is actually at issue in this debate. That future has arrived for the Navy through private litigation under the Marine Mammal Protection Act. Despite a volatile international situation and a serious and growing submarine threat to the fleet, the Navy's anti-submarine warfare program is being crippled through litigation.

Last year, in the SURTASS LFA case, a court cast aside the expert scientific judgment of the regulatory agency. It cast aside as well that agency's settled interpretations of its own statute, interpretations validated by the National Academy of Sciences, and it cast aside a Navy regulatory compliance program 6 years in the making, based on some $10 million worth of cutting-edge science.

That future is arriving very rapidly under the ESA. A wave of critical habitat litigation is rapidly developing. In the year 2000, critical habitats had been designated for just 120 species, just over 10 percent of all those listed. Recently a single court order remanded the Interior Department's critical habitat decision for 245 species in Hawaii alone.

One target of this wave of litigation is the Clinton administration policy allowing our natural resource management plans to serve in lieu of critical habitat. If successful, this challenge would fundamentally alter the way the Interior Department regulates our operational ranges and the way we test and train there. In April, just a few weeks from now, the Interior Department is required by court order to revisit the Pendleton and Miramar non-designation decisions that Ms. Clark referred to in her earlier testimony.

That regulatory future is plainly visible in litigation seeking to reverse longstanding State and Federal regulatory policies under the Superfund and solid waste management statutes and to compel unprecedented and far more intrusive regulation of our test and training on operational ranges.

We face a similar threat to readiness under the CAA. Although our CAA proposal is not driven by litigation, it is similar to the rest of our package in that it would give States and EPA some additional flexibility to pursue their existing preference to accommodate military readiness activities wherever possible.

Through luck and hard work, State regulators in the past have been able to accommodate the basing of a new weapons system or the redeployment of existing systems. Our proposal would make it easier for them to do so, and the alternative could be significant delay in basing critical new weapon systems.

The proposals we offer have minor environmental impacts, but significant benefits to readiness. They largely codify existing bipartisan policies that have served both readiness and the environment well.

I would be pleased to take your questions.

[The prepared statement of Mr. Cohen follows:]

PREPARED STATEMENT BY BENEDICT S. COHEN

INTRODUCTION

Mr. Chairman and distinguished members of this subcommittee, I appreciate the opportunity to discuss with you the very important issue of sustaining our test and

training capabilities, and the legislative proposal that the administration has put forward in support of that objective. In these remarks I would like particularly to address some of the comments and criticisms offered concerning these legislative proposals.

Addressing Encroachment

We have only recently begun to realize that a broad array of encroachment pressures at our operational ranges are increasingly constraining our ability to conduct the testing and training that we must do to maintain our technological superiority and combat readiness. Given world events today, we know that our forces and our weaponry must be more diverse and flexible than ever before. Unfortunately, this comes at the same time that our ranges are under escalating demands to sustain the diverse operations required today, and that will be increasingly required in the future.

This current predicament has come about as a cumulative result of a slow but steady process involving many factors. Because external pressures are increasing, the adverse impacts to readiness are growing. Yet future testing and training needs will only further exacerbate these issues, as the speed and range of our weaponry and the number of training scenarios increase in response to real-world situations our forces will face when deployed. We must therefore begin to address these issues in a much more comprehensive and systematic fashion and understand that they will not be resolved overnight, but will require a sustained effort.

Environmental Stewardship

Before I address our comprehensive strategy, let me first emphasize our position concerning environmental stewardship. Congress has set aside 25 million acres of land—some 1.1 percent of the total land area in the United States. These lands were entrusted to the Department of Defense (DOD) to use efficiently and to care for properly. In executing these responsibilities we are committed to more than just compliance with the applicable laws and regulations. We are committed to protecting, preserving, and, when required, restoring, and enhancing the quality of the environment.

- We are investing in pollution prevention technologies to minimize or reduce pollution in the first place. Cleanup is far more costly than prevention.
- We are managing endangered and threatened species, and all of our natural resources, through integrated natural resource planning.
- We are cleaning up contamination from past practices on our installations and are building a whole new program to address unexploded ordnance on our closed, transferring, and transferred ranges.

Balance

The American people have entrusted these 25 million acres to our care. Yet, in many cases, these lands that were once "in the middle of nowhere" are now surrounded by homes, industrial parks, retail malls, and interstate highways.

On a daily basis our installation and range managers are confronted with a myriad of challenges—urban sprawl, noise, air quality, air space, frequency spectrum, endangered species, marine mammals, and unexploded ordnance. Incompatible development outside our fence-lines is changing military flight paths for approaches and take-offs to patterns that are not militarily realistic—results that lead to negative training and potential harm to our pilots. With over 300 threatened and endangered species on DOD lands, nearly every major military installation and range has one or more endangered species, and for many species, these DOD lands are often the last refuge. Critical habitat designations for an ever increasing number of threatened or endangered species limit our access to and use of thousands of acres at many of our training and test ranges. The long-term prognosis is for this problem to intensify as new species are continually added to the threatened and endangered list.

Much too often these many encroachment challenges bring about unintended consequences to our readiness mission. This issue of encroachment is not going away. Nor is our responsibility to "train as we fight."

2003 READINESS AND RANGE PRESERVATION INITIATIVE (RRPI)

Overview

DOD's primary mission is maintaining our Nation's military readiness, today and into the future. DOD is also fully committed to high-quality environmental stewardship and the protection of natural resources on its lands. However, expanding restrictions on training and test ranges are limiting realistic preparations for combat and therefore our ability to maintain the readiness of America's military forces.

Last year, the administration submitted to Congress 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. Two of the enacted provisions allow us to cooperate more effectively with local and State governments, as well as private entities, to plan for growth surrounding our training ranges by allowing us to work toward preserving habitat for imperiled species and assuring development and land uses that are compatible with our training and testing activities on our installations.

Under the third provision, Congress provided the Department a regulatory exemption under the Migratory Bird Treaty Act (MBTA) for the incidental taking of migratory birds during military readiness activities. We are grateful to Congress for these provisions, and especially for addressing the serious readiness concerns raised by recent judicial expansion of the prohibitions under the MBTA. I am pleased to inform this subcommittee that as a direct result of your legislation, Air Force B–1 and B–52 bombers, forward deployed to Anderson Air Force Base, Guam, are performing dry run training exercises over the Navy's Bombing Range at Farallon de Medinilla in the Commonwealth of the Northern Mariana Islands.

Last year, Congress also began consideration of the other five elements of our RRPI. 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 DOD remains fully committed to its stewardship responsibilities. These five remaining provisions:

- Authorize use of integrated natural resource management plans in appropriate circumstances as a substitute for critical habitat designation;
- Reform obsolete and unscientific elements of the Marine Mammal Protection Act, such as the definition of "harassment," and add a national security exemption to that statute;
- Modestly extend the allowable time for military readiness activities like bed-down of new weapons systems to comply with Clean Air Act; and
- Limit regulation of munitions on operational ranges under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and Resource Conservation and Recovery Act (RCRA), if and only if those munitions and their associated constituents remain there, and only while the range remains operational.

Before discussing the specific elements of our proposal, I would like to address some overarching issues. A consistent theme in criticisms of our proposal is that it would bestow a sweeping or blanket exemption for the Defense Department from the Nation's environmental laws.[1] No element of this allegation is accurate.

First, our initiative would apply only to military readiness activities, not to closed ranges or ranges that close in the future, and not to "the routine operation of installation operating support functions, such as administrative offices, military exchanges, commissaries, water treatment facilities, storage, schools, housing, motor pools . . . nor the operation of industrial activities, or the construction or demolition of such facilities." Our initiative thus is not applicable to the Defense Department activities that have traditionally been of greatest concern to State and Federal regulators. It does address only uniquely military activities—what DOD does that is unlike any other governmental or private activity. DOD is, and will remain, subject to precisely the same regulatory requirements as the private sector when we per-

[1] See, e.g., The New York Times, March 22, 2003 ("[T]he Defense Department has asked Congress to approve a program . . . that would broadly exempt military bases and some operations from environmental regulation"); statement of Philip Clapp, President, the National Environmental Trust, March 5, 2003 ("The Bush administration is blatantly exploiting the war to exempt military bases all over the country from environmental laws designed to protect public health"); Julie Cart, Los Angeles Times, "Military Seeks an Exemption of its Own", March 19, 2003 ("[T]he Pentagon is asking Congress to exempt military installations . . . from environmental laws protecting marine mammals and endangered species and requiring the cleanup of potentially toxic weapons sites"); Eric Pianin, The Washington Post, "Environmental Exemptions Sought" ("[T]he Bush administration this week asked Congress to exempt the Defense Department from a broad array of environmental laws governing air pollution, toxic waste dumps, endangered species, and marine mammals"); John Stanton, Congress Daily AM, March 6, 2003 ("The Bush administration's Defense Department reauthorization proposal includes a raft of exemptions from environmental laws long sought by the Pentagon, including endangered species protections and air quality rules"); Natural Resources Defense Council website, March 12, 2003 ("[t]he Department of Defense (DOD) . . . seeks immunity from five fundamental Federal laws"); CQ Weekly, March 8, 2003, "The Pentagon's Exemption Wish List" ("The Defense Department has asked Congress to exempt military activities from a range of environmental laws").

form the same types of activities as the private sector. We seek alternative forms of regulation only for the things we do that have no private-sector analogue: military readiness activities.

Moreover, our initiative largely affects environmental regulations that don't apply to the private sector or that disproportionately impact DOD:

- Endangered Species Act "critical habitat" designation has limited regulatory consequences on private lands, but can have crippling legal consequences for military bases.
- Under the Marine Mammal Protection Act (MMPA), the private sector's Incidental Take Reduction Plans give commercial fisheries the flexibility to take significant numbers of marine mammals each year, but are unavailable to DOD—whose critical defense activities are being halted despite far fewer marine mammal deaths or injuries a year.
- The Clean Air Act's "conformity" requirement applies only to Federal agencies, not the private sector.

Our proposals therefore are of the same nature as the relief Congress afforded us last year under the MBTA, which environmental groups are unable to enforce against private parties but, as a result of a 2000 circuit court decision were able and willing to enforce, in wartime, against vital military readiness activities of the DOD.

Nor does our initiative "exempt" even our readiness activities from the environmental laws; rather, it clarifies and confirms existing regulatory policies that recognize the unique nature of our activities. It codifies and extends EPA's existing Military Munitions Rule; confirms the prior administration's policy on integrated natural resource management plans and critical habitat; codifies the prior administration's policy on "harassment" under the MMPA; ratifies longstanding State and Federal policy concerning regulation under RCRA and CERCLA of our operational ranges; and gives States and DOD temporary flexibility under the Clean Air Act. Our proposals are, again, of the same nature as the relief Congress provided us under the MBTA last year, which codified the prior administration's position on DOD's obligations under the MBTA.

Ironically, the alternative proposed by many of our critics—invocation of existing statutory emergency authority—would fully exempt DOD from the waived statutory requirements for however long the exemption lasted, a more far-reaching solution than the alternative forms of regulation we propose.

Accordingly, our proposals are neither sweeping nor exemptive; to the contrary, it is our critics who urge us to rely on wholesale, repeated use of emergency exemptions for routine, ongoing readiness activities that could easily be accommodated by minor clarifications and changes to existing law.

Existing emergency authorities

As noted above, many of our critics state that existing exemptions in the environmental laws and the consultative process in 10 USC 2014 render the Defense Department's initiative unnecessary.

Although existing exemptions are a valuable hedge against unexpected future emergencies, they cannot provide the legal basis for the Nation's everyday military readiness activities.

- The MMPA, like the MBTA, Congress amended last year, has no national security exemption.
- 10 USC 2014, which allows a delay of at most 5 days in regulatory actions significantly affecting military readiness, is a valuable insurance policy for certain circumstances, but allows insufficient time to resolve disputes of any complexity. The Marine Corps' negotiations with the Fish and Wildlife Service (FWS) over excluding portions of Camp Pendleton from designation as critical habitat took months. More to the point, section 2014 merely codifies the inherent ability of cabinet members to consult with each other and appeal to the President. Since it does not address the underlying statutes giving rise to the dispute, it does nothing for readiness in circumstances where the underlying statute itself—not an agency's exercise of discretion—is the source of the readiness problem. This is particularly relevant to our RRPI proposal because none of the five amendments we propose have been occasioned by the actions of State or Federal regulators. Four of the five proposed amendments (RCRA, CERCLA, MMPA, and Endangered Species Act (ESA)), like the MBTA amendment Congress passed last year, were occasioned by private litigants seeking to overturn Federal regulatory policy and compel Federal regulators to impose crippling restrictions on our readiness activities. The fifth, our CAA amendment, was pro-

posed because DOD and EPA concluded that the act's "general conformity" provision unnecessarily restricted the flexibility of DOD, State, and Federal regulators to accommodate military readiness activities into applicable air pollution control schemes. Section 2014, therefore, although useful in some circumstances, would be of no use in addressing the critical readiness issues that our five RRPI initiatives address.

• Most of the environmental statutes with emergency exemptions clearly envisage that they will be used in rare circumstances, as a last resort, and only for brief periods.

• Under these statutes, the decision to grant an exemption is vested in the President, under the highest possible standard: "the paramount interest of the United States," a standard understood to involve exceptionally grave threats to national survival. The exemptions are also usually limited to renewable periods of a year (or in some cases as much as 3 years for certain requirements).

• The ESA's section 7(j) exemption process, which differs significantly from typical emergency exemptions, allows the Secretary of Defense to direct the Endangered Species Committee to exempt agency actions in the interest of national security. However, the Endangered Species Committee process has given rise to procedural litigation in the past, potentially limiting its usefulness—especially in exigent circumstances. In addition, because it applies only to agency actions rather than to ranges themselves, any exemption secured by the Department would be of limited duration and benefit: because military testing and training evolve continuously, such an exemption would lose its usefulness over time as the nature of DOD actions on the range evolved.

• The exemption authorities do not work well in addressing those degradations in readiness that result from the cumulative, incremental effects of many different regulatory requirements and actions over time (as opposed to a single major action).

• Moreover, readiness is maintained by thousands of discrete test and training activities at hundreds of locations. Many of these are being adversely affected by environmental provisions. Maintaining military readiness through use of emergency exemptions would therefore involve issuing and renewing scores or even hundreds of presidential certifications annually.

• Although a discrete activity (e.g., a particular carrier battle group exercise) might only rarely rise to the extraordinary level of a "paramount national interest," it is clearly intolerable to allow all activities that do not individually rise to that level to be compromised or ended by overregulation.

• Finally, to allow continued unchecked degradation of readiness until an external event like Pearl Harbor or September 11 caused the President to invoke the exemption would mean that our military forces would go into battle having received degraded training, with weapons that had received degraded testing and evaluation. Only the testing and training that occurred after the emergency exemption was granted would be fully realistic and effective.

The Defense Department believes that it is unacceptable as a matter of public policy for indispensable readiness activities to require repeated invocation of emergency authority—particularly when narrow clarifications of the underlying regulatory statutes would enable both essential readiness activities and the protection of the environment to continue. Congress would never tolerate a situation in which another activity vital to the Nation, like the practice of medicine, was only permitted to go forward through the repeated use of emergency exemptions.

That having been said, I should make clear that the DOD is in no way philosophically opposed to the use of national security waivers or exemptions where necessary. We believe that every environmental statute should have a well-crafted exemption, as an insurance policy, though we continue to hope that we will seldom be required to have recourse to them. In this regard, I would like to address the March 7, 2003 memorandum from Deputy Secretary Wolfowitz to the secretaries of the military departments concerning the process by which the Department will evaluate the use of existing exemptions under Federal environmental laws. As DOD has repeatedly testified, our efforts to address encroachment are multifaceted, and our RRPI legislative proposals are only one element of them. Other aspects of encroachment will be addressed through collaborative efforts with our State and Federal regulators, such as the drafting of the MBTA regulation mandated by Congress last year. Still

others can be addressed through improvements in the internal policies and processes of the Defense Department itself.

The Deputy Secretary's memorandum falls into this last category—improvements in our own internal processes. It addresses a critical shortcoming in our ability to efficiently and thoughtfully consider the use of these existing exemption authorities: the absence of an articulated process for developing and considering proposed exemptions. Accordingly, Dr. Wolfowitz directed the military departments to develop procedures to ensure timely evaluation of the full range of relevant considerations. Importantly, the Deputy Secretary required that proposals for exemption include, among other things, specific, quantified evidence of the impact of the regulation proposed for exemption on readiness; an explanation of the reason the readiness activity cannot be modified, relocated, or rescheduled to avoid conflict with the regulation without compromising readiness; and the reasonably practical efforts available to mitigate the environmental consequences of proceeding with the training or testing activity in question. These substantial evidentiary requirements are hardly an invitation for extensive use of exemption authority, and they certainly belie claims that the Defense Department has issued a call to the field to produce candidates for exemptions. As the memorandum states:

> "This memorandum is not intended to signal a diminished commitment to the environmental programs that ensure that the natural resources entrusted to our care will remain healthy and available for use by future generations. Any decision to seek a statutory exemption will remain a high hurdle."

The memorandum itself is a direct result of the response to our legislative initiative last year. The most frequently heard comment on our RRPI proposal at that time was that the Defense Department was seeking new legislative flexibility without having explored the flexibility inherent in existing law.[2] Although our review of our proposals has persuaded us that existing emergency exemptions cannot adequately substitute for them, for the reasons I have outlined previously, we did take this criticism to heart. We responded not by seeking a specific test case to provide an easy answer to our critics, but rather by attempting to articulate both a process and criteria to guide our use of these authorities. The memorandum has been in development for almost a year, and was painstakingly reviewed at every level of the Department. I can assure that no one in the DOD will lightly pursue or endorse the use of these extraordinary measures.

Specific Proposals

This year's proposals do include some clarifications and modifications based on events since last year. Of the five, the Endangered Species Act (ESA) and CAA provisions are unchanged. Let me address the changed provisions first.

RCRA and CERCLA

The legislation would codify and confirm the longstanding regulatory policy of EPA and every State concerning regulation of munitions use on operational ranges under RCRA and CERCLA. It would confirm that military munitions are subject to EPA's 1997 Military Munitions Rule while on range, and that cleanup of operational ranges is not required so long as material stays on the range. If such material moves off range, it still must be addressed promptly under existing environmental laws. Moreover, if munitions constituents cause an imminent and substantial endangerment on range, EPA will retain its current authority to address it on range under CERCLA section 106. (Our legislation explicitly reaffirms EPA's section 106 authority.) The legislation similarly does not modify the overlapping protections of the Safe Drinking Water Act, NEPA, and the ESA against environmentally harmful activities at operational military bases. The legislation has no effect whatsoever on DOD's cleanup obligations under RCRA or CERCLA at formerly used defense sites,

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[2] See, e.g., testimony of the Hon. Jamie Rappaport Clark before the Senate Environment and Public Works Committee hearing on S. 2225 and the Readiness and Range Preservation Initiative, July 9, 2002 ("The environmental laws targeted by this administration already contain site-specific exemption and permitting procedures that enable the Defense Department to achieve its readiness objectives while still taking the environment into account"); Jeffrey Ruch, Public Employees for Environmental Responsibility, C–SPAN interview, January 16, 2003 ("Virtually all these environmental laws have national security exemptions. . . These national security exemptions allow the Pentagon to suspend the application of environmental laws, if they can articulate a reason. They should actually spend some time using the leeway that's allowed in existing law, before suspending them."); Gordon Lubold, Marine Corps Times, "Endangered Species vs. Military Training" ("National security waivers are the appropriate way for the Pentagon to get the flexibility it needs to do training, he said [quoting Michael Jasny, senior policy analyst with the Natural Resources Defense Council]").

closed ranges, ranges that close in the future, or waste management practices involving munitions even on operational ranges (such as so-called OB/OD activities).[3]

The core of our concern is to protect against litigation the longstanding, uniform regulatory policy that: (1) use of munitions for testing and training on an operational range is not a waste management activity or the trigger for cleanup requirements, and (2) that the appropriate trigger for DOD to address the environmental consequences of such routine test and training uses involving discharge of munitions is: (a) when the range closes, (b) when munitions or their elements migrate or threaten to migrate off-range, or (c) when munitions or their elements create an imminent and substantial endangerment on-range. The legislation clarifies and confirms the applicability of EPA's CERCLA section 106 authority to on-range threats to health or the environment, and likewise clarifies and confirms the applicability of both RCRA and CERCLA to migration of munitions constituents off-range. I should note, however, that in one respect, our RCRA and CERCLA proposals do extend rather than codify existing policy. Under existing law, in the event of off-range migration, DOD could potentially be subject to overlapping or even conflicting cleanup directives secured by different regulators or private parties under RCRA and CERCLA. To avoid this risk, our proposal integrates and rationalizes the applicability of the two statutes to off-range migration by providing that should such migration occur, DOD and EPA will have the opportunity to address it under CERCLA sections 104 and 106, respectively, but that should they fail to do so RCRA authorities will apply, including but not limited to citizen suits under section 7002 and EPA's emergency authority under section 7003. This provision is analogous to 40 C.F.R. 266.202(d) of the Military Munitions Rule, which provides that a round that lands off-range is not a solid waste for purposes of RCRA corrective action or emergency authorities "if [it] . . . is promptly rendered safe and/or retrieved," but otherwise is subject to such authorities.

This legislation is needed because of RCRA's broad definition of "solid waste," and because States possess broad authority to adopt more stringent RCRA regulations than EPA (enforceable both by the States and by environmental plaintiffs). EPA therefore has quite limited ability to afford DOD regulatory relief under RCRA. Similarly, the broad statutory definition of "release" under CERCLA may also limit EPA's ability to afford DOD regulatory relief. The President's site-specific, annually renewable waiver (under a paramount national interest standard in RCRA and a national security standard in CERCLA) is inapt for the reasons discussed above.

Although its environmental impacts are negligible, the effect of this proposal on readiness could be profound. Environmental plaintiffs have filed suit at Fort Richardson, Alaska, alleging violations of CERCLA and Alaska anti-pollution law applicable under RCRA. If successful, plaintiffs could potentially force remediation of the Eagle River Flats impact area and preclude live-fire training at the only mortar and artillery impact area at Fort Richardson and dramatically degrading readiness of the 172nd Infantry Brigade, the largest infantry brigade in the Army. If successful, the Fort Richardson litigation could set a precedent fundamentally affecting military training and testing at virtually every test and training range.

Our proposed amendments to RCRA and CERCLA have been slightly revised to make it absolutely unambiguous that they do not affect our cleanup obligations on closed ranges. Last year some misinterpreted our proposal to apply to closed ranges. We included new language to clarify that our proposals have no effect whatsoever on our legal obligations with respect to cleanup of closed bases, or of bases that close in the future. If there is a way to make this point even clearer, we would be delighted to do so.[4]

In addition, we have revised a provision in last year's bill designed to ensure that our proposal did not alter EPA's existing protective authority in section 106 of the Superfund law. This year's version is therefore even clearer that, notwithstanding anything in our proposal, EPA retains the authority to take any action necessary to prevent endangerment of public health or the environment in the event such risk arose as a result of use of munitions on an operational range.

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[3] In this context I should mention that for those areas, other than operational ranges, which require action, the Department has established, with representatives from the U.S. Environmental Protection Agency, Federal Land Managers, States, and Tribes, a Munitions Response Committee. The primary goal of the committee is to define a collaborative decisionmaking process that ensures each party's rights and respective responsibilities are respected. This approach will allow coordination and, where appropriate, integration of the applicable statutory and administrative authorities under Federal and State environmental laws. This approach ensures that action will be taken within an agreed upon approach when operational ranges are closed in the future.

[4] In this regard, EPA and DOD have recently developed a further language change designed to underscore this point, which we would be happy to provide to the subcommittee.

Contractor and Off-Range Liability

Finally, I'm pleased to inform the subcommittee that EPA and DOD have further changes to suggest to the proposal to address concerns raised by some earlier testimony and comments on our proposals. The language DOD submitted to Congress largely tracks existing exclusions in the Military Munitions Rule, including 40 C.F.R. 266.202(a)(1) (i) and (ii), which provide that munitions used for training military personnel or explosives and munitions emergency response specialists, or for research, development, test, and evaluation (RDT&E) of military munitions, are not solid waste for purposes of RCRA. In the existing Military Munitions Rule, these exclusions are not limited to munitions training or RDT&E activities that occur on operational ranges; in fact, they apply to such activities anywhere they occur, on or off such ranges. Some commentators have suggested that DOD, by codifying these aspects of the Military Munitions Rule, was seeking to exclude itself and its contractors from RCRA regulation for off-range activities.

As I have mentioned, the Military Munitions Rule adopted by EPA under the prior administration already fully excludes those activities (though not the resulting waste stream generated by them) from RCRA regulation; DOD supported that policy in 1997 and continues to support it today. Nevertheless, our Readiness and Range Preservation Initiative is not intended to codify all the circumstances in which munitions use is properly excluded from RCRA regulation. Rather, it is intended to address one emerging threat to our operational ranges. Accordingly, EPA and DOD have identified two language changes that we believe will set this issue to rest.

First, in section 2019(a)(2) (A) and (B), the two provisions drawn from the Military Munitions Rule's exemption of munitions training and RDT&E, we would support the addition of the words "on an operational range" at the end of each section, thereby clarifying that these provisions, unlike their analogues in the Military Munitions Rule, do not apply to such activities outside operational ranges.[5] Second, the Department submitted as a separate part of our proposed Defense authorization a number of general definitions, including a definition of "operational range." In that proposed definition, it was explicitly stated that inactive operational ranges must be under the jurisdiction, custody, or control of the Department, but this was not explicitly stated for active operational ranges. To address any possible concern that as a result of this definition the Department's RCRA/CERCLA RRPI provision might be read to apply to "active ranges" controlled by our contractors, EPA and DOD would fully support a change that clarified that the requirement of DOD jurisdiction, custody, or control applied to both active and inactive ranges.[6]

DOD is pleased to have been able to address some of the concerns that we have heard concerning this proposal and stands ready to clarify our intent as necessary as Congress continues its consideration of these proposals.

Perchlorate and RRPI

I would also like to take the opportunity to address some other concerns about these provisions that in DOD's view do not warrant revision of the legislation. First, some observers have expressed concern that our RRPI legislation could intentionally or unintentionally affect our financial liability or cleanup responsibilities with respect to perchlorate. Nothing in either RRPI or our defense authorization as a whole would affect our financial, cleanup, or operational obligations with respect to perchlorate.

- As discussed above, nothing in our legislative program alters the financial, cleanup, or operational responsibilities of our contractors, or of DOD with respect to our contractors, either regarding perchlorate or any other chemical.
- Nothing in our legislative program alters our financial, cleanup, or operational responsibilities with respect to our closed ranges, formerly used defense sites, or ranges that may close in the future, either regarding perchlorate or any other chemical.

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[5] The new provisions would thus read: "(2) Except as set out in subparagraph (1), the term 'solid waste,' as used in the Solid Waste Disposal Act, as amended, does not include explosives, unexploded ordnance, munitions, munitions fragments, or constituents thereof that: (A) are used in training military personnel or explosives and munitions emergency response specialists (including training in proper destruction of unused propellant or other munitions) on an operational range; (B) are used in research, development, testing, and evaluation of military munitions, weapons, or weapon systems on an operational range."

[6] The provision would thus read: "The term 'operational range' means a range that is under the jurisdiction, custody, or control of the Secretary concerned and (A) is used for range activities, or (B) is not currently being used for range activities, but that is still considered by the Secretary concerned to be a range and has not been put to a new use that is incompatible with range activities."

• Nothing in our legislative program affects the Safe Drinking Water Act, which provides that EPA "upon receipt of information that a contaminant which is present or is likely to enter a public water system or an underground source of drinking water may present an imminent and substantial endangerment to the health of persons . . . may take such actions as [EPA] may deem necessary to protect the health of such persons," enforceable by civil penalties of up to $15,000 a day. 42 USC 300i(a). EPA used this Safe Drinking Water order authority to impose a cease-fire on the Massachusetts Military Reservation to address groundwater contamination from perchlorate, and nothing in our proposal would alter the events that have played out there. Because this Safe Drinking Water Act authority is not limited to CERCLA "releases" or off-range migration, it clearly empowers EPA to issue orders to address endangerment either on-range or off-range, and to address possible contamination before it migrates off-range.

• DOD is also committed to being proactive in addressing perchlorate. On November 13, 2002, DOD issued a perchlorate assessment policy authorizing assessment "if there is a reasonable basis to suspect both a potential presence of perchlorate and a pathway on installation[s] where it could threaten public health."

Delayed Response to Spreading Contamination

Some commentators have expressed concern that our RRPI proposal would create a legal regime that barred regulators from addressing contamination until it reached the fence lines of our ranges, or that it at least reflects a DOD policy to defer any action until that point. As the above discussion makes clear, EPA's continuing authority under the Safe Drinking Water Act to prevent likely contamination clearly empowers the Agency to act before contamination leaves DOD ranges. In addition, nothing in our legislative program affects EPA's authority under section 106 of CERCLA to "issu[e] such orders as may be necessary to protect public health and welfare and the environment" whenever it "determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility." Such orders are judicially enforceable. Because EPA's sweeping section 106 authority covers not only actual but "threatened release," our proposal would therefore clearly enable EPA to address groundwater contamination before the contamination leaves DOD land—which is also the objective of DOD's existing management policies. Section 106 would also clearly cover on-range threats. Finally, States and citizens exercising RCRA authority under our RRPI RCRA provision addressing off-range migration could potentially use that authority to enforce on-range measures necessary to redress the migration where appropriate. Under RRPI, our range fence lines would not become Chinese walls excluding regulatory action either before or after off-range migration occurred. Finally, it is most definitely not DOD policy to defer action on groundwater contamination until it reaches the fence lines of our operational ranges, when it will be far more difficult and expensive to address.

In addition, I should mention the recently completed DOD Directive (DODD), "Sustainment of Ranges and Operating Areas", which was signed by the Deputy Secretary of Defense for immediate implementation on January 10, 2003. This DODD was developed as part of our overall comprehensive range sustainment strategy.

The Deputy Secretary of Defense tasked the development of this new directive with this guidance:

> ". . . The Directive should assign responsibilities for range sustainability and require the Services to issue implementing directives, which specifically focus on long-term sustainability. Further, it should embrace 'working outside the fence' as an overall management approach, and emphasize the importance of partnerships with regulators, the public, and land owners."

In fulfilling these requirements, this directive provides capstone-level guidance to DOD and the Services on overall policy for test and training range sustainment planning, management, coordination, and outreach. As a capstone, it is intended to serve as a guide in the development or revision of other directives with applicability to range sustainment.

Most importantly, the directive provides that range planning and management will identify range requirements for both training and testing, identify encroachment concerns and other inhibiting factors to the ranges, and develop responsive plans to address conflicts. It also calls for functionally integrated decisionmaking—operator, environmental, legal and other installation/range offices or staffs. Coordination and outreach on sustainment issues that include off-range stakeholders is also directed, with a goal of promoting understanding of range management and use

decisions and working with outside groups to consider their concerns and work cooperative to address shared concerns.

Active vs. Inactive Ranges

Some commentators have criticized the application of our RCRA and CERCLA provisions to both the active and the inactive categories of operational ranges, suggesting that it will motivate DOD to retain ranges that are never used and should be closed as nominally "inactive" ranges to defer cleanup costs. This policy question was addressed in section 266.201 of EPA's 1997 Military Munitions Rule, which established a three-part test designed to prevent such manipulation: "inactive ranges" must be "still under military control and considered by the military to be potential range area, and . . . [must] not [have] been put to a new use that is incompatible with range activities." This test is codified in the definition of "operational range" that the Department is proposing, as discussed above.

We believe that this test will appropriately limit DOD's discretion in characterizing ranges as "inactive" but still "operational," while not providing DOD with excessive incentives to close inactive ranges. Our range sustainment policy initiative is based on the recognition that DOD will not easily acquire new range lands in the future, even though modern precision munitions and weapons systems, with their longer ranges, require increasing training areas. Existing range lands must therefore be appropriately but not excessively husbanded for future needs. DOD believes that the policy embodied in the Military Munitions Rule and our proposed "operational range" definition strikes the correct balance.

I should also mention that DOD is taking action, in response to congressional direction, to make visible our range inventory. This is being done in two ways. First, in response to requirements in section 311 of the National Defense Authorization Act for Fiscal Year 2002, DOD will make publicly available by May 31 of this year an initial inventory of former ranges and other areas which may require a munitions response action. We are now working with EPA, the Federal Land Managers, the States, and affected tribes to ensure this list is as comprehensive as possible. This list will include formerly used defense sites, BRAC installations, and also, most important to the discussion today, a list of closed ranges on active installations. Second, in response to the requirements of section 366 of the National Defense Authorization Act for Fiscal Year 2003, DOD is developing a list of operational ranges—which will include a delineation of active and inactive ranges. Together, these lists will enable an accounting of all areas for which we are concerned about in this discussion.

Marine Mammal Protection Act

This year's Marine Mammal Protection Act (MMPA) proposal includes new provisions as well. This year's proposal, like last year's, would amend the term "harassment" in the MMPA, which currently focuses on the mere "potential" to injure or disturb marine mammals. Our initiative adopts verbatim a reform proposal developed during the prior administration by the Commerce, Interior, and Defense Departments and applies it to military readiness activities. That proposal espoused a recommendation by the National Research Council (NRC) that the currently overbroad definition of "harassment" of marine mammals—which includes "annoyance" or "potential to disturb"—be focused on biologically significant effects. As recently as 1999, the NMFS asserted that under the sweeping language of the existing statutory definition harassment "is presumed to occur when marine mammals react to the generated sounds or visual cues"—in other words, whenever a marine mammal notices and reacts to an activity, no matter how transient or benign the reaction. As the NRC study found, "If [this] interpretation of the law for level B harassment (detectable changes in behavior) were applied to shipping as strenuously as it is applied to scientific and naval activities, the result would be crippling regulation of nearly every motorized vessel operating in U.S. waters."

Under the prior administration, NMFS subsequently began applying the NRC's more scientific, effects-based definition. But environmental groups have challenged this regulatory construction as inconsistent with the statute. The Navy and the National Oceanic and Atmospheric Administration suffered an important setback last year involving a vital anti-submarine warfare sensor—SURTASS LFA, a towed array emitting low-frequency sonar that is critical in detecting ultra-quiet diesel-electric submarines while they are still at a safe distance from our vessels. In the SURTASS LFA litigation environmental groups successfully challenged the new policy as inconsistent with the sweeping statutory standard, putting at risk NMFS' regulatory policy, clearly substantiating the need to clarify the existing statutory definition of harassment that we identified in our legislative package last year.

Second, this year's language will address new concerns resulting from the District Court's ruling in the SURTASS LFA case, which highlighted a number of structural deficiencies in application of the MMPA to military readiness activities that require legislative change. In addition to ruling against NOAA's regulatory interpretation of "harassment," the court ruled against NOAA's longstanding application of the MMPA's "small numbers" requirement. The National Research Council has recommended that this provision be deleted as not scientifically based. Elimination of this requirement, which Congress has previously acknowledged is "incapable of quantification," would instead appropriately focus impact determinations on the scientifically based "negligible impacts" standard. In addition, the litigation highlighted the difficulty in identifying a "specific geographical region" for permits applied to military readiness activities. Given the migratory nature of marine mammals, varying biological and bathymetric features in the environment they occupy, and the worldwide nature of naval operations, this requirement is extremely difficult to define as a legal matter. Our proposal would have no effect on NOAA's responsibility to satisfy itself that our activities would have "negligible impacts"—a finding that necessarily entails full consideration of the location and timing of our readiness activities. It would, however, prevent critical readiness activities that have been validated by such scientific review from being impeded by technical legal issues of defining "regions".

The last change we are proposing, a national security exemption process, also derives from feedback the Defense Department received from environmental advocates last year after we submitted our proposal, as I discussed above. Although DOD continues to believe that predicating essential military training, testing, and operations on repeated invocations of emergency authority is unacceptable as a matter of public policy, we do believe that every environmental statute should have such authority as an insurance policy. The comments we received last year highlighted the fact that the MMPA does not currently contain such emergency authority, so this year's submission does include a waiver mechanism. Like the Endangered Species Act, our proposal would allow the Secretary of Defense, after conferring with the Secretaries of Commerce or Interior, as appropriate, to waive MMPA provisions for actions or categories of actions when required by national security. This provision is not a substitute for the other clarifications we have proposed to the MMPA, but rather a failsafe mechanism in the event of emergency.

The only substantive changes are those described above. The reason that the text is so much more extensive than last year's version is that last year's version was drafted as a freestanding part of title 10—the Defense Department title—rather than an amendment to the text of the MMPA itself. This year, because we were making several changes, we concluded that as a drafting matter we should include our changes in the MMPA itself. That necessitated a lot more language, largely just reciting existing MMPA language that we are not otherwise modifying.

The environmental impacts of our proposed reforms would be minimal. Although our initiative would exclude transient, biologically insignificant effects from regulation, the MMPA would remain in full effect for biologically significant effects—not only death or injury but also disruption of significant activities. The Defense Department could neither harm marine mammals nor disrupt their biologically significant activities without obtaining authorization from FWS or NMFS, as appropriate.

Nor does our initiative depart from the precautionary premise of the MMPA. The precautionary principle holds that regulators should proceed conservatively in the face of scientific uncertainty over environmental effects. But our initiative embodies a conservative, science-based approach validated by the National Research Council. By defining as "harassment" any readiness activities that "injure or have the significant potential to injure," or "disturb or are likely to disturb," our initiative includes a margin of safety fully consistent with the precautionary principle. The alternative is the existing grossly overbroad, unscientific definition of harassment, which sweeps in any activity having the "potential to disturb." As the National Research Council found, such sweeping overbreadth is unscientific and not mandated by the precautionary principle.

Enforcement, mitigation, and monitoring, with exactly the same degree of transparency, will continue unchanged for naval activities likely to disturb biologically significant activities. Indeed, during the prior administration's development of our proposed language, both the Interior Department and the Justice Department expressed the view that the vagueness of the existing definition of harassment was making it difficult to enforce, and that the proposed language would facilitate prosecution of violations. The current enforcement, mitigation, and monitoring affected by our initiative would be that directed towards biologically insignificant effects—i.e., that which by definition does not contribute to marine mammal welfare. Nor will our initiative engender more debate: it will merely shift debate to where it

should be, over biologically significant activities—not over the nebulous "potential to disturb" standard rejected by the prior administration, NMFS, and the National Research Council.

The Defense Department already exercises extraordinary care in its maritime programs: all DOD activities worldwide result in fewer than 10 deaths or injuries annually (as opposed to 4,800 deaths annually from commercial fishing activities). DOD currently funds much of the most significant research on marine mammals, and will continue this research in the future.

Although the environmental effects of our MMPA reforms will be negligible, their readiness implications are profound. Application of the current hair-trigger definition of "harassment" has profoundly affected both vital R&D efforts and training. Navy operations are expeditionary in nature, which means world events often require planning exercises on short notice. To date, the Navy has been able to avoid the delay and burden of applying for a take permit only by curtailing and/or dumbing down training and research/testing. For 6 years, the Navy has been working on research to develop a suite of new sensors and tactics (the Littoral Advanced Warfare Development Program (LWAD)) to reduce the threat to the fleet posed by ultraquiet diesel submarines operating in the littorals and shallow seas like the Persian Gulf, the Straits of Hormuz, the South China Sea, and the Taiwan Strait. These submarines are widely distributed in the world's navies, including "Axis of Evil" countries such as Iran and North Korea and potentially hostile great powers. In the 6 years that the program has operated, over 75 percent of the tests have been impacted by environmental considerations. In the last 3 years, 9 of 10 tests have been affected. One was cancelled entirely, and 17 different projects have been scaled back.

Endangered Species Act

Our Endangered Species Act provision is unchanged from last year. The legislation would confirm the prior administration's decision that an integrated natural resources management plan (INRMP) may in appropriate circumstances obviate the need to designate critical habitat on military installations. These plans for conserving natural resources on military property, required by the Sikes Act, are developed in cooperation with State wildlife agencies, the FWS, and the public. In most cases they offer comparable or better protection for the species because they consider the base's environment holistically, rather than using a species-by-species analysis. The prior administration's decision that INRMPs may adequately provide for appropriate endangered species habitat management is being challenged in court by environmental groups, who cite Ninth Circuit caselaw suggesting that other habitat management programs provided an insufficient basis for the FWS to avoid designating critical habitat. These groups claim that no INRMP, no matter how protective, can ever substitute for critical habitat designation. This legislation would confirm and insulate the Fish and Wildlife Service's policy from such challenges.

Both the prior and current administrations have affirmed the use of INRMPs as a basis for possible exclusion from critical habitat. Such plans are required to provide for fish and wildlife management, land management, forest management, and fish and wildlife-oriented recreation; fish and wildlife habitat enhancement; wetland protection, enhancement, and restoration; establishment of specific natural resource management goals, objectives, and timeframes; and enforcement of natural resource laws and regulations. Unlike the process for designation of critical habitat, INRMPs assure a role for State regulators. Furthermore, INRMPs must be reviewed by the parties on a regular basis, but not less than every 5 years, providing a continuing opportunity for FWS input.

By contrast, in 1999, the FWS stated in a notice of proposed rulemaking that "we have long believed that, in most circumstances, the designation of 'official' critical habitat is of little additional value for most listed species, yet it consumes large amounts of conservation resources. . . [W]e have long believed that separate protection of critical habitat is duplicative for most species."

Our provision does not automatically eliminate critical habitat designation, precisely because under the Sikes Act, the statute giving rise to INRMPs, the FWS is given approval authority over those elements of the INRMP under its jurisdiction. This authority guarantees the FWS the authority to make a case-by-case determination concerning the adequacy of our INRMPs as a substitute for critical habitat designation. If the FWS does not approve the INRMP, our provision will not apply to protect the base from critical habitat designation.

Our legislation explicitly requires that the Defense Department continue to consult with the FWS and the National Marine Fisheries Service under section 7 of the Endangered Species Act (ESA); the other provisions of the ESA, as well as other

environmental statutes such as the National Environmental Policy Act, would continue to apply, as well.

The Defense Department's proposal has vital implications for readiness. Absent this policy, courts, based on complaints filed by environmental litigants, compelled the FWS to re-evaluate "not prudent" findings for many critical habitat determinations, and as a result FWS proposed to designate over 50 percent of the 12,000-acre Marine Corps Air Station (MCAS) Miramar and over 56 percent of the 125,000-acre Marine Corps Base (MCB) Camp Pendleton. Prior to adoption of this policy, 72 percent of Fort Lewis and 40 percent of the Chocolate Mountains Aerial Gunnery Range were designated as critical habitat for various species, and analogous habitat restrictions were imposed on 33 percent of Fort Hood. These are vital installations.

Unlike Sikes Act INRMPs, critical habitat designation can impose rigid limitations on military use of bases, denying commanders the flexibility to manage their lands for the benefit of both readiness and endangered species.

Clean Air Act General Conformity Amendment

Our CAA amendment is unchanged since last year. The legislation would provide more flexibility for the Defense Department in ensuring that emissions from its military training and testing are consistent with State implementation plans under the CAA by allowing DOD and the States a slightly longer period to accommodate or offset emissions from military readiness activities.

The CAA's "general conformity" requirement, applicable only to Federal agencies, has repeatedly threatened deployment of new weapons systems and base closure/realignment despite the fact that relatively minor levels of emissions were involved.

- The planned realignment of F–14s from NAS Miramar to NAS Lemoore in California would only have been possible because of the fortuity that neighboring Castle Air Force Base in the same airshed had closed, thereby creating offsets.
- The same fortuity enabled the homebasing of new F/A–18 E/Fs at NAS Lemoore.
- The realignment of F/A–18 C/Ds from Cecil Field, Florida, to NAS Oceana in Virginia was made possible only by the fortuity that Virginia was in the midst of revising its implementation plan and was able to accommodate the new emissions. The Hampton Roads area in which Oceana is located will likely impose more stringent limits on ozone in the future, thus reducing the State's flexibility.

As these near-misses demonstrate, under the existing requirement there is limited flexibility to accommodate readiness needs, and DOD is barred from even beginning to take readiness actions until the requirement is satisfied.

Our proposal does not exempt DOD from conforming to applicable requirements; it merely allows DOD more time—a 3-year period—to find offsetting reductions. This period does not apply to "any activities," but rather to the narrow category of military readiness activities, which characteristically generate relatively small amounts of emissions—typically less than 0.5 percent of total emissions in air regions.

The CAA permits the President to issue renewable 1-year waivers for individual Federal sources upon a paramount national interest finding, or to issue renewable 3-year regulations waiving the act's requirements for weaponry, aircraft, vehicles, or other uniquely military equipment upon a paramount national interest finding. Use of such time-limited authorities in the context of activities that are: (a) ongoing indefinitely, and (b) largely cumulative in effect would be difficult under a paramount interest standard, and would require needless revisiting of the issue annually or triennially.

This provision is vitally needed to protect readiness. The more efficient and powerful engines that are being designed and built for virtually all new weapons systems will burn hotter and therefore emit more NOx than the legacy systems they are replacing, even though they will also typically emit lower levels of volatile organic compounds (VOCs) and carbon monoxide (CO). Without greater flexibility, the conformity requirement could be a significant obstacle to basing military aircraft in any Southern California location, as well as a potentially serious factor for the siting of the Joint Strike Fighter and the Marine Corps' Advanced Amphibious Assault Vehicle.

QUANTIFICATION OF ENCROACHMENT

The final issue that I wish to raise as a part of today's hearing concerns our ability to better quantify how encroachment affects our test and training mission. This has been an ongoing criticism of our legislative effort as well as our broader range

sustainment strategy—a concern raised as part of GAO's report on encroachment dated April 25, 2002.[7] Because of these concerns and as part of the National Defense Authorization Act for Fiscal Year 2003, Congress directed the Secretary of Defense to develop a plan to address training constraints caused by limitations on use of our land, sea, and air resources.

As part of this requirement, DOD has recognized the need for better supporting data to substantiate our requests for encroachment relief. In response, the Under Secretary for Personnel and Readiness has recently asked the Secretary of each military department to develop and submit specific information to include:

- An assessment of the current and future training requirements of their respective Service;
- A report on implementation of a Service range inventory system;
- An evaluation of the adequacy of current Service resources to meet both current and future training requirements in the United States and overseas;
- A comprehensive plan to address operational constraints resulting in adverse training impacts caused by limitations on the use of, or access to, land, water, air, and spectrum that are available or needed in the United States and overseas for training; and
- A report on, or specific plans for, designation of an office within each of the military departments that will have lead responsibility for overseeing implementation of the plan.

CONCLUSION

In closing Mr. Chairman, let me emphasize that modern warfare is a "come as you are" affair. There is no time to get ready. We must be prepared to defend our country wherever and whenever necessary. While we want to train as we fight, in reality our soldiers, sailors, airmen, and marines fight as they train. The consequences for them, and therefore for all of us, could not be more momentous.

DOD is committed to sustaining U.S. test and training capabilities in a manner that fully satisfies that military readiness mission while also continuing to provide exemplary stewardship of the lands and natural resources in our trust.

Mr. Chairman, we sincerely appreciate your support on these important readiness issues. I look forward to working with you on our Readiness and Range Preservation legislation.

Thank you.

Senator ENSIGN. Thank you.

Mr. Mears.

STATEMENT OF DAVID K. MEARS, SENIOR ASSISTANT ATTORNEY GENERAL, OFFICE OF THE ATTORNEY GENERAL, ECOLOGY DIVISION, STATE OF WASHINGTON

Mr. MEARS. Thank you, Mr. Chairman. I am pleased to have the opportunity to testify today. I appear before you with the testimony I present that is endorsed by the States of Colorado, Utah, Idaho, and my own State of Washington. We have worked together with the attorneys general from those States and developed the position that I present to you today.

At the outset I would like to make it clear that the attorneys general are interested only in those statutes in which the States play a primary role, that is the CAA, RCRA, and the largely cooperative role that we play with EPA under CERCLA or Superfund.

First, the attorneys general absolutely support the goal of maintaining the readiness of our Nation's military. As is highlighted by the current conflict in Iraq, our young men and women of our Armed Forces need to have every opportunity to be appropriately trained. At the same time, we have an absolute obligation to en-

[7] Although some commentators have mischaracterized the GAO report as stating that encroachment has had no impact on military readiness, the report itself explicitly states that encroachment is having demonstrable adverse effects on readiness.

sure that the public health and environment are protected, as is allowed the States to do under these statutes.

We have learned from experience that military activities can have a significant impact on the environment and public health. The current statutory framework allows States to work together with the DOD to harmonize the readiness concerns with the environmental protection concerns. With that in mind, we would like to make three points today.

As far as we are aware, the DOD has not identified a single actual instance in which these three laws that I have mentioned have adversely impacted readiness.

Second, these statutes already provide sufficient flexibility to accommodate readiness concerns within the existing framework in the event that there is such a conflict.

Third, we think that these amendments as proposed, at least as we have seen them to date, go far beyond the stated concerns and intent to deal just with readiness and could have far-reaching impacts beyond that.

As I mentioned, the existing framework strikes the right balance. Because of the exemptions and the fact that the Department has never invoked these exemptions, we think that this aspect of the statute should be explored before making any changes.

One of the strengths of the current framework is that, in addition to having the exemptions and the flexibility to deal with readiness on a site-by-site, case-by-case basis, there also is a requirement of the assuredness of accountability at all other sites, and accountability is important because historically the DOD and Federal agencies generally do not have a good history of compliance with environmental laws.

Under our current system of governance, under which the States can play a significant role in ensuring that these laws are complied with, we are able to work and fashion site-by-site, case-by-case solutions when issues of readiness arise. I would suggest it is not luck; it is hard work and it is a high level of sensitivity by State officials to issues of readiness that have ensured that the system that exists today works.

We would ask Congress not to turn its back on the existing framework and on the progress, frankly, that the DOD has made, significant progress over the past decade. We are making significant progress towards ensuring that the well-being and public health of our citizens does not depend on whether or not they live next to or adjacent to or on a military base.

In conclusion, the States have been and remain committed to working with the DOD to make progress in this area. There is simply no evidence that State officials lack sufficient sensitivity to issues of military readiness. We would ask that Congress avoid passing any laws that preempt existing State authority to protect our citizens. We think that we should work within the current framework.

Finally, we would ask that if this body does endeavor to consider these amendments, we would ask that you use the normal legislative process to do so and provide the opportunity for the committees with jurisdiction over the environmental laws to have the op-

portunity to not just hear these statutes, but to have a hand in crafting them.

Thank you and I am available to answer any questions.

[The prepared statement of Mr. Mears follows:]

PREPARED STATEMENT BY DAVID K. MEARS

Mr. Chairman, I am appearing today on behalf of the attorneys general of Colorado, Idaho, Utah, and Washington. I am also submitting a detailed written statement on behalf of these four and other attorneys general. In addition, these four Attorneys General co-sponsored a resolution which was passed by the National Association of Attorneys General at their last meeting. I will address only those parts of the Department of Defense's legislative proposals that would amend the Clean Air Act, the Resource Conservation and Recovery Act (RCRA) or the Comprehensive Environmental, Response, Compensation and Liability Act (CERCLA). The States are the primary implementers of the CAA and RCRA and are major partners with EPA under CERCLA.

First, we absolutely support the goal of maintaining the readiness of our Nation's military. As is highlighted by the current conflict in Iraq, the men and women of our Armed Forces must have all appropriate training. At the same time, we strongly support our environmental laws and, we know that military activities can adversely impact human health and the environment. Furthering military readiness and ensuring environmental protection are compatible goals, not mutually exclusive ones. The current statutory framework allows State regulatory agencies to work together with the Department of Defense to harmonize military readiness concerns with environmental concerns.

We would like to make three main points today.

- First, as far as we are aware, the Department of Defense has not identified a single instance in which these three laws have actually adversely impacted readiness. Consequently, we do not believe that the proposed amendments are necessary.
- Second, RCRA, CERCLA, and the CAA already provide sufficient flexibility to accommodate potential conflicts, in the unlikely event they occur.
- Third, we also think that the Department of Defense's amendments go far beyond its stated concerns with maintaining military readiness, and would likely be construed by the courts to provide Defense, other Federal agencies, and even private contractors, broad exemptions from State and EPA authority under RCRA, CERCLA, and the CAA.

The existing statutory framework already strikes the right balance between readiness and environmental protection. The statutes of concern to the States already allow the President to exempt the Department of Defense from their requirements on a case-by-case basis. The Department has never invoked these exemptions for military readiness needs. In the unlikely event that environmental requirements imposed by States under these statutes conflict with military readiness, the existing exemptions allow sufficient flexibility to ensure readiness and still provide for accountability in every other case.

Accountability is important because Federal agencies, including the Department of Defense, do not have a good history of compliance with environmental requirements. Federal agencies have consistently had a worse compliance record than private industry. There is one exception. Since 1992, when Congress authorized States to assess penalties against Federal agencies for hazardous waste violations, Federal agencies' hazardous waste compliance rates have steadily improved, and now surpass the private sector. We ask that Congress not turn its back on this progress but instead that you remain steadfast in your commitment to holding the Federal agencies to the same standards as everyone else. The well-being of our citizens should not depend on whether they happen to live on or near a military base.

As an example of the problems with the Department's proposal, I will briefly discuss section 2019. This section defines when munitions, explosives, unexploded ordnance, and their constituents are solid wastes, and thus subject to State regulation under RCRA as hazardous wastes. The Department's proposed re-definition of "solid waste" is intended to, and likely does, preempt State and EPA authority over munitions, explosives, and the like at operational ranges.

We disagree with the Department's position that these amendments simply codify EPA's existing RCRA regulations, known as the "munitions rule." Contrary to the Department's assertions, proposed section 2019 reaches far beyond operating ranges. This section likely also preempts State and EPA authority at former ranges, at Defense sites other than ranges, Department of Energy sites, and even at private

defense contractor sites. In contrast, nothing in the munitions rule preempts State authority to require cleanup of munitions-related contamination, whether it be at an operating range, former range now in private ownership, or private defense contractor facility.

Under section 2019, the only time munitions that have been used or fired on an operational range can be a solid waste is if: (1) they are removed from the range; (2) they are recovered and then buried; or (3) they migrate off range and are not addressed under CERCLA. This definition likely eliminates State and EPA authority over cleanup of munitions that were deposited on an operational range and simply remain there after the range closes. These residual munitions are precisely the problem at closed and transferred ranges. The Department of Defense estimates there are up to 16 million acres of former ranges contaminated with unexploded ordnance. Many of these ranges are now in private hands.

In addition to the obvious explosive hazards, the constituents in many munitions and explosives have toxic or potential carcinogenic effects, and can contaminate groundwater. The Department of Defense's proposal would likely preempt or limit State and EPA authority over these chemical constituents. One of these chemicals is perchlorate, a constituent of munitions and explosives that has contaminated public water supply wells near the Massachusetts Military Reservation, the Aberdeen Proving Grounds in Maryland, and has contaminated surface and groundwater at hundreds of government and private defense contractor sites around the country.

The States have been and remain committed to working with the Department of Defense to resolve issues on a case-by-case, site-by-site fashion under the existing framework of regulatory authority. In the decades since the major Federal environmental laws were passed, States have exercised their regulatory authority over military facilities responsibly. This fact is supported by the absence of efforts by the Department to seek exemptions. There is simply no evidence that State officials lack sensitivity to issues of military readiness. For these reasons, Congress should avoid passing laws that preempt the States' ability to protect our citizens. Instead, the Department should work with the States to develop ways to address its readiness concerns within the context of the environmental laws as they currently exist.

If the Senate decides to consider these proposed amendments, we urge you to follow the normal legislative process for this legislation. The committees with jurisdiction over the environmental statutes should be provided the opportunity to hold public hearings and craft solutions to the complex issues raised by proposals to modify our system of environmental laws.

Thank you and I am available to answer any questions.

Co-Sponsors: Attorney General Salazar, Attorney General Shurtleff, Attorney General Gregoire, Attorney General Wasden

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Spring Meeting
March 17 - 20, 2003
Washington, DC

PROPOSED RESOLUTION

SUPPORTING THE PRINCIPLE THAT FEDERAL FACILITIES BE SUBJECT TO THE SAME ENVIRONMENTAL STANDARDS AS PRIVATE INDUSTRY AND OPPOSING AMENDMENTS TO WEAKEN STATE AND EPA AUTHORITY OVER THE DEPARTMENT OF DEFENSE

WHEREAS, our nation has long made the protection of human health and the environment a priority through enactment of several environmental laws, including the Resource Conservation and Recovery Act, the Clean Air Act, the Clean Water Act, the Safe Drinking Water Act, and the Comprehensive Environmental Response, Compensation, and Liability Act (Superfund); and

WHEREAS, Congress recognized in each of these laws that the states have a fundamental right to protect their citizens and the environment within their borders and therefore included in each law a waiver of the federal government's sovereign immunity; and

WHEREAS, the Attorneys General play a primary role in protecting human health and the environment through their enforcement of state laws authorized under the Resource Conservation and Recovery Act, the Clean Air Act, the Clean Water Act, and the Safe Drinking Water Act, and through representation of their states in cases brought under Superfund, and

WHEREAS, despite Congress' long-standing adherence to the principle that federal agencies should be subject to the same environmental standards and enforcement as private industry, the states have experienced significant difficulty in bringing federal agencies into compliance with federal and state environmental laws because federal agencies continue to dispute the extent of waivers of immunity in the environmental laws; and

WHEREAS, federal agencies have long been recognized as the nation's largest polluters with thousands of contaminated sites across the nation, which will cost hundreds of billions of dollars to remediate; and

WHEREAS, consideration and adoption of proposed legislation through regular order, with full and open hearings before the Congressional committees of jurisdiction, is one of the fundamental procedural safeguards of the legislative process, because it allows an opportunity for interested parties to present their views, allows for construction of a record upon which the need for legislation can be judged, and allows for debate on the merits of any proposed legislative language; and

WHEREAS, the Department of Defense has proposed legislation amending RCRA, CERCLA and the Clean Air Act that would provide broad exemptions from these laws, notwithstanding the lack of any demonstration that any of these laws has adversely impacted military readiness, and notwithstanding the existence of waiver mechanisms in each of these laws; and

WHEREAS, these proposed amendments to RCRA and CERCLA would preempt state and EPA authority over munitions-related and explosives-related wastes at a broad range of sites, including Department of Energy facilities, defense contractor sites, current military bases, and up to *16 million acres* of former ranges that may be contaminated with unexploded ordnance; and

NOW, THEREFORE, BE IT RESOLVED THAT THE NATIONAL ASSOCIATION OF ATTORNEYS GENERAL:

1. Urges the Congress to consider legislation affecting federal agency compliance with environmental requirements only through regular order, and to solicit and consider the views of affected states in considering any such legislation;

2. Urges Congress to strengthen and clarify existing waivers of immunity in Superfund and the Clean Water Act, and in the other environmental laws, as appropriate, and to reject any proposed amendments that would impair states' authority to protect the health of their citizens, such as DOD's proposed amendments to RCRA, CERCLA and the Clean Air Act;

3. Re-establishes the Federal Facilities Working Group, composed of representatives of the offices of interested Attorneys General, under the auspices of the NAAG Environment Committee to serve as a resource to the Attorneys General/ NAAG regarding federal agency compliance with state and federal environmental laws; to monitor proposed legislation and regulatory actions in this area; and to assist the Attorneys General in formulating such responses to such proposed legislation and regulatory actions as may be timely and appropriate; and

4. Authorizes the Executive Director to transmit this resolution to Congress, the Administration, and other interested organizations and individuals; and to monitor and report back on proposed legislation that might impair state authority over federal facilities.

STATEMENT BY THE ATTORNEYS GENERAL OF: ARIZONA, CALIFORNIA, COLORADO, DELAWARE, HAWAII, IDAHO, MASSACHUSETTS, NEW HAMPSHIRE, NEW MEXICO, NORTHERN MARIANA ISLANDS, NEW YORK, OREGON, SOUTH DAKOTA, UTAH, AND WASHINGTON

INTRODUCTION

This statement is submitted on behalf of the attorneys general of Arizona, California Colorado, Delaware, Hawaii, Idaho, Massachusetts, New Hampshire, New Mexico, New York, Northern Mariana Islands, Oregon, South Dakota, Utah, and Washington. Our statement addresses the Department of Defense's recent proposed legislation to amend the Clean Air Act (CAA), the Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental, Response, Compensation and Liability Act (CERCLA). The States are the primary implementers of the Clean Air Act and RCRA, and are major partners with EPA under CERCLA. As the chief law enforcement officers of our respective States, it is our duty to ensure compliance with our environmental laws.

First, let us reiterate that we absolutely support the need to maintain military readiness, and to provide our Armed Forces with appropriate realistic training to minimize battlefield casualties and increase their combat effectiveness. There is no question of the importance of readiness. Historically, however, military training activities have caused adverse impacts on human health and the environment, and resulted in expensive cleanups. For example, there are 129 DOD facilities on the Superfund National Priorities List. The question is whether the existing environ-

mental laws allow the military to conduct these activities in a manner that maintains readiness while ensuring protection of human health and the environment. With respect to RCRA, CERCLA, and the CAA, we believe that they do. In our view, furthering military readiness and ensuring environmental protection are compatible goals, not mutually exclusive.

We are not aware of any instance in which RCRA, CERCLA, or the CAA has ever caused an adverse impact on military readiness. To our knowledge, DOD has not cited any examples of any such conflicts. We note that Christine Whitman, the Administrator of the Environmental Protection Agency, recently testified before the Senate Environment and Public Works Committee that she was not aware of any training mission anywhere in the country that was being held up or not taking place because of these laws.[1] We believe that the likelihood of a future conflict between these laws and military readiness is remote. In the unlikely event of such a conflict, these laws already provide the flexibility necessary to harmonize the competing concerns of military readiness and protection of human health and the environment.

RCRA, CERCLA, and the CAA provide vital safeguards to protect the health of our citizens and their environment. As a general matter, we think that these safeguards should be maintained, not weakened. Certainly, any amendments that would weaken the protections these laws provide must be justified by important countervailing considerations that are supported by facts. While we certainly agree that maintaining readiness is necessary, the lack of any demonstrated conflict with RCRA, CERCLA, and CAA requirements and the inherent flexibility of these laws cause us to conclude that these amendments are unnecessary.

We are concerned that DOD's proposed amendments to RCRA, CERCLA, and the CAA would undermine State authority and create significant adverse environmental impacts, with no benefit to military readiness. These amendments are far-reaching. The amendments to the CAA would allow continued violations of health-based air quality standards in cases where there was no impact on readiness. We disagree with DOD's statements that the amendments to RCRA and CERCLA only apply to "operational" ranges. As described more specifically later in this statement, DOD's proposed amendments to RCRA and CERCLA would likely have the following results:

- Section 2019 will likely be interpreted to preempt or impair State authority over munitions, explosives, and the like not only at operational ranges, but—contrary to DOD's assertions—also at former military ranges now in private ownership, DOD sites other than ranges, Department of Energy facilities, and even at private defense contractor sites.
- Section 2019 may preempt or impair EPA and State authority under RCRA and analogous State laws to require cleanup not only of unexploded ordnance, but also the chemical constituents of the ordnance such as perchlorate, TNT, or RDX—that may have leached out and contaminated the soil and groundwater. Again, this is not limited to operational ranges, but would likely extend to other Federal facilities, former military ranges now in private ownership, and defense contractor sites.
- Subsection 2019(a) would likely preempt States and EPA from using RCRA authorities to regulate the cleanup of unexploded ordnance and other munitions-related contamination at 16 million acres of land on closed, transferred, and transferring ranges that DOD estimates are potentially contaminated with unexploded ordnance. Much of this land is in private ownership.
- Proposed paragraph 2019(a)(2) appears to provide a wholesale exemption for munitions and explosives-related contamination that also likely extends beyond ranges to other Federal facilities and even to defense contractor sites. This exemption may encompass waste streams from the manufacture of explosives and munitions constituents, such as perchlorate contamination.
- Paragraph 2019(b)(2) arguably precludes State superfund authority over munitions-related contamination on operational ranges.
- Paragraph 2019(b)(2) also likely precludes prevents States from requiring cleanup of munitions-related contamination on 16 million acres of closed, transferred, and transferring ranges under State superfund-type laws.

Finally, we are concerned with the legislative process by which these proposed amendments have been considered. As we understand it, DOD has requested that the proposed amendments be included as part of the Defense Authorization Bill.

[1] As reflected in the record of the Senate Environment and Public Works Hearings of February 26, 2003, on the President's 2004 budget for the Environmental Protection Agency.

These amendments affect the Federal Government's obligations to comply with State and Federal environmental laws. This is an important matter of public policy, with significant implications for environmental protection. It deserves full hearings before the committees of jurisdiction, and the careful deliberation that regular order provides. Because Federal courts closely scrutinize waivers of sovereign immunity, and these proposed amendments would affect the waivers of immunity in RCRA and CERCLA, the need for careful deliberation of the proposed legislative language is even greater.

These amendments should be subjected to regular order with hearings before the congressional committees with jurisdiction over the environmental laws, not proposed as amendments to authorization or appropriations bills. Last summer, the National Association of Attorneys General approved a resolution urging Congress to only consider laws that might impair State authority over Federal facilities through regular order.[2]

The Clean Air Act, RCRA, and CERCLA have not adversely impacted military readiness.

As far as we are aware, DOD has not identified any cases in which RCRA or CERCLA have adversely impacted military readiness. Nor are we aware of any such instances. Even DOD's own background materials supporting the "Readiness and Range Preservation Initiative" for 2002 downplay the need for amending RCRA and CERCLA, characterizing the impact on readiness as merely "potentially significant".[3] DOD's justification for its proposed amendments to RCRA and CERCLA is a citizen suit filed in Alaska. According to DOD, this suit alleges that the discharge of ordnance onto an operational military range constitutes "disposal" under RCRA and a "release" under CERCLA.[4] DOD concludes that if munitions used for their intended purpose are considered to be statutory solid waste, the Army could be forced to perform corrective action or remediation of Eagle River Flats, and live-fire training during the remediation would be impossible.

We disagree with DOD's conclusion. First, there are no RCRA imminent and substantial endangerment or illegal disposal allegations in the Fort Richardson citizen suit. Plaintiffs in that suit did allege violation of an Alaska statutory provision that prohibits pollution.[5] The cited provision is not part of Alaska's hazardous waste regulatory program; indeed, Alaska does not have a State hazardous waste program, much less an authorized program under RCRA. Plaintiffs in this case have never even alleged that used or fired munitions are a RCRA statutory solid waste. Thus, if this case were decided adversely to the Army, it would not set any precedent regarding RCRA.

Even if DOD's characterization of the plaintiff's complaint were correct, the likelihood that cleanup requirements would preclude training is remote. First, remediation would only be required if the munitions or munitions constituents posed a risk to human health or the environment. Generally speaking, this would only occur in situations where munitions constituents were contaminating environmental media, such as ground or surface water. Assuming that some remediation were required, there is no evidence to suggest that remediation of environmental contamination would impact military readiness. Remedial approaches to contaminated sites are quite varied, and inevitably site-specific. Without knowing the specific details of what the problem is, and what the remedial alternatives are, there is simply no basis for assessing the impacts, if any, of cleanup on training.

The underlying premise of DOD's position seems to be that if used or fired military munitions are considered statutory solid wastes under RCRA, or hazardous substances under CERCLA, the inevitable consequence will be that States will impose remedial requirements that will conflict with military readiness. DOD has cited no evidence to support this premise. States have regulated cleanup of contaminated

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[2] See Exhibit 1.

[3] "Readiness and Range Preservation Initiative Summary," dated April 18, 2002, p. 7 (atttached as Exhibit 2).

[4] *Id.*

[5] Plaintiff's Amended Complaint for Declaratory and Injunctive Relief, para. 29, *Alaska Community Action on Toxics, et al. v. United States*, A02–0083 CV, filed June 26, 2002 (attached as Exhibit 3). Plaintiffs' complaint never cites RCRA's imminent and substantial endangerment provision; instead, it cites 42 U.S.C. § 6972(a)(1)(A), the RCRA citizen suit provisions authorizing suit against any person "alleged to be in violation of any permit, standard, regulation, condition, requirement, prohibition, or order which has become effective pursuant to this chapter" as a jurisdictional basis for the suit. See para. 3 of Exhibit 3. In paragraph 29, plaintiffs allege that the Army's violation of Alaska Statutes § 46.03.710 constitutes a violation of RCRA's waiver of immunity provision, 42 U.S.C. § 6961(a). Alaska Statutes § 46.03.710 states: "A person may not pollute or add to the pollution of the air land, subsurface land, or water of the State."

Department of Energy nuclear weapons facilities and Department of Defense sites for decades in a responsible manner. We believe that State and EPA regulators have demonstrated their consistent willingness to resolve differences with regulated Federal officials, and to develop creative approaches that balance defense concerns with environmental protection. But if there were a case where State or EPA regulators believed that environmental contamination at an operation range required remediation to protect human health and the environment, and adverse impacts on readiness could not be avoided, RCRA and CERCLA already allow DOD to seek an exemption from such requirements on the basis of national security.

Similarly, DOD has not identified any instances in which the CAA's conformity requirements have actually prevented the military from conducting the activities it believes are necessary to maintain readiness. Instead, it describes some "near misses," and urges that the proposed exemption is necessary to facilitate the next round of base closures in 2005.[6] These "near misses" are cases where, in fact, potentially conflicting environmental requirements and readiness concerns were successfully resolved through the regulatory process. DOD's proposed amendments to the CAA would allow continued violations of the health-based National Ambient Air Quality Standards without any demonstration that DOD could not make the necessary emissions offsets.

The environmental laws provide ample flexibility to accommodate any conflicts between military readiness and environmental protection.

It is unlikely the CAA, RCRA, or CERCLA requirements will cause conflicts with military readiness. Based on experience to date, any such conflicts would be rare occurrences. Consequently, the case-by-case exemption provisions that already exist in each of these laws (described below) are vastly preferable to DOD's proposed across-the-board statutory exemption from environmental requirements. The case-by-case approach accommodates readiness concerns where necessary, and minimizes adverse environmental consequences in the vast majority of cases where there are no conflicts. Conversely, DOD's approach weakens environmental protections unnecessarily in the vast majority of cases where there is no adverse impact on readiness. The CAA, RCRA, and CERCLA already allow the President to exempt the Department of Defense from their statutory and regulatory requirements on a case-by-case basis.[7] These are not burdensome requirements. All that is required is a finding that doing so is necessary for national security or is in the paramount interests of the United States, depending on the particular statute at issue. For example, President Bush recently made such a finding under RCRA exempting the Air Force facility "near Groom Lake, Nevada, from any Federal, State, interstate, or local provision respecting the control and abatement of solid waste or hazardous waste disposal that would require the disclosure of classified information concerning the operating location to any authorized person."[8] The entire finding consists of three paragraphs. President Clinton made similar findings annually from 1996 through 2000 regarding this same matter. We understand that to date, the exemption provisions of the CAA, RCRA, and CERCLA have never been invoked because of military readiness concerns.

In addition to providing a case-by-case exemption, section 118(b) of the CAA authorizes the President to "issue regulations exempting from compliance with the requirements of this section any weaponry, equipment, aircraft, vehicles, or other classes or categories of property which are owned or operated by the Armed Forces of the United States (including the Coast Guard) or by the National Guard of any State and which are uniquely military in nature."[9] This provision allows even greater flexibility than the case-by-case exemptions in managing any potential conflicts between CAA requirements and readiness concerns. The CAA's "general conformity" regulations that DOD's amendments would override contain still more flexibility.

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[6] Exhibit 2, p. 6.

[7] 42 U.S.C. §§ 6961(a), 7418(b), and 9620(j). The RCRA exemption, § 6961(a), provides:

The President may exempt any solid waste management facility of any department, agency, or insturmentality in the executive branch from compliance with such a requirement if he determines it to be in the paramount interest of the United States to do so. No such exemption shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of 1 year, but additional exemptions may be granted for periods not to execeed 1 year upon the President's making a new determination. The President shall report each January to Congress all exemptions from the requirements of this section ganted during the preceding calendar year, together with his reason for granting each such exemption."

[8] 67 Fed. Reg. 78425 (Dec. 24, 2002), attached as Exhibit 4.

[9] 42 U.S.C. § 7418(b).

These regulations allow DOD to set aside clean air requirements for up to 6 months in response to "emergencies," which, by definition, include responses to terrorist activities and military mobilizations. This exemption is renewable every 6 months through a written determination by DOD.[10]

Other provisions of the environmental laws provide further flexibility to balance environmental protection with other Federal priorities. For example, in 1992, Congress provided EPA authority to issue administrative orders under RCRA to other Federal agencies, but required that such agencies have the opportunity to confer with the EPA Administrator before any such order becomes final.[11] Additionally, Congress has created a procedure that allows the Secretary of Defense to temporarily suspend any pending administrative action by another Federal agency that the Secretary determines "affects training or any other readiness activity in a manner that has or would have a significant adverse effect on the military readiness of any of the Armed Forces or a critical component thereof."[12] During the suspension, the Secretary and the head of the other Federal agency must consult and attempt to mitigate or eliminate the adverse impact of the proposed action on readiness, consistent with the purpose of the proposed action.[13] If they are unable to reach agreement, the Secretary of Defense must notify the President, who shall resolve the matter.[14]

DOD's compliance record warrants a regulatory structure that ensures accountability.

A case-by-case approach to resolving any future potential conflicts between readiness and the requirements of RCRA, CERCLA, and the CAA is preferable to sweeping statutory exemptions because the case-by-case approach provides accountability. Experience since the 1992 Supreme Court decision in *U.S. Department of Energy v. Ohio*[15] demonstrates that Federal agencies in general, and DOD in particular, are far more likely to comply with environmental requirements when they can be held accountable. In that case, the Supreme Court held that Federal agencies were not subject to penalties for violating State hazardous waste and water quality laws. In response, Congress swiftly amended RCRA to make Federal agencies subject to penalties for violating hazardous waste laws. Once Congress clarified the States' authority to hold Federal agencies accountable for violating hazardous waste requirements, DOD and other Federal agencies began steadily improving their RCRA compliance rates, bringing the percentage of facilities in compliance from a low of 55.4 percent in fiscal year 1993 to 93.6 percent in fiscal year 2000.[16]

This salutary trend stands in stark contrast to Federal agency performance under the Clean Water Act (CWA). Unlike RCRA, Congress did not amend the CWA following the *Ohio* decision to subject Federal agencies to penalties for violating CWA requirements. Since the Supreme Court decision removed the threat that States could hold Federal agencies accountable for violating CWA requirements by assessing penalties, the percentage of Federal facilities in compliance with the Clean Water Act has fallen steadily from a high of 94.2 percent in fiscal year 1993 to a low of 61.5 percent in fiscal year 1998.[17] DOD's Clean Water Act compliance rates are slightly worse than the Federal agency totals.[18]

Compliance statistics alone, telling as they are, do not paint the entire picture of Federal agencies' failure to comply with environmental requirements. Federal agencies in general, and DOD in particular, have long had a history of resistance to environmental regulation. The history of the CAA provides a good example. Before 1970, the CAA encouraged, but did not require, Federal agencies to comply with its man-

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[10] 40 C.F.R. 93.153(e); 40 C.F.R. 152.
[11] 42 U.S.C. § 6961(b)(2).
[12] 10 U.S.C. 2014 (a) and (d).
[13] 10 U.S.C. 2014(c).
[14] 10 U.S.C. 2014(e).
[15] 503 U.S. 607 (1992).
[16] "The State of Federal Facilities—An Overview of Environmental Compliance at Federal Facilities Fiscal Year 1999–2000" USEPA Office of Enforcement and Compliance Assurance, EPA 300–R–01–004, September 2001, p. 22.
[17] *Id.* While Federal facilities' Clean Water Act compliance rates as a whole rebounded somewhat in fiscal year 1999 and 2000, the overall trend is still downward.
[18] *Id.* DOD's Clean Water Act compliance rates for fiscal year 1996–2000 were slightly lower than Federal agencies as a whole. *Id.* at p. 24; "The State of Federal Facilities—An Overview of Environmental Compliance at Federal Facilities, fiscal year 1997–1998," USEPA Office of Enforcement and Compliance Assurance, EPA 300–R–00–002, January 2000, p. 26; "The State of Federal Facilities—An Overview of Environmental Compliance at Federal Facilities, fiscal year 1995–1996" USEPA Office of Enforcement and Compliance Assurance, EPA 300–R–98–002a, June 1998, pp. ES–11 and ES–12. While the DOD rates also improved in fiscal year 1999 from fiscal year 1998's nadir, they declined again in fiscal year 2000.

dates. Congress determined that this voluntary system was not working, and in 1970 amended the act to require Federal agencies to comply. Specifically, Congress added section 118 to the CAA. The first sentence of the section provides, in relevant part:

> Each department, agency, and instrumentality of . . . the Federal Government . . . shall comply with Federal, State, interstate, and local requirements respecting control and abatement of air pollution to the same extent that any person is subject to such requirements. 42 U.S.C. § 1857f.

The 1970 amendments also required the Environmental Protection Agency to establish ambient air quality standards. Each State had to submit plans describing how the State would meet these standards. Kentucky, like most States, submitted a plan that relied on permits as the sole mechanism to establish emissions limitations for air pollution sources, and to establish schedules for achieving compliance with the emissions limitations. Kentucky sought to require several Federal facilities (including the Army's Fort Knox, Fort Campbell, and others) to obtain permits. The Federal agencies refused, arguing that section 118 of the CAA did not obligate them to comply with "procedural" requirements, such as the need to obtain State permits. Without the permit, there was no way for Kentucky to control air pollution from these Federal facilities.

The matter went to court, and ultimately, in *Hancock v. Train,*[19] the Supreme Court agreed with the Federal agencies. Shortly thereafter, Congress amended the CAA to require Federal agencies to comply with procedural requirements, including permit requirements.[20] While the challenge to State authority under the CAA was pending, Federal agencies were also challenging the requirement to obtain State permits under the CWA's National Pollution Discharge Elimination System program. Interpreting a similar waiver of immunity, the Supreme Court again sided with the Federal agencies.[21] Again, Congress acted swiftly to amend the CWA to require Federal agencies to obtain discharge permits.[22] More recently, DOD spent years challenging State authority over cleanup of contamination at Federal facilities, ultimately losing in the Tenth Circuit.[23]

Nonetheless, DOD continues to challenge State authority over cleanup of contamination at its sites, and in particular to resist State authority over cleanup of munitions-related contamination. In addition, DOD is challenging a number of other environmental requirements:

- DOD is refusing to pay penalties for violations of State requirements related to underground petroleum storage tanks.[24]
- DOD is appealing a determination by an EPA Administrative Law Judge that the CAA's command that penalties for violations of the act be calculated by considering, *inter alia,* the economic benefit of the violator's noncompliance applies to Federal agencies.[25]
- DOD is also challenging State and EPA authority to require compliance with "institutional controls." "Institutional controls" are legal mechanisms to restrict land or water use, and are often employed to reduce the cost of cleaning up contaminated sites. DOD argues, *inter alia,* that State institutional controls do not fall within the scope of RCRA's waiver of Federal sovereign immunity for State requirements respecting the control and abatement of solid waste.

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[19] 426 U.S. 167 (1976).
[20] Pub.L. 95–95, § 116(a).
[21] *Environmental Protection Agency v. California,* 426 U.S. 200 (1976).
[22] Pub.L. 95–217, §§ 60, 61(a).
[23] *U.S. v. Colorado,* 990 F.2d 1565 (10th Cir. 1993).
[24] See exchange of letters between State of Hawaii Department of Health and U.S. Army Garrison Hawaii, attached hereto as Exhibit 5.
[25] *In the Matter of U.S. Army, Fort Wainwright Central Heating & Power Plant,* Docket No. CAA–10–99–0121. Administrative Law Judge Susan L. Biro entered the order against the Air Force on April 30, 2002. Section 113 of the Clean Air Act, 42 U.S.C. § 7413, provides, in relevant part, that the Administrator may "issue an administrative order against any person assessing a civil administrative penalty of up to $25,000, per day," and that in calculating the penalty, the Administrator "shall take into consideration . . . the economic benefit of noncompliance." 42 U.S.C. § 7413 (d) and (e). Section 302 of the Clean Air Act, 42 U.S.C. § 7602, defines "person" to include "any agency, department, or instrumentality of the United States." Finally, the waiver of Federal sovereign immunity in section 118 of the Clean Air Act, 42 U.S.C. § 7418 states that Federal agencies "shall be subject to . . . all Federal . . . process and sanctions . . . in the same manner, and to the same extent as any nongovernmental entity."

The huge extent of DOD's environmental contamination also demands a regulatory structure that ensures accountability.

Accountability is also important because of the environmental impact of military activities. DOD is responsible for far more contaminated sites than any other Federal agency. There are 165 Federal facilities currently listed on the Superfund National Priorities List; 129 of these are DOD facilities.[26] All together, DOD is responsible for addressing over 28,500 potentially contaminated sites across the country.[27] Through fiscal year 2001, DOD had spent almost $25 billion cleaning up sites for which it is responsible.[28] DOD recently estimated that it would take another $14 billion to complete the remediation of environmental contamination at active, realigning, and closing sites.[29]

But the need for cleanup of active and closing bases is only part of the picture. DOD is also responsible for assessing and cleaning up thousands of potentially contaminated formerly used defense sites (FUDS) in the United States and its territories and possessions.[30] Many FUDS are former bombing or gunnery ranges that contain unexploded ordnance. The GAO estimated recently that unexploded ordnance contamination may exist at over 1,600 FUDS.[31] DOD estimates that approximately 16 million acres of land on transferred ranges are potentially contaminated with unexploded ordnance.[32] There are no reliable data on the cost of addressing the contamination at these former ranges and other FUDS. DOD's recent estimates for unexploded ordnance cleanup vary from $14 billion to over $100 billion.[33]

Despite this lack of data, we do know that the costs of detecting and remediating unexploded ordnance contamination are extremely high. For example, through fiscal year 2001, DOD had spent over $37 million investigating and remediating the former Lowry Bombing and Gunnery Range (a/k/a Buckley Field) near Aurora, Colorado, and expected to spend an additional $71 million to complete cleanup of this site.[34] At the Spring Valley site in the District of Columbia, DOD had spent over $24 million through fiscal year 2001, and expected to spend an additional $73 million.[35] The costs for cleaning up sites like the Lowry Range and Spring Valley may be dwarfed by the sheer magnitude of the remaining FUDS, such as the 288 FUDS projects in California that DOD estimates may cost $2.6 billion to address.[36] The bottom line is that unexploded ordnance contamination at FUDS represents an environmental problem of huge dimensions. As shown below, DOD's proposed amendments would likely be read to preempt State authority over cleanup of these sites. Independent State oversight is needed to ensure these sites are cleaned up in a manner that protects human health and the environment.[37]

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[26] Information from EPA's Superfund website at *http://www.epa.gov/superfund/sites/query/queryhtm/nplfin1.htm* and from telephone conversation with EPA's Federal Facilities Restoration and Reuse Office.

[27] *See* "Fiscal Year 2001 Defense Environmental Restoration Program Annual Report to Congress," p. 19. This document is available at the following DOD website: http://www.dtic.mil/envirodod/DERP/DERP.htm

[28] *Id.*, p. 21.

[29] *Id.*, pp. 27–28, attached as Exhibit 6. The $14 billion figure combines the total cost-to-complete sums given for active installations in Figure 8 and Base Realignment and Closure Sites in Figure 10 of Exhibit 6.

[30] "Environmental Contamination: Cleanup Actions at Formerly Used Defense Sites," GAO–01–557 (July 2001), p. 1. FUDS are properties that were formerly owned, leased, possessed, or operated by DOD or its components.

[31] *Id.* at 2.

[32] "DOD Training Range Cleanup Cost Estimates Are Likely Understated," GAO–01–479 (April 2001), p. 11.

[33] *Id.*, pp. 5 and 13.

[34] "Fiscal Year 2001 Defense Environmental Restoration Program Annual Report to Congress," Table C–1, showing status of military installations and FUDS with estimated cleanup completion cost estimates exceeding $5 million at p. C–1–22.

[35] *Id.* at p. C–1–25.

[36] *Id.*, pp. C–1–8 to C–1–21.

[37] For example, many States have found that DOD's determinations that specific FUDS do not require any cleanup action are frequently mistaken. In 1998, the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) conducted a survey of its members regarding "no further action" determinations made by the Army Corps of Engineers. Nearly half of the responding States (19 out of 39) said that they had reason to believe that the Corps had not made sound environmental decisions in making some "no further action" determinations. Six States had conducted their own environmental or health assessments at 66 of the sites the Corps had designated "no further action." These States determined that 32 of the 66 did require cleanup. Contamination at the 32 sites included high levels of PCBs, unexploded ordnance, leaking underground storage tanks, asbestos, and groundwater contamination. "No Further Action Survey," Association of State and Territorial Solid Waste Management Officials, December 1998. Several of the States that responded they did not have any reason to doubt the Corps' deter-

In addition to the obvious explosive hazards of unexploded ordnance, some constituents of explosives and munitions contamination have toxic or potential carcinogenic effects,[38] and can cause groundwater contamination. For example, perchlorate is a chemical widely used in solid rocket fuel and munitions. It interferes with iodide uptake into the thyroid gland, and disrupts the thyroid function. The Wall Street Journal has reported that EPA is concerned that fetuses and newborn babies may be particularly sensitive to exposure to perchlorate.[39] Live-fire training at the Massachusetts Military Reservation (MMR) over several decades has contaminated large amounts of groundwater in the sole source drinking water aquifer for the Cape Cod area. Recently, the Town of Bourne closed half of its drinking water supply wells due to contamination by perchlorate that migrated from MMR. Subsequently, DOD spent approximately $2 million to hook the town up to an alternate water supply.[40] Reportedly, explosives contaminants have been detected in about 100 groundwater monitoring wells on MMR, and exceed EPA health advisory limits at 53 of those wells.[41] Similarly, military training activities at the Aberdeen Proving Ground have contaminated groundwater there with perchlorate, again prompting closure of a municipal water supply well that had been contaminated.[42]

Indeed, perchlorate contamination from military training, research, and production activities has caused widespread groundwater contamination in at least 22 States, according to the Wall Street Journal.[43] DOD's proposed legislation would likely be read to preempt or impair State authority to address many of these sites, including some privately-owned defense contractor sites, under RCRA, CERCLA, and analogous State laws.

DOD's proposed amendments to RCRA, CERCLA, and the CAA are far-reaching, and go far beyond DOD's stated concerns with readiness.

DOD has repeatedly stated that its proposed amendments are very narrowly focused.[44] We disagree. As described above, neither the CAA, RCRA, nor CERCLA has had any adverse impacts on readiness. All three laws have provisions allowing for waivers of their requirements sufficient to address any potential readiness concerns. Considering the magnitude of the munitions contamination problem at FUDS and other DOD sites, and the groundwater contamination at sites such as the Massachusetts Military Reservation and the Aberdeen Proving Grounds, any change in DOD's obligation to comply with cleanup requirements has the potential for large impacts. But the bottom line is that DOD's proposed amendments likely create broad exemptions that jeopardize the States' ability to protect their citizens' health and environment, without any corresponding benefit to readiness.

DOD's amendment to RCRA would likely be read to preempt or impair State and EPA authority over munitions-related and explosives-related wastes at active military bases, closing bases, FUDS, and private contractor sites.

Proposed section 2019 would define when munitions, explosives, unexploded ordnance, and constituents thereof are "solid wastes" under RCRA, and thus potentially subject to regulation as hazardous wastes.[45] By narrowing this definition, DOD's amendments limit the scope of EPA's authority under RCRA, as well as State authority under State hazardous waste laws. The change in the definition of "solid waste" would affect State authority because the term appears in RCRA's waiver of Federal sovereign immunity—the provision of the law that makes DOD subject to

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minations commented that they had not assessed the sites themselves. The complete survey is available on ASTSWMO's website at *http://www.astswmo.org/Publications/bookshelf.htm* by clicking on "Federal Facilities" and then on "No Further Action Review Efforts at Formerly Used Defense Sites (NOFA FUDS) December 1998."

[38] Fact sheets or public health statements, all published by the Agency for Toxic Substances and Disease Registry, for four common explosives or munitions constituents (DNT, RDX, TNT, and white phosphorous), are attached as Exhibit 7. Also included in Exhibit 7 are two EPA documents regarding perchlorate, another common munitions constituent.

[39] "A Fuel of Cold War Defenses Now Ignites Health Controversy," 12/16/2002 article by Peter Waldman, reported on page 1 of the Wall Street Journal, attached as Exhibit 8.

[40] "Military Cash Flows for New Water Supply," story by Kevin Dennehy, Cape Cod Times, April 24, 2002, attached as Exhibit 9.

[41] "Work to Clean Cape Cod Continues as Pentagon Seeks Environmental Exemptions," 5/27/2002 story by Melissa Robinson, reported in Boston Globe Online, 5/29/2002, attached as Exhibit 10.

[42] "Group calling for cleanup of perchlorate in Aberdeen," 10/3/2002 article by Lane Harvey Brown in the Baltimore Sun, attached as Exhibit 11.

[43] See Exhibit 8.

[44] *See,* e.g., Exhibit 2.

[45] *See* 42 U.S.C. § 6903 (5) and (27). Section 6903(5) defines "hazardous waste" as "a solid waste, or combination of solid wastes," that exhibits certain characteristics. Section 6903(27) defines "solid waste." Therefore, hazardous wastes are a subset of solid wastes.

State hazardous waste laws. The RCRA waiver of immunity applies to State "requirements respecting the control and abatement of solid waste or hazardous waste disposal and management."[46] Thus, the scope of the RCRA sovereign immunity waiver will likely be affected by amendments to RCRA's definition of solid waste. Because waivers of immunity are construed extremely narrowly, any ambiguity in the definition of solid waste will likely be construed in the way that results in the narrowest waiver.[47] By re-defining "solid waste" in a very limited fashion, DOD's proposed amendment will likely preempt or impair State authority over munitions, explosives, and the like not only at operational ranges, but—contrary to DOD's assertions—also at FUDS, DOD sites other than ranges, DOE facilities, and even at private defense contractor sites.

DOD's proposed amendment to the definition of solid waste provides:

"2019. Range management and restoration

"(a) DEFINITION OF SOLID WASTE. (1)(A) The term 'solid waste,' as used in the Solid Waste Disposal Act, as amended (42 U.S.C. 6901 et seq.), includes explosives, unexploded ordnance, munitions, munition fragments, or constituents thereof that;

"(i) are or have been deposited, incident to their normal and expected use, on an operational range, and;

"(I) are removed from the operational range for reclamation, treatment, disposal, treatment prior to disposal, or storage prior to or in lieu of reclamation, treatment, disposal, or treatment prior to disposal;

"(II) are recovered, collected, and then disposed of by burial or landfilling; or

"(III) migrate off an operational range and are not addressed under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9601 et seq.); or

"(ii) are deposited, incident to their normal and expected use, off an operational range, and are not promptly rendered safe or retrieved.

"(B) The explosives, unexploded ordnance, munitions, munitions fragments, or constituents thereof defined as solid waste in subparagraph (a)(1)(A) shall be subject to the provisions of the Solid Waste Disposal Act, as amended, including but not limited to sections 7002 and 7003, where applicable.

"(2) Except as set out in subparagraph (1), the term 'solid waste,' as used in the Solid Waste Disposal Act, as amended, does not include explosives, unexploded ordnance, munitions, munitions fragments, or constituents thereof that:

"(A) are used in training military personnel or explosives and munitions emergency response specialists (including training in proper destruction of unused propellant or other munitions);

"(B) are used in research, development, testing, and evaluation of military munitions, weapons, or weapon systems;

"(C) are or have been deposited, incident to their normal and expected use, and remain on an operational range, except as provided in subparagraph (a)(1)(A);

"(D) are deposited, incident to their normal and expected use, off an operational range, and are promptly rendered safe or retrieved; or

"(E) are recovered, collected, and destroyed on-range during range clearance activities at operational ranges, but not including the on-range burial of unexploded ordnance and contaminants when the burial is not a result of product use.

"Nothing in subparagraphs (2) (A), (B), (C), (D), or (E) hereof affects the legal requirements applicable to explosives, unexploded ordnance, munitions, munitions fragments, or constituents thereof that have been deposited on an operational range once the range ceases to be an operational range."

(Italics indicate substantive changes from the 2002 version of DOD's proposal.)

As an initial matter, paragraph 2019(a)(1) applies to an extremely broad range of items. It does not just cover munitions, munitions fragments, explosives, ordnance, and unexploded ordnance, but also constituents of any of those items. That means it applies not just to unexploded ordnance that may contaminate an area, but also to the chemical constituents of the ordnance such as perchlorate, TNT, or RDX—that may have leached out and contaminated the soil and groundwater. For convenience, we will generally refer only to munitions when describing the scope of section 2019, but it is well to remember that it actually covers many more items.

[46] 42 U.S.C. § 6961(a).

[47] *Department of Energy v. Ohio,* 503 U.S. 607 (1992). See also the discussion of *Hancock v. Train, supra.*

Paragraph 2019(a)(1) sets forth the circumstances under which munitions are solid wastes. Again, because the term "solid waste" is used in RCRA's waiver of immunity, it will be construed narrowly. Thus, under paragraph 2019(a)(1), the only circumstances under which munitions will be considered solid wastes are if: (1) they are or have been deposited, incident to their normal and expected use, on an operational range, and then one of three things happens: they are removed from the range; or are recovered and then buried; or migrate off range and are not addressed under CERCLA; or (2) they are deposited, incident to their normal and expected use, off an operational range, and are not promptly rendered safe or retrieved.

Subparagraph 2019(a)(2)(C) compels the same conclusion, because it expressly limits the instances in which munitions-related materials that "are or have been deposited, incident to their normal and intended use, on operational ranges," to the circumstances set forth in 2019(a)(1). This year, DOD has added a sentence to the end of section 2019 that it says limits the scope of this section to only "operational" ranges.

We disagree that the new language limits the reach of section 2019. First, it only limits the impact of paragraph 2019(a)(2), not paragraph 2019(a)(1). As noted above, because of the narrow construction courts placed on waivers of immunity, even absent the language of 2019(a)(2)(C), paragraph 2019(a)(1) likely will be read as defining the exclusive universe of circumstances under which States may regulate munitions pursuant to the RCRA waiver. Paragraph 2019(a)(1) excludes from the definition of solid waste munitions that were deposited on an operational range while it was operational and remain there after it closed.

Second, the new language is ambiguous. It can be read to mean that nothing in paragraph 2019(a)(2) affects the legal requirements applicable to munitions that were deposited on a range after the range ceased to be operational. This would result in a narrower waiver of immunity than the interpretation DOD has proffered, and consequently would likely be the interpretation a Federal court would adopt.

Third, in 1997, EPA deferred promulgation of a rule that would have codified EPA's interpretation that munitions left in place at the time a range closed or was transferred out of military control are solid wastes as defined in RCRA.[48] In light of EPA's regulatory inaction, DOD may argue that there currently are no legal requirements applicable to munitions that were deposited on a range while it was operational, and remain there after it has closed.[49] It could then argue that subparagraph 2019(a)(2)(C) precludes EPA from promulgating any such regulation in the future, because the munitions are not a solid waste as defined in RCRA.

Even with DOD's revision to proposed section 2019, munitions that were deposited on an operational range and simply remain there after the range closed or was transferred are not solid wastes under RCRA, and thus cannot be hazardous wastes. Such residual unexploded ordnance and explosives contamination is precisely the problem at closed, transferring, and transferred ranges. Contrary to DOD's assertions that this amendment only affects operating ranges, this amendment would also likely be read to preempt States and EPA from regulating the cleanup of

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[48] "Military Munitions Rule," 62 Fed. Reg. 6622, 6632 (2/12/97). Under this interpretation, such munitions would have been statutory solid wastes, but not "regulatory" solid wastes. (EPA's regulatory definition of solid waste is narrower than the statutory definition. *See* 40 CFR 261.2.) Both regulatory and statutory solid wastes may be subject to RCRA's imminent and substantial endangerment provisions (42 U.S.C. §§ 6972 and 6973) and, if located at a facility subject to RCRA permitting requirements, its corrective action authorities (see 42 U.S.C. §§ 6924 (u) and (v) and 6928(h)). However, only regulatory solid wastes are subject to the full panoply of RCRA permit and management requirements. See 42 U.S.C. § 6903(27); Military Toxics Project v. EPA, 146 F.3d 948, 950–51 (D.C. Cir. 1998).

EPA also proposed that its interpretation of munitions on closed ranges as solid wastes would "sunset" if and when DOD promulgated a rule allowing for public involvement in the cleanup of closed and transferred ranges. EPA decided to postpone action on this rule in part because many commenters argued that DOD had no authority to promulgate such a rule, and that such deferral would be contrary to the Federal Facility Compliance Act. When Congress passed the Federal Facility Compliance Act, it rejected a Senate proposal that would have allowed DOD to regulate waste munitions, in favor of State and EPA regulation under RCRA. See House Conf. Rep. No. 102–886 (Sept. 22, 1992), pp. 28–29.

[49] EPA's final munitions rule—including its decision to postpone promulgation of the provision defining certain munitions as statutory solid wastes—does not mean that discharged munitions on ranges cannot be statutory solid wastes. Under the Federal Facility Compliance Act, if such munitions meet the statutory definition of "discarded," they are statutory solid wastes. The Department of Justice took this position in recent litigation concerning the Navy's facilities in Vieques, Puerto Rico. *See* Water Keeper Alliance v. U.S. Department of Defense, 152 F. Supp.2d 163, 176, n. 3 ("Defendants [the United States] point out that they 'do not seek dismissal of any claim that ordnance debris and unexploded ordnance left to accumulate on the [Live Impact Area] constitute solid waste.' [citation omitted] Consequently, the Court will not dismiss this claim.")

unexploded ordnance and related materials at the 16 million acres of land on closed, transferred, and transferring ranges (i.e., FUDS) that are potentially contaminated with unexploded ordnance. In many cases, this ordnance was deposited on these ranges decades ago.

In addition, paragraph 2019(a)(1) is not limited to ranges on military bases. Under EPA's "Military Munitions Rule" (see below),[50] a range may include land owned by an entity under contract with DOD or DOE that is set aside for researching, developing, testing, and evaluating military munitions and explosives. In other words, a military range may include defense contractor facilities.[51] Paragraph 2019(a)(1) may thus preempt State and EPA authority under RCRA and analogous State laws to address groundwater contaminated with perchlorate or other munitions constituents at defense contractor sites that may be considered ranges, potentially including some of those described in the Wall Street Journal article.[52]

Proposed subsection 2019(a) may well override State and EPA authority to address munitions-related environmental contamination that is not on a range at all. To cite just one example, in the normal course of maintaining artillery shells, DOD generates a waste stream from ammunition washout known commonly as "pink water." The water is pink due to the presence of trinitrotoluene (TNT), a constituent of both explosives and munitions (and a possible human carcinogen, according to EPA),[53] in the water. Ammunition washout is not conducted on operational ranges, but has in at least one case led to environmental contamination. At Pueblo Chemical Depot in Colorado, ammunition washout created a plume of TNT-contaminated groundwater that has traveled over 2 miles, and has gone off the depot to contaminate drinking water wells nearby. Under subparagraph 2019(a)(1)(A), this plume of TNT-contaminated groundwater would not be considered a solid waste (and thus excluded from the scope of the RCRA waiver of immunity), because the explosives constituents have not been deposited on an operational range, nor have they been deposited "incident to their normal and expected use," off an operational range. A similar result would obtain at the Los Alamos National Laboratory (a Department of Energy facility), where explosives constituents have contaminated groundwater approximately 1,000 feet below the ground surface.

Proposed paragraph 2019(a)(2) provides a broad exemption that may also encompass munitions-related contamination at defense contractor sites. This paragraph exempts from the definition of solid waste explosives and munitions that are used in training or in research, development, testing, and evaluation of military munitions, weapons, or weapon systems. This provision appears to create a wholesale exemption for explosives and munitions. It is not limited to ranges at all, but instead applies to any facility with such wastes, such as facilities owned and operated by defense contractors who produce munitions constituents, including perchlorate, TNT, or RDX, or who produce munitions, weapons, or weapons systems. Because this exemption includes munitions and explosives constituents, it may extend to waste streams from the production of munitions or explosives. Thus, under paragraph 2019(a)(2), the perchlorate contamination from the Aerojet-General corporation's plant near Rancho Cordova, California, or from the Kerr-McGee ammonium perchlorate production facility in Henderson, Nevada, that are described in the Wall Street Journal article[54] likely would not be subject to regulation as a solid or hazardous waste under RCRA.

Proposed subsection 2019(a)(2) may even extend to the chemical munitions scheduled for destruction at various military installations around the country. If DOD conducts or has conducted research or evaluation of chemical munitions constituents (such as mustard agent)—even for defensive purposes—under subparagraph 2019(a)(2)(A), these materials could be considered exempt from the definition of solid waste. Currently, States have the authority to regulate the scheduled destruction of chemical agent stockpiles around the United States under RCRA. For example, Colorado is planning to issue a permit for the destruction of 780,000 rounds of mustard agent at the Pueblo Chemical Depot. DOD's proposed amendments may call into question Colorado's and other States' authority over the destruction of these chemical weapons.

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[50] 40 CFR § 266.201.

[51] We understand that DOD may be offering a similar definition for codification in Title 10 of the U.S. Code. This proposed definition would then apply to proposed section 2019.

[52] See Exhibit 8.

[53] See Exhibit 7.

[54] See Exhibit 8.

DOD'S AMENDMENTS DO NOT SIMPLY CODIFY EPA'S "MILITARY MUNITIONS RULE"

DOD states that its proposed amendments would "clarify and confirm" EPA's "Military Munitions Rule." We disagree. DOD's proposal differs from the munitions rule in at least four significant ways. First, DOD's proposal narrows RCRA's statutory definition of solid waste, while the munitions rule does not affect RCRA's statutory definition of solid waste. Thus, unlike the munitions rule, this statutory change precludes States and EPA from using RCRA's imminent and substantial endangerment authorities to address most munitions-related contamination. In addition, changing the statute's definition of solid waste likely narrows RCRA's waiver of immunity and likely limits EPA's authority to regulate munitions under RCRA, as described below.

Second, by narrowing the statutory definition of solid waste, a term used in RCRA's waiver of sovereign immunity, DOD's amendments likely narrow the waiver of immunity. The amendments may thus preempt State authority to require the cleanup of most munitions-related contamination, including unexploded ordnance and perchlorate contamination, under RCRA. In contrast, the munitions rule does not preempt State authority at all. When it first proposed the munitions rule, EPA solicited comment on a regulatory approach that would preempt States from enforcing broader or more stringent requirements respecting military munitions.[55] In the final rule, EPA determined not to adopt such an approach, and expressly acknowledged that under RCRA sections 3006 and 3009, "States may adopt requirements with respect to military munitions that are more stringent or broader in scope than the Federal requirements."[56]

Third, as described above, DOD's proposal likely prevents EPA from promulgating additional regulations under RCRA governing the cleanup of munitions on non-operational ranges, because they are excluded from the statute's definition of solid waste. Under the munitions rule, EPA expressly reserved promulgation of such regulations for future decision.[57]

Fourth, by including the phrase "or constituents thereof," in paragraphs 2019 (a)(1) and (a)(2), DOD's proposal may well preempt State and EPA authority over munitions-related and explosives-related constituents that have leached from the munitions and are contaminating the environment. These include chemicals such as perchlorate, RDX, TNT, DNT, and white phosphorous. The munitions rule does not address munitions constituents at all, and does not prevent EPA or the States from requiring cleanup of these chemicals when they leach from munitions into the soil or groundwater.[58]

DOD's proposed amendments to CERCLA go far beyond DOD's stated concerns with readiness.

Proposed subsection 2019(b) has similarly broad consequences for CERCLA. This provision states:

"(b) DEFINITION OF RELEASE.

—(1) The term 'release,' as used in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9601 et seq.), includes the deposit off an operational range, or the migration off an operational range, of any explosives, unexploded ordnance, munitions, munitions fragments, or constituents thereof.

"(2) The term 'release,' as used in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9601 et seq.), does not include the deposit or presence on an operational range of any explosives, unexploded ordnance, munitions, munitions fragments, or constituents thereof that are or have been deposited thereon incident to their normal and expected use and remain thereon.

"(3) Notwithstanding the provisions of paragraph (2), the authority of the President under section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9606(a)), to take action because there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance includes the authority to take action because of the deposit or presence on an operational range of any explosives, unexploded ordnance, munitions, munitions fragments, or constituents thereof that are or have been deposited thereon incident to their normal and expected use and remain thereon.

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[55] 60 Fed. Reg. 56488 (Nov. 8, 1995).
[56] 62 Fed. Reg. 6625 (Feb. 12, 1997).
[57] "Military Munitions Rule," 62 Fed. Reg. 6622, 6632. See note 48, *supra*.
[58] 62 Fed. Reg. 6631.

"(4) Nothing in this section affects the authority of the Department to protect the environment, safety, and health on operational ranges."

DOD's proposed change to the definition of "release" may narrow the scope of State authority under State Superfund-type laws, because it may narrow CERCLA's waiver of immunity. CERCLA's waiver of immunity includes State laws "concerning removal and remedial action."[59] CERCLA's definitions of "removal" and "remedial action" are limited by the definition of "release."[60] Thus, by excluding the "deposit or presence on an operational range of any explosives, unexploded ordnance, munitions, munitions fragments, or constituents thereof that are or have been deposited thereon incident to their normal and expected use" from the definition of "release," paragraph 2019(b)(2) arguably precludes State Superfund authority over munitions-related contamination on operational ranges.

Read in conjunction with proposed paragraph 2019(b)(1), paragraph 2019(b)(2) also may be read to preclude prevents States from requiring cleanup of munitions-related contamination on closed, transferred, and transferring ranges (i.e., FUDS) under State Superfund-type laws. This statutory construction follows from the fact that paragraph 2019(b)(2) excludes the both the deposit and the presence of munitions-related contamination on an operational range from the definition of release. Consequently, the presence on a closed, transferring, or transferred range of munitions- or explosives-related contamination that was deposited when the range was operational could only be considered a "release" if paragraph 2019(b)(1) specifically included the presence of munitions-related contamination on a nonoperational range in its definition of release.

However, paragraph 2019(b)(1) only says that the deposit or migration of munitions-related contaminants off an operational range constitutes a release under CERCLA. Thus, under subsection 2019(b), munitions-related contamination on a former military range that arises from the deposit of such materials on the range while it was still operational may not be considered a "release" under CERCLA, and would not fall within the scope of CERCLA's waiver of immunity. States may thus be precluded from using their State Superfund-type laws to require DOD to address munitions-related contamination, including residual unexploded ordnance or soil or groundwater contaminated with munitions constituents such as perchlorate, RDX, or TNT at former military ranges. Additionally, there are several States whose Superfund-type laws are tied to definitions in CERCLA. Amending CERCLA's definition of "release" may limit these States' ability to require parties other than DOD to clean up such contamination at former ranges.

Subsection 2019(b)'s overall impact on EPA's CERCLA authority to clean up munitions-related contamination on operational ranges is far from clear. While preserving the President's authority under CERCLA section 106, this provision appears to eliminate section 104 removal and remedial authority for munitions-related and explosives-related contamination. It also appears to remove the cleanup of such contamination from the scope of CERCLA section 120 interagency agreements for sites on the National Priorities List. This means that EPA will no longer have authority to select (or concur in) remedies for munitions- and explosives-related contamination at NPL sites. This provision may also be read to eliminate the requirement that investigation and cleanup of these contaminants be conducted according to standards that apply to all other CERCLA cleanups. By removing these public involvement, procedural, substantive, and technical safeguards, section 2019(b) may undermine the goal of achieving cleanups that adequately protect human health and the environment.

Finally, section 2019 may limit State and Federal authority to pursue natural resource damage actions for contamination caused by munitions and explosives constituents. Natural resource damages are only available for releases of hazardous substances that cause injury to, loss of, or destruction of natural resources.[61] By restricting the definition of solid waste to exclude munitions and explosives constituents, subsection 2019(a) may exclude some such constituents from being "hazardous substances" under CERCLA.[62] By restricting the definition of "release" under CERCLA, subsection 2019(b) restricts the number of sites where natural resource damage claims may be pursued.

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[59] 42 U.S.C. § 9620(a)(4).
[60] 42 U.S.C. § 9601 (23) and (24).
[61] 42 U.S.C. § 9607(a)(4)(C).
[62] See 42 U.S.C. § 9601(14).

CONCLUSION

DOD's far-reaching amendments to RCRA, CERCLA, or the CAA are not warranted. These laws have not impacted readiness, and are not likely to do so. As shown in the preceding portions of our testimony, DOD's proposed amendments to RCRA, CERCLA, and the CAA have little to do with maintaining readiness. They would, however, provide substantial exemptions from environmental requirements. The activities that DOD would exempt from the environmental laws can have significant adverse impacts on human health and the environment. States have historically worked cooperatively with DOD to find solutions to environmental problems at military installations that minimize regulatory burdens while protecting human health and the environment. We would be glad to continue this work with DOD to develop ways to address its readiness concerns within the context of the existing environmental laws.

We would also urge that any proposed legislation on this issue go through a normal legislative process with public hearings before the committees with jurisdiction over the environmental laws. The normal legislative process allows interested parties, including the States—which are the primary implementers and enforcers of the Nation's environmental laws—an opportunity to present their views on these matters. Such hearings would allow deliberate consideration of any proposed amendments. As we have shown above, seemingly small amendments to the environmental laws can have large effects, particularly when State authority over Federal agencies is at stake.

Adopted

Summer Meeting
June 18-22, 2002
Farmington, Pennsylvania

RESOLUTION

SUPPORTING THE PRINCIPLE THAT FEDERAL FACILITIES BE SUBJECT TO THE SAME ENVIRONMENTAL STANDARDS AS PRIVATE INDUSTRY

WHEREAS, our nation has enacted a series of environmental laws designed to protect human health and the environment by regulating the emission of pollutants and by requiring remediation of environmental contamination; and

WHEREAS, such environmental laws include the Resource Conservation and Recovery Act, the Clean Air Act, the Clean Water Act, the Safe Drinking Water Act, and the Comprehensive Environmental Response, Compensation, and Liability Act (Superfund); and

WHEREAS, the Congress, in enacting each of these laws, intended that federal agencies be subject to each of these laws, and therefore included in each law a waiver of the federal government's sovereign immunity; and

WHEREAS, the States are the primary implementers of the Resource Conservation and Recovery Act, the Clean Air Act, the Clean Water Act, and the Safe Drinking Water Act, and are key partners with the Environmental Protection Agency in implementing Superfund, and

WHEREAS, despite Congress' long-standing adherence to the principle that federal agencies should be subject to the same environmental standards and enforcement as private industry, the states have experienced significant difficulty in bringing federal agencies into compliance with federal and state environmental laws because federal agencies continue to dispute the extent of waivers of immunity in the environmental laws; and

WHEREAS, federal agencies have long been recognized as the nation's largest polluters with thousands of contaminated sites across the nation, which will cost hundreds of billions of dollars to remediate; and

WHEREAS, data from the Environmental Protection Agency demonstrate that clear waivers of federal sovereign immunity are necessary to ensure federal agencies comply with state and federal environmental laws; and

WHEREAS, on several occasions, legislation has been proposed that could alter or impair state authority over federal facility environmental compliance; such proposed legislation is often not subjected to regular order with hearings before the Congressional committees with jurisdiction over the environmental laws, but instead is proposed as amendments to authorization or appropriations bills; and

WHEREAS, consideration and adoption of proposed legislation through regular order, with full and open hearings before the Congressional committees of jurisdiction, is one of the fundamental procedural safeguards of the legislative process, because it allows an opportunity for interested parties to present their views, allows for construction of a record upon which the need for legislation can be judged, and allows for debate on the merits of any proposed legislative language; and

WHEREAS, the importance of regular order in considering legislation that could alter or impair state authority over federal facility environmental compliance is particularly important because of the close scrutiny federal courts give waivers of federal sovereign immunity:

NOW, THEREFORE, BE IT RESOLVED THAT THE NATIONAL ASSOCIATION OF ATTORNEYS GENERAL:

1. Urges the Congress to consider legislation affecting federal agency compliance with environmental requirements only through regular order;

2. Urges Congress to solicit and consider the views of affected states in considering any such legislation;

3. Urges Congress to strengthen and clarify existing waivers of immunity in Superfund and the Clean Water Act, and in the other environmental laws, as appropriate;

4. Establishes a Federal Facilities Working Group, composed of representatives of the offices of interested Attorneys General, to serve as a resource to the Attorneys General, NAAG, and the NAAG Environment Committee regarding federal agency compliance with state and federal environmental laws; to monitor proposed legislation and regulatory actions in this area; and to assist the Attorneys General in formulating such responses to such proposed legislation and regulatory actions as may be timely and appropriate; and

5. Authorizes the Executive Director to transmit this resolution to Congress, the Administration, and other interested organizations and individuals; and to monitor and report back on proposed legislation that might impair state authority over federal facilities.

Readiness and Range Preservation Initiative Summary
(April 30, 2002)

Introduction. The Department of Defense has embarked on a multifaceted effort to improve readiness today and in the future. As part of that effort, the Department is recommending that Congress clarify the way that several provisions of environmental laws apply to military training and testing activities. For the most part, these changes simply confirm the way existing laws and regulations are currently administered, thereby safeguarding these existing practices against litigation seeking to overturn them. From an environmental perspective, each element of the package ranges from neutral to strongly positive in its effects. From a readiness perspective, however, these amendments are of great significance.

The changes are designed to save the lives of America's young men and women by preparing them and their equipment for combat on the first day of battle. A battlefield is not the place for soldiers, sailors, airmen, or Marines to learn how a military tactic or weapon really works. We often say that we need to train as we fight. The reality is we fight as we train. With the many restrictions placed on military training and weapons testing in recent years, training is losing its realism. Having to "unlearn" artificial training restrictions can have serious implications. To employ weapons systems and handle and use munitions properly on the battlefield, our troops must experience that use in a realistic training environment. The battlefield is not the place to learn these skills.

The sustainable readiness initiative is narrow in scope, addressing only military readiness activities—the training, testing, and operations that relate to combat. It does not affect the wide range of Defense Department activities that do not directly relate to combat, such as our wastewater treatment plants, dry cleaners, or routine transportation. And it does not affect our closed bases, or those bases that close in the future: For those bases, DoD's cleanup responsibilities remain unchanged.

The initiative also contains several proposals that will enhance environmental protection by protecting additional habitat around existing bases—a win/win for the environment and readiness. By encouraging creation of such buffer zones for our bases, the initiative will create new protection for wildlife and natural resources while simultaneously protecting our bases from encroachment by inconsistent development.

Specific Provisions.

Endangered Species Act. The legislation would confirm the prior Clinton Administration's decision that there is no need to designate critical habitat on military installations for which an Integrated Natural Resources Management Plan has been completed. These plans for conserving natural resources on military property, required by the Sikes Act, are developed in cooperation with state wildlife agencies, the U.S. Fish and Wildlife Service, and the public. They offer superior protection for species because they consider the base's environment holistically, rather than using an obsolete and unscientific species-by-species analysis.

Need for Legislation: The Clinton Administration's decision that INRMPs provide for

EXHIBIT
2

appropriate endangered species habitat management is being challenged in court by environmental groups, who cite Ninth Circuit caselaw suggesting that a California habitat management program was an insufficient basis for the Fish and Wildlife Service to avoid designating Critical Habitat. This legislation would and insulate the Fish and Wildlife Service's policy from such challenges.

Effect on the Environment: **Neutral to Positive**

- This legislation confirms existing policy of the last two Administrations.
- INRMPs are a superior form of habitat and species protection, as the both the Clinton and Bush Administrations have affirmed. Such plans are required to provide for fish and wildlife management, land management, forest management, and fish and wildlife-oriented recreation; fish and wildlife habitat enhancement; wetland protection, enhancement, and restoration; establishment of specific natural resource management goals, objectives, and timeframes; and enforcement of natural resource laws and regulations.
- In 1999, the Fish and Wildlife Service stated in a Notice of Proposed Rulemaking that "we have long believed that, in most circumstances, the designation of 'official' critical habitat is of little additional value for most listed species, yet it consumes large amounts of conservation resources... . [W]e have long believed that separate protection of critical habitat is duplicative for most species."
- The legislation explicitly requires that the Defense Department continue to consult with the Fish and Wildlife Service and the National Marine Fisheries Service under Section 7 of the Endangered Species Act (ESA); the other provisions of the ESA, as well as other environmental statutes such as the National Environmental Policy Act, would continue to apply, as well.

Effect on Readiness: **Critical**

- Absent this policy, environmental litigants would have forced the Fish and Wildlife Service to designate over 50% of the 12,000-acre Marine Corps Air Station (MCAS) Miramar and over 65% of the 125,000-acre Marine Corps Base (MCB) Camp Pendleton. Prior to adoption of this policy, 72% of Fort Lewis and 40% of the Chocolate Mountains Aerial Gunnery Range were designated as critical habitat for various species, and analogous habitat restrictions were imposed on 33% of Fort Hood. These are vital installations.
- Unlike Sikes Act INRMPs, critical habitat designation imposes rigid limitations on military use of bases, denying commanders the flexibility to manage their lands for the benefit of both readiness and endangered species.

Marine Mammal Protection Act. The legislation would codify the National Research Council's recommendation that the current overly broad definition of "harassment" of marine mammals, which includes "annoyance" or "potential to disturb," be focused on biologically significant effects. As recently as 1999, the National Marine Fisheries Service asserted that under the sweeping language of the existing statutory definition harassment "is presumed to occur when marine mammals...react to the generated sounds or visual cues"—in other words, whenever a marine mammal notices and reacts to an activity, no matter how transient or benign the reaction. Both the Clinton and Bush Administrations have sought to refine this

overbroad definition. This legislation would apply to military readiness activities a definition of harassment consistent with the recommendation of the National Research Council and developed by the Departments of Commerce, Interior, and Defense under the last two Administrations.

Need for Legislation: Environmental groups challenge the National Marine Fisheries Service's policy of using a more scientific, effects-based standard of harassment as inconsistent with the sweeping statutory standard and have announced that they will challenge NMFS' permitting of vital national security technology under that standard. Although reauthorization of the MMPA with a similar provision would obviate such a suit, global MMPA reauthorization is likely to be protracted and could be delayed by other issues. A narrow amendment for military readiness activities is fully consistent with a subsequent general reauthorization.

Effect on the Environment: **Neutral**

- The legislation confirms existing policy of the last two Administrations, endorsed by the National Research Council.
- Although excluding transient, biologically insignificant effects from regulation, the MMPA would remain in full effect for biologically significant effects—not only death or injury but also disruption of significant activities.
- The Defense Department already exercises extraordinary care in its maritime programs: all DoD activities worldwide result in fewer than 10 deaths or injuries annually (as opposed to 4800 deaths annually from commercial fishing activities).
- DoD currently funds much of the most significant research on marine mammals, and will continue this research in future.

Effect on Readiness: **Critical**

Application of the current hair-trigger definition of "harassment" has profoundly affected both vital R&D efforts and training. Navy operations are expeditionary in nature, which means world events often require planning exercises on short notice. This challenge is especially acute for the Atlantic Fleet, which over the past two years has often had to find alternate training sites for Vieques. To date, the Navy has been able to avoid the delay and burden of applying for a take permit only by curtailing and/or dumbing down training and research/testing.

- For 6 years, the Navy has been working on research to develop a suite of new sensors and tactics (the Littoral Advanced Warfare Development Program, or LWAD) to reduce the threat to the fleet posed by ultraquiet carrier-killer diesel submarines operating in the littorals and shallow seas like the Persian Gulf, the Straits of Hormuz, the South China Sea, and the Taiwan Strait. These submarines are widely distributed in the world's navies, including "Axis of Evil" countries like Iran and North Korea and other potentially hostile great powers.
  - In the 6 years that the program has operated, over 75% of the tests have been impacted by environmental considerations.
  - In the last 3 years, 9 of 10 tests have been affected. One was cancelled entirely, and 17 different projects have been scaled back.

  Deployment of the Surveillance Towed – Array Sensor System (SURTASS) Low Frequency Active (LFA) sonar system, a key defense against ultraquiet diesel

submarines, has been delayed for over six years, in large measure by the MMPA's definition of "harassment."

- o The Navy sponsored a $10 million scientific research project conducted by the Woods Hole Oceanographic Institute and Cornell University.
- o In 1998 these scientists concluded that although some marine mammals could be "harassed" (though not injured) by LFA, LFA would not adversely affect marine mammal populations.
- o The Navy still awaits the Letter of Authorization (LOA) to allow incidental taking of marine mammals in connection with the LFA program. Once the LOA is issued, DoD anticipates a lawsuit challenging, among other things, interpretation of harassment by the Navy and NMFS and the NMFS decision to issue a permit based on that interpretation.

Migratory Bird Treaty Act. The legislation would reverse a March 2002 judicial decision applying the MBTA to training activities at the Farallon de Medinilla (FDM) range in the Western Pacific that are vital to Operation Enduring Freedom. The provision would require that the military services take practical steps to prevent injuries to birds in the course of training.

Need for Legislation: Without clarifying the scope of the MBTA, DoD now faces the potential for an injunction that would halt military training if it could result in the death or injury of any migratory birds. In the FDM litigation, the judge himself stated that Congress should take up the current inflexible MBTA requirements.

- Although DoI may attempt to address this problem by regulation, a formal rulemaking process would entail at least 18-24 months, and subsequent litigation is likely since the FDM plaintiffs have already stated that they do not believe Interior has authority to issue either regulations or permits for military readiness activities. (An emergency interim regulation, by contrast, would be subject to further procedural challenge.)
- DoI's ability to address the problem by issuance of "special purpose" permits is also qualified by the fact that it would be very difficult administratively to issue site-specific special-purpose permits for the hundreds of DoD bases and activities implicating the MBTA. Programmatic special-purpose permits for categories as broad as "low-level military aviation" would likely entail at least 24-36 months to complete the requisite environmental documentation, and a subsequent lengthy legal challenge would be likely since the FDM plaintiffs have argued to the court that DoI may not lawfully issue MBTA incidental take permits that do not conduce to the net benefit of migratory birds.

Effect on the Environment: **Neutral to Positive**

The legislation merely restores the legal and regulatory status quo as it existed for over 80 years, until the FDM decision last month. The military already undertakes extensive mitigation efforts, not just at FDM but throughout all our aviation activities, because bird strikes represent a critical threat to pilot safety. Our legislation would expand that by committing to reduce injuries to migratory birds to the extent possible.

Effect on Readiness: **Critical**

- Senior commanders have testified that loss of FDM will have important detrimental effects on Operation Enduring Freedom.
  - o VADM Metzger: "FDM [has] become a necessity for training and readiness in the

war against terrorism...Closing FDM will mean that units transiting to the Seventh Fleet area of responsibility may not have adequate range training time before they are required to engage in combat operations in support of Operation Enduring Freedom."
  - Maj. Gen. Cartwright: "FDM's critical role in Marine aviation military readiness, and therefore national security, has dramatically increased since the September 11, 2001 terrorist attacks."
- Almost all species of birds everywhere are migratory, and the FDM case was brought in the D.C. Circuit, which has jurisdiction over all DoD activities.
- As a result, the holding in the FDM case puts at risk **all** military aviation, military telecommunications, and live-fire training nationwide and as far afield as FDM.

Clean Air Act. The legislation would provide more flexibility for the Defense Department in ensuring that emissions from its military training and testing are consistent with State Implementation Plans under the Clean Air Act by allowing DoD and the state a slightly longer period to accommodate or offset emissions from military readiness activities.

Need for Legislation: The Clean Air Act's "general conformity" requirement, applicable only to federal agencies, has repeatedly threatened deployment of new weapons systems and base closure/realignment despite the fact that relatively minor levels of emissions were involved.

- The planned realignment of F-14s from NAS Miramar to NAS Lemoore in California would only have been possible because of the fortuity that neighboring Castle Air Force Base in the same airshed had closed, thereby creating offsets.
- The same fortuity enabled the homebasing of new F/A-18 E/Fs at NAS Lemoore.
- The realignment of F/A-18 C/Ds from Cecil Field, Florida to NAS Oceana in Virginia was made possible only by the fortuity that Virginia was in the midst of revising its Implementation Plan and was able to accommodate the new emissions. The Hampton Roads area in which Oceana is located will likely impose more stringent limits on ozone in the future, thus reducing the state's flexibility.

As these near-misses demonstrate, under the existing requirement there is limited flexibility to accommodate readiness needs, and DoD is barred from even beginning to take readiness actions until the requirement is satisfied.

- The Clean Air Act permits the President to issue renewable one-year waivers for individual federal sources upon a paramount national interest finding, or to issue renewable three-year regulations waiving the Act's requirements for weaponry, aircraft, vehicles, or other uniquely military equipment upon a paramount national interest finding.
  - Use of such time-limited authorities in the context of activities that are (a) ongoing indefinitely, and (b) largely cumulative in effect would be difficult under a paramount interest standard, and would require needless revisiting of the issue annually or triennially.

Effect on the Environment: **Strongly positive**

The new legislation would greatly facilitate the 2005 base closure round authorized by Congress by facilitating realignment of military units from closing bases. This round will substantially reduce aggregate DoD emissions nationwide, both by reducing the number of

DoD facilities and by enabling upgrade of aging infrastructure at the remaining facilities. By contrast, the new emissions the legislation would *temporarily* authorize are typically less than .5% of the total emissions in air regions—several hundred tons in airsheds with emissions budgets of tens of thousands of tons.

Effect on Readiness: **Major**

- The provision is necessary to facilitate a new base closure round critical to military transformation.
- The more efficient and powerful engines that are being designed and built for virtually all new weapons systems will burn hotter and therefore emit more NOx than the legacy systems they are replacing, even though they will also typically emit lower levels of VOCs and CO. Without greater flexibility, the conformity requirement could be a significant obstacle to basing military aircraft in any Southern California location, as well as a potentially serious factor for the siting of the Joint Strike Fighter and the Marine Corps' Advanced Amphibious Assault Vehicle.

RCRA and CERCLA. The legislation would confirm that military munitions are subject to EPA's Military Munitions Rule while on range, and that cleanup of operating ranges is not required so long as material stays on the range. If such material moves off range, it still must be addressed promptly under existing environmental laws. Moreover, if munitions cause an imminent and substantial endangerment *on range*, EPA will retain authority to address it on range under CERCLA section 106.

Need for Legislation.

- Because of the broad statutory definition of "solid waste" in RCRA, and because states possess broad authority to adopt more stringent RCRA regulations than EPA (enforceable both by the states and by environmental plaintiffs), EPA has limited ability to afford DoD regulatory relief under RCRA.
- The broad statutory definition of "release" under CERCLA, combined with EPA's past assertions that munitions are a hazardous substance subject to CERCLA response authorities, may also limit EPA's ability to afford DoD regulatory relief.
- The President's site-specific, annually renewable waiver (under a paramount national interest standard in RCRA and a national security standard in CERCLA) are inapt for the reasons discussed above.

Effect on the Environment: **Neutral**

- The legislation codifies virtually uniform existing regulatory policy.
- The legislation does not modify the overlapping protections of the Safe Drinking Water Act, NEPA, and the ESA against environmentally harmful activities at operational military bases.
- The legislation does nothing to modify EPA's CERCLA section 106 authority to address imminent and substantial endangerment on operational military bases.
- The legislation clarifies and confirms the applicability of both RCRA and CERCLA to migration of munitions constituents off-range.
- The legislation does not modify DoD's existing cleanup responsibilities at Formerly Used Defense Sites, closed, closing, or transferring ranges, or currently operational bases that may close in the future.

Effect on Readiness: **Potentially Significant**

- Environmental plaintiffs have filed suit alleging RCRA and CERCLA violations at Fort Richardson, Alaska. If successful, plaintiffs could force remediation of the Eagle River Flats impact area, precluding live-fire training at the only mortar and artillery impact area at Fort Richardson and dramatically degrading readiness of the 172nd Infantry Brigade, the largest infantry brigade in the Army.
- If successful, the Fort Richardson litigation could set a precedent fundamentally affecting military training and testing at virtually every test and training range.

Additional Provisions.

- The legislation provides DoD with additional authority to work with conservation groups to address urban encroachment of its installations that threatens military testing, training, and operations, including purchase of land around existing installations that would be managed to protect habitat for sensitive species and to prevent development incompatible with the installation.
- In addition, it would provide legislative authority to transfer surplus property without charge to state and local government or private organizations for conservation purposes.

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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA AT ANCHORAGE

ALASKA COMMUNITY ACTION ON TOXICS, COOK INLET KEEPER, THE CHICKALOON VILLAGE TRADITIONAL COUNCIL, JANET DANIELS, RICHARD MARTIN, and THE MILITARY TOXICS PROJECT Plaintiffs, v. UNITED STATES DEPARTMENT OF THE ARMY, UNITED STATES DEPARTMENT OF DEFENSE, and DONALD RUMSFELD IN HIS OFFICIAL CAPACITY AS UNITED STATES SECRETARY OF DEFENSE, Defendants.	Civil Action No: A02-0083 CV (JWS) **AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs allege as follows:

NATURE OF THE CASE

1. This is a citizens' suit brought pursuant to the provisions of Clean Water Act 33 U.S. C. §1251, *et seq.*, the Solid Waste Disposal Act, 42 U.S. C. §6901, *et seq.*, and the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §9601, *et seq.*

JURISDICTION

2. This Court has jurisdiction over the subject matter of the First Count herein pursuant to 33 U.S.C. §1365(a)(1). Defendants have waived sovereign immunity to the First Count pursuant to 33 U.S.C. §§1323(a) and 1365(a)(1).

3. This Court has jurisdiction over the subject matter of the Second Count pursuant to 42 U.S.C. §6972(a)(1)(A). The Defendants have waived sovereign immunity to the Second Count pursuant to 42 U.S.C. §§6961(a) and 6972(a)(1)(A).

4. This Court has jurisdiction over the subject matter of the Third Count pursuant to 42 U.S.C. §9659(a)(1). The Defendants have waived sovereign immunity to the Third Count pursuant to 42 U.S.C. § 9659(a)(1).

5. By letter dated June 15, 2001, the Plaintiffs gave notice of their intent to commence this action as required by 33 U.S.C. § 1365(b)(1) and 42 U.S.C. §§ 6972(b)(1) and 9659(d)(1). Shortly following the Defendants' receipt of said letter, the Plaintiffs and Defendants commenced negotiations aimed at reaching a settlement of the claims asserted herein. At the request of the Defendants, Plaintiffs agreed that they would not commence this action

until such time as the Plaintiffs and Defendants ceased their negotiations. By letter dated about April 10, 2002, the Defendants terminated said negotiations. Plaintiffs commenced this action as soon as possible thereafter.

THE PLAINTIFFS

6. Plaintiff, Alaska Community Action on Toxics ("ACAT") is a non-profit corporation incorporated under the laws of the State of Alaska. The purposes for which ACAT exists include ensuring that the environment of the State of Alaska is safe and healthful for its members and that the environment is suitable for recreation and enjoyment by its members. Members of ACAT have consumed and/or continue to consume fish and game taken from the waters and the lands in the area of the upper Cook Inlet in the vicinity of the Eagle River, the Eagle River Flats and the Knik Arm. As a result of the land and water pollution resulting from the Army's discharge of munitions and/or the constituents and/or byproducts and/or residues of munitions as described below, said members have reduced their consumption of fish and/or game taken from these areas. If the relief requested herein were granted, said members would consume somewhat greater amounts of fish and/or game taken from these areas. The members of ACAT also have engaged and continue to engage in watching animals, particularly waterfowl and other wildlife, in areas very near the Eagle River, Eagle River Flats and the Knik Arm. As a result of the water pollution resulting from the Army's discharge of munitions and/or the constituents and/or by-products and/or residues of munitions as described below and the adverse effects of said pollution on animals, said members' opportunities to watch, and their enjoyment when watching, the animals has been reduced. If the relief requested herein were granted, these members' opportunity to watch, and their enjoyment in watching, animals in these areas would

be increased.

7. Plaintiff, Cook Inlet Keeper, is a non-profit corporation. The purposes of Cook Inlet Keeper include protection of the lands and waters in the vicinity of Cook Inlet against pollution and/or other degradation. Members of Cook Inlet Keeper have consumed and/or continue to consume fish and game taken from the waters and the lands in the area of the upper Cook Inlet in the vicinity of the Eagle River, the Eagle River Flats and the Knik Arm. As a result of the land and water pollution resulting from the Army's discharge of munitions and/or the constituents and/or byproducts and/or residues of munitions as described below, said members have reduced their consumption of fish and/or game taken from these areas. If the relief requested herein were granted, said members would consume somewhat greater amounts of fish and/or game taken from these areas. The members of Cook Inlet Keeper also have engaged and continue to engage in watching animals, particularly waterfowl and other wildlife, in areas very near the Eagle River, Eagle River Flats and the Knik Arm. As a result of the water pollution resulting from the Army's discharge of munitions and/or the constituents and/or by-products and/or residues of munitions as described below and the adverse effects of said pollution on animals, said members' opportunities to watch, and their enjoyment when watching, the animals has been reduced. If the relief requested herein were granted, these members' opportunity to watch, and their enjoyment in watching, animals in these areas would be increased.

8. Plaintiff, the Chickaloon Village Traditional Council ("Chickaloon"), is a federally recognized native American tribe. As a traditional part of the Chickaloon cultural heritage, the Chickaloon members engaged in hunting of water fowl and the gathering of water fowl eggs in and on lands and waters in the near vicinity of Fort Richardson, the Eagle River,

Eagle River Flats and the Knik Arm. As a result of the water and land pollution described below, the members of the Chickaloon have substantially reduced and/or altogether eliminated their traditional hunting and egg gathering in these areas. Members of the Chickaloon have also traditionally eaten fish taken from waters in the vicinity of the upper Cook Inlet, including without limitation the waters in the vicinity of the Knik Arm and the streams and rivers adjacent thereto. As a result of the pollution of lands and waters described below, the members of the Chickaloon have reduced their consumption of fish caught in such areas. If the relief requested herein were granted, the members of the Chickaloon would increase their hunting of water fowl and egg gathering in these areas, and would consume greater amounts of fish taken from these areas.

9. Plaintiff, Janet Daniels is an individual who is a member of Plaintiffs ACAT, Cook Inlet Keeper, Chickaloon and MTP. Ms. Daniels has consumed and/or does consume fish taken from waters in the vicinity of the Eagle River, Eagle River Flats and/or the Knik Arm, including without limitation fish taken from Moose Creek and fish caught at a native fish camp in Eklutna. As a result of the land and water pollution resulting from the Army's discharge of munitions and/or the constituents and/or byproducts and/or residues of munitions as described below, Ms. Daniels has reduced and/or eliminated her consumption of fish taken from these areas. For example, Ms. Daniels has completely eliminated her consumption of fish taken at the native fish camp near Eklutna. Even when Ms. Daniels consumes fish taken from areas such as Moose Creek, her enjoyment of said fish is greatly reduced due to her fear that the fish contain harmful levels of toxic or otherwise hazardous substances resulting from the Army's activities. If the relief requested herein were granted, Ms. Daniels would consume greater amounts of fish

taken from these areas.

10. Plaintiff, Richard Martin, is an individual and a member of Plaintiffs ACAT and Chickaloon. Mr. Martin has consumed and/or does consume fish taken from waters in the vicinity of the Eagle River, Eagle River Flats and/or the Knik Arm, including without limitation fish taken from Peters Creek and areas nearby. As a result of the land and water pollution resulting from the Army's discharge of munitions and/or the constituents and/or byproducts and/or residues of munitions as described below, Mr. Martin has reduced and/or eliminated his consumption of fish taken from these areas. If the relief requested herein were granted, Mr. Martin would consume greater amounts of fish taken from these areas.

11. Plaintiff, Military Toxics Project ("MTP"), is a non-profit organization formed for the purpose of, among other things, protecting the health and welfare of its members from environmental pollution caused by the activities of the United States military. While MTP has members nationwide, MTP has members that live in the vicinity of Fort Richardson and who consume fish and/or game taken from the lands and/or waters in the vicinity and who have reduced or eliminated their consumption of such fish and/or game as a result of the pollution of the lands and/or waters on or near Fort Richardson described below. If the relief requested herein were granted, said members would, once again, consume greater amounts of fish and/or game taken from these areas. The members of MTP also have engaged and continue to engage in watching animals, particularly waterfowl and other wildlife, in areas very near the Eagle River, Eagle River Flats and the Knik Arm. As a result of the water pollution resulting from the Army's discharge of munitions and/or the constituents and/or by-products and/or residues of munitions as described below and the adverse effects of said pollution on animals, said members'

opportunities to watch, and their enjoyment when watching, the animals has been reduced. If the relief requested herein were granted, these members' opportunity to watch, and their enjoyment in watching, animals in these areas would be increased.

FIRST COUNT

VIOLATIONS OF CLEAN WATER ACT

12. Plaintiffs hereby incorporate each of the foregoing allegations by reference as though fully set forth in this cause of action.

13. This First Count is brought against Defendants, United States Department of the Army and the United States Department of Defense only.

14. Each of the Plaintiffs is a "citizen" as said term is defined in 33 U.S.C. § 1365(g), in that they are persons having an interest which is or may be adversely affected by the actions of the Defendants described in this First Count. Each of the Plaintiffs likewise has one or more interests that are or may be adversely affected by the actions or inactions of the Defendants described in the Second and Third Counts below.

15. Defendants, United States Department of the Army and United States Department of Defense (collectively the "Army"), maintain jurisdiction and/or control over a military installation consisting of approximately 60,000 acres known as Fort Richardson, located north of Anchorage, Alaska. Fort Richardson lies within this district.

16. As part of its operations at Fort Richardson, beginning at a time currently unknown to the Plaintiffs and continuing to the present, the Army has and/or continues to and/or plans to discharge munitions, and the constituents and/or by-products and/or residues of munitions, in to and on various lands and waters on and/or in the vicinity of Fort Richardson.

17. The Army has and/or continues to and/or plans to discharge munitions, and the constituents and/or by-products and/or residues of munitions, into waters and/or on to lands on or in the vicinity of Fort Richardson, using cannons, rifles, artillery and/or other point sources.

18. The waters into which the Army has and/or continues to and/or plans to discharge munitions, and the constituents and/or by-products and/or residues of munitions, include the waters of the Eagle River, Eagle River Flats and/or Knik Arm.

19. The Army has not applied for, nor has it been issued, a permit from the United States Environmental Protection Agency ("EPA") authorizing the discharge of munitions into waters as described in this First Count.

20. The Army therefore has violated, continues to violate and/or threatens to violate 33 U.S.C. §§1311(a) and 1323(a), as well as 40 C.F.R. §122.21.

21. The waters of the Eagle River on and in the vicinity of Fort Richardson violate the water quality standards established by 18 Alaska Administrative Code 070.20(b) in that among other things such waters contain toxic or otherwise hazardous substances at levels exceeding the water quality standards, and said toxic or otherwise hazardous substances pose a danger to the health or well being of fish, birds, mammals, other animals, and plants, and many of said substances are capable of accumulating, and do accumulate, in fish, birds, mammals, other animals and plants, thereby posing a health risk to persons who consume the fish and/or birds and/or mammals or other animals. Said toxic or otherwise hazardous substances are and/or threaten to be transported by natural processes such as currents, tides, and ice movement, in to the waters of the Cook Inlet and the streams and/or rivers in the vicinity thereof. The waters of the Eagle River also violate the water quality standards in other ways that will be proven at trial.

22. The Army's discharge of munitions and/or the constituents and/or by-products and/or residues of munitions into and on lands and waters as described herein, has caused and/or contributed, and continue to cause and/or contribute, to violations of Alaska water quality standards in the Eagle River. The Army therefore has violated and continues to violate 18 Alaska Administrative Code 070.10 and 33 U.S.C. §1323(a). The State of Alaska has identified the Army's military activities as the cause for the Eagle River's violation of the quality standards.

23. The Army's discharge of munitions and the constituents, by-products and/or residues of munitions as described herein, has polluted and/or added to the pollution of the land and/or waters on and/or in the vicinity of Fort Richardson. Said lands and/or waters include lands and/or waters in, on and/or under the Eagle River, Eagle River Flats, and/or the Knik Arm. The Army's actions therefore have violated and continue to violate Alaska Statutes 46.03.710 and 33 U.S.C. § 1323(a).

24. As a result of the Army's actions, large amounts of munitions and the constituents and/or by-products and/or residues of munitions now exist in and on the lands and waters in and near the Eagle River. These munitions and the constituents and/or by-products and/or residues of munitions have been, are being, and threaten to be released to the Eagle River and such release has caused and continues to cause the waters of the Eagle River to violate the Alaska water quality standards.

25. The Army has never adopted or carried out any plan to clean up the munitions and constituents and/or by-products and/or residues of munitions from these lands and waters. By failing to adopt and carry out such a clean-up plan, the Army has caused and contributed, and continues to cause and contribute, to violations of the water quality standards in the Eagle River;

and therefore has violated and continues to violate 18 A.A.C. 070.10 and 33 U.S,C. § 1323(a).

SECOND COUNT

VIOLATIONS OF SOLID WASTE DISPOSAL ACT

26. Plaintiffs hereby incorporate each of the foregoing allegations by reference as though fully set forth in this cause of action.

27. This Second Count is brought against Defendants, United States Department of the Army and the United States Department of Defense only.

28. As described in the First Count above, the Army has violated and continues to violate Alaska Statutes §§46.03.710.

29. The Army's violations of Alaska Statutes §§46.03.710 constitute a violation of 42 U.S.C. §6961(a).

THIRD COUNT

VIOLATIONS OF CERCLA

30. Plaintiffs hereby incorporate each of the foregoing allegations by reference as though fully set forth in this cause of action.

31. This Third Count is brought against all of the Defendants named above.

32. In 1994, due to a high level of pollution, the Environmental Protection Agency placed Fort Richardson on the National Priorities List, a list of the nation's most polluted facilities that are to be given priority for cleanup.

33. Shortly thereafter, the EPA, the State of Alaska, and the Army entered into an "interagency agreement" (as that term is used in 42 U.S.C. §9620(e)) entitled "Federal Facility Agreement Under CERCLA Section 120 Administrative Docket Number 1092-05-02-120"

(hereinafter the "FFA") regarding Fort Richardson.

34. Unexploded ordnance, also referred to as ordnance and explosives ("OE") exists in, on, and/or under the lands and/or water on Fort Richardson, including without limitation the lands and/or waters of the Eagle River, Eagle River Flats and/or the Knik Arm, as well as the lands and/or waters in an area of Fort Richardson referred to by the Army as the OB/OD pad. OE may also exist in, on, and/or under other lands and/or waters on or in the vicinity of Fort Richardson. The Army caused this OE to be released to the lands and/or waters as described above. The Army intends to allow this OE to remain in and/or on the lands and/or waters permanently, and the Army does not intend to clean up or remove this OE.

35. As a result of the release of OE in and/or on the lands and/or waters described above, toxic or otherwise hazardous substances (including without limitation explosive compounds and heavy metals) have been, are being, and/or threaten to be released to the waters and lands on Fort Richardson. These toxic or otherwise hazardous substances pose a danger to the health or well being of fish, birds, mammals, other animals, and plants, and many of said substances are capable of accumulating, and do accumulate, in fish, birds, mammals, other animals and plants, thereby posing a health risk to persons who consume the fish and/or birds and/or mammals or other animals. Said toxic or otherwise hazardous substances are being and/or threaten to be transported by natural processes such as currents, tides, and ice movement, in to the waters of the Cook Inlet and the streams and/or rivers in the vicinity thereof. Natural processes also have transported and/or threaten to transport unexploded ordnance off of Fort Richardson and in to and/or on lands or waters in the vicinity of Fort Richardson, thereby posing an explosive danger to persons and wildlife off of Fort Richardson.

36. This OE in, on and/or under the lands and/or waters of Fort Richardson constitutes and contains "hazardous substances" and/or "pollutants or contaminants" as those terms are defined in 42 U.S.C. §§9601(17) and 9601(33). The Army, however, has taken, and continues to take, the position that this OE neither constitutes nor contains "hazardous substances" and/or "pollutants or contaminants" as those terms are defined in 42 U.S.C. §§9601(17) and 9601(33).

37. The Army has never commenced, nor has it performed, a remedial investigation or feasibility study (RI/FS) regarding OE on Fort Richardson.

38. The Army's failure to commence or perform such an RI/FS has violated and continues to violate 42 U.S.C. §9620(e)(1) as well as paragraphs 8.8 and 8.9 and Attachment 1 of the FFA (including without limitation section 3.1 of Attachment 1).

39. The Army has never adopted a plan for remediation of the OE described above; nor has the Army commenced or performed remediation of such OE. The Army therefore has violated and continues to violate 42 U.S.C. §§9620(e)(2)-(e)(4) as well as ¶8.10 and Attachment 1 to the FFA.

REQUEST FOR RELIEF

Plaintiffs respectfully request the following relief:

40. Declare that the Army's discharge of munitions into waters as described in the First Count herein has violated and continues to violate 33 U.S.C. §§1311(a) and/or 1323(a).

41. Order the Army to stop discharging munitions into any waters, including the waters of the Eagle River, Eagle River Flats and/or the Knik Arm until such time as the Army obtains a permit authorizing the discharge from the EPA.

42. Declare that the Army's discharge of munitions and the constituents and/or by-products and/or residues of munitions to lands and waters as described in the First and Second Counts herein has violated and/or continue to violate 18 A.A.C. §070.10, Alaska Statutes §§46.03.710 and/or 33 U.S.C. §1323(a) and/or 42 U.S.C. §6961(a).

43. Issue appropriate injunctive relief prohibiting the Army from continuing to discharge munitions and the constituents and/or by-products and/or residues of munitions to lands and waters as described in the First and Second Counts in violation of 18 A.A.C. §070.10, AS §§46.03.710 and/or 33 U.S.C. §1323(a) and/or 42 U.S.C. §6961(a).

44. Declare that the Army's failure to adopt or implement a plant to clean-up munitions in and on lands and waters as described in the First Count herein has violated and continues to violate 18 A.A.C. §070.10 and 33 U.S.C. § 1323(a).

45. Issue appropriate injunctive relief requiring the Army to adopt and implement a plan to clean up munitions so as to reduce and/or eliminate violations of Alaska's water quality standards.

46. Declare that the OE in, on, and/or under the lands and waters on Fort Richardson constitutes and contains "hazardous substances" and/or "pollutants or contaminants" as those terms are defined in CERCLA, 42 U.S.C. §§9601(17) and 9601(33).

47. Order the Army to commence and fully perform an RI/FS regarding OE on Fort Richardson.

48. Order the Army to pay the Plaintiffs' costs and attorneys fees as provided by statute, including 33 U.S.C. §1365(d) and 42 U.S. §§ 6972(e) and 9659(f).

49. Order the Army to pay appropriate civil penalties as provided by 33 U.S.C. §

1319(d), 42 U.S. C. § 6928(g), 42 U.S.C. §§ 9609(a)(1)(E), 9609(b)(5), 9622(l), and/or 9659(c).

50. Issue other and further relief as the court deems just and proper.

Dated: June 26, 2002

COX & MOYER

By: [signature] for
SCOTT J. ALLEN
Attorneys for Plaintiffs

P:\Richardson\95.Amended Complaint.wpd

Certificate of Service

I CERTIFY THAT I SERVED A COPY OF:

AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF,

ON JUNE 26, 2002 TO:

VIA HAND DELIVERY:

US DEPT. OF JUSTICE ATTORNEYS OFFICE
DISTRICT OF ALASKA
222 W. 7TH AVE. #9 ROOM 253
ANCHORAGE, AK 99513-7567

VIA FAX AND FEDERAL EXPRESS:

SCOTT WILLIAMS
TRIAL ATTORNEY
U.S. DEPT. OF JUSTICE
ENVIRONMENT & NATURAL RESOURCES DIVISION
ENVIRONMENTAL DEFENSE SECTION
501 D STREET, N.W.
WASHINGTON, DC 20004

[signature]
JOANNA PARKER
Legal Assistant
Trustees For Alaska

walkers to maintain records for three years containing information about testing, inspections, sales and distribution of these products.

The records of testing and other information required by the regulations allow the Commission to determine if baby-bouncers, walker-jumpers, and baby-walkers comply with the requirements of the regulation codified at 16 CFR 1500.18(a)(6). If the Commission determines that products fail to comply with the regulations, the records required by 16 CFR 1500.86(a)(4) enable the firm and the Commission to: (i) Identify specific models of products which fail to comply with applicable requirements; and (ii) notify distributors and retailers in the event those products are subject to recall.

Additional Information About the Request for Extension of Approval of a Collection of Information

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Requirements for Baby-Bouncers, Walker-Jumpers, and Baby-Walkers, 16 CFR 1500.18(a)(6) and 1500.86(a)(4).

Type of request: Extension of approval without change.

General description of respondents: Manufacturers and importers of baby-bouncers, walker-jumpers, and baby-walkers.

Estimated number of respondents: 28.

Estimated average number of hours per respondent: 2 per year.

Estimated number of hours for all respondents: 56 per year.

Estimated cost of collection for all respondents: $1,590.40 per year.

Comments: Comments on this request for extension of approval of information collection requirements should be submitted by January 23, 2003 to (1) the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for CPSC, Office of Management and Budget, Washington DC 20503; telephone: (202) 395-7340, and (2) the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504-0127 or by e-mail at *cpsc-os@cpsc.gov*.

Copies of this request for extension of the information collection requirements and supporting documentation are available from Linda Glatz, management and program analyst, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504-0416, ext. 2226.

Dated: December 19, 2002.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 02-32437 Filed 12-23-02; 8:45 am]

BILLING CODE 6355-01-P

DEPARTMENT OF DEFENSE

Department of the Air Force L5 Civil Signal Interface Control Document (ICD) Revision 2

AGENCY: Department of the Air Force, DoD.

ACTION: Request for public comment of L5 Civil Signal Interface Control Document (ICD) Revision 2.

SUMMARY: This notice informs the public that the Global Positioning System (GPS) Joint Program Office (JPO) has released the current ICD-GPS-705 dated 2 December 2002, Navstar GPS Space Segment/User Segment L5 Interfaces, for public review and comment. This ICD describes the interface characteristics of L5, a signal to be incorporated into the GPS system for the benefit of the civilian community. The ICD can be reviewed at the following Web site: *http://gps.losangeles.af.mil*. Click on "Public Interface Control Working Group (ICWG)." Hyperlinks to the ICD and review instructions are provided. The reviewer should save the ICD to a local memory location prior to opening and performing the review. All comments and their resolutions will be posted to the web site.

ADDRESSES: Submit comments to SMC/CZERC, 2420 Vela Way, Suite 1467, El Segundo, CA 90245-4659. A comment matrix is provided for your convenience at the web site and is the preferred method of comment submittal. Comments may be submitted to the following internet address: smc.czerc@losangeles.af.mil. Comments may also be sent by fax to 1-310-363-6387.

DATES: The suspense date for comment submittal is January 17, 2003.

FOR FURTHER INFORMATION CONTACT: CZERC at 1-310-363-6329, GPS JPO System Engineering Division, or write to the address above.

SUPPLEMENTARY INFORMATION: The civilian and military communities use the Global Positioning System which employs a constellation of 24 satellites to provide continuously transmitted signals to enable appropriately configured GPS user equipment to produce accurate position, navigation, and time information.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 02-32335 Filed 12-23-02; 8:45 am]

BILLING CODE 5001-05-P

DEPARTMENT OF DEFENSE

Presidential Determination on Classified Information Concerning the Air Force's Operating Location Near Groom Lake, NV

AGENCY: Department of the Air Force, DOD.

ACTION: Notice.

SUMMARY: Notice is hereby given that the President has exempted the United States Air Force's operating location near Groom Lake, Nevada from any Federal, State, interstate, or local provision respecting control and abatement of solid waste or hazardous waste disposal that would require the disclosure of classified information to any unauthorized persons.

FOR FURTHER INFORMATION CONTACT: Mr. W. Kipling At Lee, Jr., Deputy General Counsel (Military Affairs), Office of the Secretary of the Air Force, Washington, DC 20330; telephone (703) 695-5663.

SUPPLEMENTARY INFORMATION: 42 U.S.C. 6961 makes each department, agency and instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any solid waste management facility or disposal site, or (2) engaged in any activity resulting, or which may result, in the disposal or management of solid waste or hazardous waste subject to all Federal, State, interstate, and local requirements, both substantive and procedural (including any requirement for permits or reporting or any provisions for injunctive relief and such sanctions as may be imposed by a court to enforce such relief), respecting control and abatement of solid waste or hazardous waste disposal and management in the same manner, and to the same extent, as any person is subject to such requirements, including the payment of reasonable service charges. 42 U.S.C. 6961 also states that the President may exempt any solid waste management facility of any department, agency, or instrumentality in the executive branch from compliance with such a requirement if he determines it to be in the paramount interest of the United States to do so and that any exemption shall be for a period not in excess of one year.

EXHIBIT 4

On September 13, 2002, the President exempted the Air Force's operating location near Groom Lake, Nevada from any Federal, State, interstate, or local provisions respecting control and abatement of solid waste or hazardous waste disposal that would require the disclosure of classified information concerning that operating location to any unauthorized person. Therefore, the text of the Memorandum from the President to the Secretary of the Air Force is set forth below.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

Presidential Determination No. 2002–30
September 13, 2002

Memorandum for Administrator of the Environmental Protection Agency [and] the Secretary of the Air Force

Subject: Classified Information Concerning the Air Force's Operating Location Near Groom Lake, Nevada

I find that it is in the paramount interest of the United States to exempt the United States Air Force's operating location near Groom Lake, Nevada, the subject of litigation in *Kasza v. Brownet* (D. Nev. CV–S–94–795–PMP) and *Frost v. Perry* (D. Nev. CV–S–94–714–PMP), from any applicable requirement for the disclosure to unauthorized persons of classified information concerning that operating location. Therefore, pursuant to 42 U.S.C. 6961(a), I hereby exempt the Air Force's operating location near Groom Lake, Nevada, from any Federal, State, interstate or local provision respecting control and abatement of solid waste or hazardous waste disposal that would require the disclosure of classified information concerning the operating location to any unauthorized person. This exemption shall be effective for the full one-year statutory period.

Nothing herein is intended to: (a) Imply that in the absence of such a Presidential exemption, the Resource Conservation and Recovery Act (RCRA) or any other provision of law permits or requires disclosure of classified information to unauthorized persons; or (b) limit the applicability or enforcement of any requirement of law applicable to the Air Force's operating location near Groom Lake, Nevada, except those provisions, if any, that would require the disclosure of classified information.

The Secretary of the Air Force is authorized and directed to publish this determination in the Federal Register.

George W. Bush

[FR Doc. 02–32334 Filed 12–23–02; 8:45 am]

BILLING CODE 5001–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 24, 2003.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 18, 2002.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Revision.

Title: Integrated Postsecondary Education Data System (IPEDS), Web-Based Collection System.

Frequency: Annually.

Affected Public: Not-for-profit institutions; Businesses or other for-profit; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 63,550.

Burden Hours: 183,080.

Abstract: IPEDS is a system of surveys designed to collect basic data from approximately 9,500 postsecondary institutions in the United States. The IPEDS provides information on numbers of students enrolled, degrees completed, other awards earned, dollars expended, staff employed at postsecondary institutions, and cost and pricing information. The amendments to the Higher Education Act of 1998, Part C, Sec. 131, specify the need for the "redesign of relevant data systems to improve the usefullness and timeliness of the data collected by such systems." As a consequence, in 2000 IPEDS began to collect data through a web-based data collection system and to concentrate on those institutions that participate in Title IV federal student aid programs; other institutions may participate on a voluntary basis.

Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov.* Requests may also be faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–32306 Filed 12–23–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 23, 2003.

BENJAMIN J. CAYETANO
GOVERNOR OF HAWAII

COPY

BRUCE S. ANDERSON, Ph.D., M.P.H.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. BOX 3378
HONOLULU, HAWAII 96801

In reply, please refer to
EMD/SHWB

November 20, 2001

U11035RC

Colonel William E. Ryan III
Director of Public Works
Headquarters, U.S. Army Garrison Hawaii
Schofield Barracks, Hawaii 96857-5000

Dear Colonel Ryan:

SUBJECT: Pohakuloa Training Area
Building 343
Facility ID No. 9-601858
Withdrawal of Field Citation No. 2038

This letter is in response to your letter dated May 22, 2001, notifying the Hawaii Department of Health (DOH) that the United States Department of the Army (Army) had corrected the violation cited in DOH's Field Citation No. 2038. The Field Citation was issued during DOH's May 8, 2001, inspection of the Pohakuloa Training Area, Building 343. DOH's inspector determined that the Army had violated Hawaii Administrative Rules (HAR) Section 11-281-51(a) by failing to provide a release detection method for UST Nos. 343-7 and 343-8. Your letter and the Army's comments in the "Description of Corrections" section of the Field Citation (attached to your letter) indicate that the Army has taken appropriate steps to correct the violation. DOH appreciates the Army's efforts to correct the violation.

Your letter also advised DOH that the Army could not agree to pay the proposed $600 penalty because the Army is not authorized to waive the sovereign immunity of the United States for penalties imposed by states for violations of state UST rules.

Under HAR Section 11-281-126, if an owner or operator of a facility that has received a Field Citation does not correct the violations, pay the penalty, and sign and return the Field Citation/Settlement Agreement to DOH within thirty (30) days after the issuance of the Field Citation, the Field Citation is automatically withdrawn, and DOH may proceed with a more formal enforcement action.

EXHIBIT
5

Enclosure 1

COPY

Colonel William E. Ryan III
November 20, 2001
Page 2

Even though the Army corrected the violation, it has failed to sign and return the Field Citation/Settlement Agreement, and has refused to pay the penalty. Therefore, the Field Citation has been automatically withdrawn, and DOH is authorized to pursue more formal enforcement action. DOH has referred this matter to the Hawaii Department of the Attorney General.

Should you have any questions regarding this matter, please contact Gregory Olmsted of the Solid and Hazardous Waste Branch at (808) 586-4226.

Sincerely,

GARY GILL
Deputy Director
Environmental Health Administration

c: Dana Viola, Deputy Attorney General, Honolulu
Norwood Scott, U.S. EPA, Region 9, San Francisco

FEB 25 2002

DEPARTMENT OF THE ARMY
HEADQUARTERS, UNITED STATES ARMY GARRISON, HAWAII
SCHOFIELD BARRACKS, HAWAII 96857-5000

REPLY TO ATTENTION OF

February 20, 2002

2/26/02

Directorate of Public Works

Bob
G-601658

Mr. Gregory Olmstead
Solid and Hazardous Waste Branch
Hawaii State Department of Health (DOH)
919 Ala Moana Boulevard, Room 212
Honolulu, Hawaii 96814

COPY

RE: Field Citation No. 2038

Dear Mr. Olmstead:

The Army acknowledges receipt of your letter dated November 20, 2001, at enclosure 1, concerning the above referenced field citation. The Army wishes to reaffirm its position that the federal government has sovereign immunity and is not required to pay such state penalties.

The Army remains committed to its mission of environmental stewardship. If there are any questions, contact Ian Beltran, Environmental Division, Directorate of Public Works, 656-2878 extension 1026 or Jeanne Prussman, Staff Judge Advocate, 438-6724.

Sincerely,

William E. Ryan III
Colonel, U.S. Army
Director of Public Works

Enclosure

Figure 8
Active Installation Cost-to-Complete Trends
(Excluding FUDS, in $000)

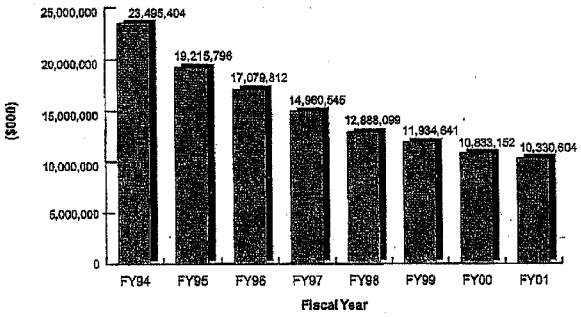
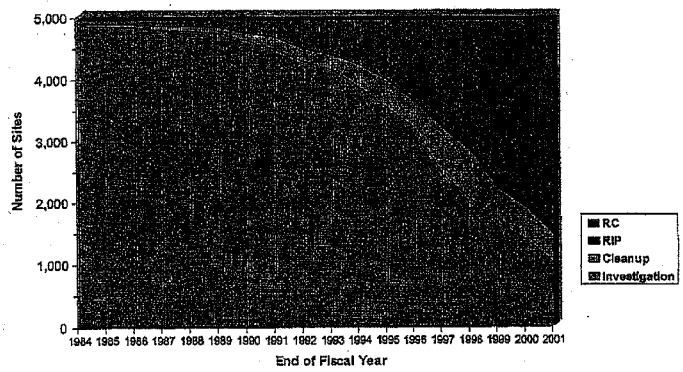


Figure 9
BRAC Installation Site Progress Over Time



Based on DoD-wide BRAC Site inventory of 4,928 sites
Includes all site types

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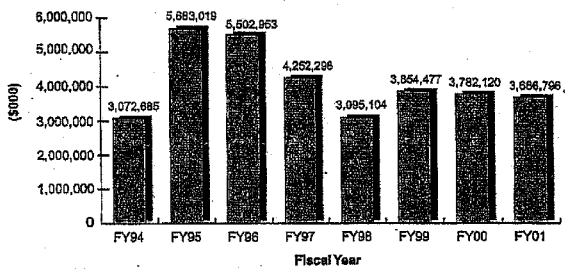
Figure 10
BRAC Installation Cost-to-Complete Estimate Trends*†
(In $000)



*FY95 and FY96 funding includes compliance in addition to restoration funding.
†Based on the Department's agency-wide FY01 financial statements, the unfunded BRAC environmental liability (Cost-to-complete) was approximately $4 Billion as of Sept. 30, 2001.

into restoration in FY98, additional funding was required, as shown by the increase in cost-to-complete estimates from FY98 to FY99.

BRAC cost-to-complete estimates are not declining at the same rate as the estimates for active installations. This is attributed, among other reasons, to a greater proportion of sites in study or cleanup phases, and a greater range of contaminants considered in the environmental restoration process. Requirements to address these issues to a greater extent at BRAC installations than active installations has impacted BRAC funding requirements and cost-to-complete estimates.

❑❑❑

In this chapter, DoD presented a comprehensive overview of the resources that have allowed the Department to achieve its current successes protecting human health and the environment and the resources it will need to guide the program to completion.

The next two chapters provide an in-depth look at the status and progress and differing requirements of the DERP's Installation Restoration and Military Munitions Response sub-programs.

ATSDR

2,4- and 2,6-DINITROTOLUENE

CAS # 121-14-2 and 606-20-2

Agency for Toxic Substances and Disease Registry ToxFAQs June 1999

This fact sheet answers the most frequently asked health questions (FAQs) about 2,4- and 2,6-dinitrotoluene. For more information, call the ATSDR Information Center at 1-888-422-8737. This fact sheet is one in a series of summaries about hazardous substances and their health effects. It's important you understand this information because this substance may harm you. The effects of exposure to any hazardous substance depend on the dose, the duration, how you are exposed, personal traits and habits, and whether other chemicals are present.

HIGHLIGHTS: 2,4- and 2,6-Dinitrotoluene are used in a number of industries. Exposure to high levels may affect the nervous system and the blood. Both are known to cause cancer in laboratory animals. These substances have been found in at least 69 (2,4-DNT) and 53 (2,6-DNT) of the 1,467 National Priorities List sites identified by the Environmental Protection Agency (EPA).

What are 2,4-dinitrotoluene (2,4-DNT) and 2,6-dinitrotoluene (2,6-DNT)?

(Pronounced 2,4- and 2,6-dī′ nī trō tōl′ yōō ēn)

Both 2,4-DNT and 2,6-DNT are pale yellow solids with a slight odor. They are two of the six forms of the chemical called dinitrotoluene (DNT).

DNT is not a natural substance. It is made by mixing toluene with nitric acid. DNT is usually used to make flexible polyurethane foams used in the bedding and furniture industries. DNT is also used to produce explosives, ammunition, and dyes. It is also used in the air bags of automobiles.

What happens to 2,4- and 2,6-DNT when they enter the environment?

- DNT has been found in the soil, surface and ground water, and air.
- It has been found at hazardous waste sites that contain buried ammunition wastes.
- DNT does not usually evaporate; it is found mostly in the air of manufacturing plants.
- DNT does not stay in the environment because it is broken down by sunlight and by bacteria.
- In water, DNT tends to be more stable and less likely to break down.
- DNT can be transferred to plants by root uptake from contaminated water or soil.

How might I be exposed to 2,4- and 2,6-DNT?

- Most people will not be exposed to 2,4- and 2,6-DNT.
- Breathing contaminated air near manufacturing plants.
- Drinking contaminated water or eating contaminated food.
- Breathing air near a hazardous waste site that contains buried ammunition wastes.

How can 2,4- and 2,6-DNT affect my health?

Workers who have been exposed to 2,4-DNT showed a higher than normal death rate from heart disease. However, these workers were exposed to other chemical as well. 2,4- and 2,6-DNT may also affect the nervous system and the blood of exposed workers.

One study showed that male workers exposed to DNT had reduced sperm counts, but other studies did not confirm this finding.

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2,4- and 2,6-DINITROTOLUENE
CAS # 121-14-2 and 606-20-2

Animals exposed to high levels of DNT had lowered number of sperm and reduced fertility. Animals also showed a reduction in red blood cells, nervous system disorders, and liver and kidney damage.

How likely are 2,4- and 2,6-DNT to cause cancer?

In animal studies, both 2,4- and 2,6-DNT caused liver cancer in rats. There are no studies on the effects of 2,4- and 2,6-DNT on people. The International Agency for Research on Cancer (IARC) has determined that 2,4- and 2,6-DNT are possible human carcinogens.

How can 2,4- and 2,6-DNT affect children?

It is unlikely that children would be exposed to 2,4- and 2,6-DNT unless they live near a manufacturing plant or a waste site that contains these compounds. Children are at risk of exposure if DNT has leached into a community's drinking water supply from a nearby hazardous waste site, since they drink more fluids in proportion to their body weight than adults. Children playing in DNT-contaminated surface water might be more exposed than adults, because of their larger skin area in proportion to their body weight.

The health effects of DNT on children have not been studied. It is not known if DNT affects children differently than adults, or what long-term effects might appear in adults exposed as children.

How can families reduce the risk of exposure to 2,4- and 2,6-DNT?

If your doctor finds that you have been exposed to significant amounts of 2,4- or 2,6-DNT, ask if children may also be exposed. When necessary your doctor may need to ask your state Department of Public Health to investigate.

Is there a medical test to show whether I've been exposed to 2,4- and 2,6-DNT?

Both 2,4- and 2,6-DNT and the chemicals they change into in the body can be measured in the blood and urine. The urine must be collected within 24 hours of exposure. These tests cannot show how much 2,4- or 2,6-DNT a person has been exposed to. They are not usually available in a doctor's office, but they can be performed in special laboratories.

Has the federal government made recommendations to protect human health?

EPA requires that spills or accidental releases of more than 1,000 pounds of DNT be reported to the EPA.

The Occupational Safety and Health Administration (OSHA) requires that total DNT (all forms) in workplace air should not exceed 1.5 mg per cubic meter (1.5 mg/m^3) for an 8-hour workday, 40-hour workweek.

The National Institute of Occupational Safety and Health (NIOSH) recommends a workplace limit of 1.5 mg/m^3. This is the average concentration for a 10-hour day over a 40-hour workweek.

Source of Information

Agency for Toxic Substances and Disease Registry (ATSDR). 1998. Toxicological profile for 2,4- and 2,6-dinitrotoluene. Atlanta, GA: U.S. Department of Health and Human Services, Public Health Service.

Animal testing is sometimes necessary to find out how toxic substances might harm people and how to treat people who have been exposed. Laws today protect the welfare of research animals and scientists must follow strict guidelines.

Where can I get more information? For more information, contact the Agency for Toxic Substances and Disease Registry, Division of Toxicology, 1600 Clifton Road NE, Mailstop E-29, Atlanta, GA 30333. Phone: 1-888-422-8737, FAX: 404-639-6359. ToxFAQs Internet address via WWW is http://www.atsdr.cdc.gov/toxfaq.html ATSDR can tell you where to find occupational and environmental health clinics. Their specialists can recognize, evaluate, and treat illnesses resulting from exposure to hazardous substances. You can also contact your community or state health or environmental quality department if you have any more questions or concerns.

ATSDR

RDX
CAS # 121-82-4

Agency for Toxic Substances and Disease Registry ToxFAQs September 1996

This fact sheet answers the most frequently asked health questions (FAQs) about RDX. For more information, call the ATSDR Information Center at 1-888-422-8737. This fact sheet is one in a series of summaries about hazardous substances and their health effects. It's important you understand this information because this substance may harm you. The effects of exposure to any hazardous substance depend on the dose, the duration, how you are exposed, personal traits and habits, and whether other chemicals are present.

SUMMARY: RDX is an explosive. Few people will be exposed to RDX. Exposure to large amounts can cause seizures. RDX has been found in at least 16 of the 1,430 National Priorities List sites identified by the Environmental Protection Agency (EPA).

What is RDX?

(Pronounced RDX)

RDX stands for Royal Demolition eXplosive. It is also known as cyclonite or hexogen. The chemical name for RDX is 1,3,5-trinitro-1,3,5-triazine. It is a white powder and is very explosive.

RDX is used as an explosive and is also used in combination with other ingredients in explosives. Its odor and taste are unknown. It is a synthetic product that does not occur naturally in the environment. It creates fumes when it is burned with other substances.

What happens to RDX when it enters the environment?

- Particles of RDX can enter the air when it is disposed of by burning.
- RDX can enter the water from disposal of waste water from Army ammunitions plants, and it can enter water or soil from spills or leaks from improper disposal at these plants or at hazardous waste sites.
- RDX dissolves very slowly in water, and it also evaporates very slowly from water.
- It does not cling to soil very strongly and can move into the groundwater from soil.
- RDX can be broken down in air and water in a few hours, but it breaks down more slowly in soil.
- RDX does not build up in fish or in people.

How might I be exposed to RDX?

Few people will be exposed to RDX. Fewer than 500 people are known to work with RDX. These people can be exposed by:

- Breathing dust with RDX in it.
- Getting RDX on their skin.
- Drinking contaminated water or touching contaminated soil near factories that produce RDX.

How can RDX affect my health?

RDX can cause seizures (a problem of the nervous system) in humans and animals when large amounts are inhaled or eaten. The effects of long-term (365 days or longer), low-level exposure on the nervous system are not known. Nausea and

vomiting have also been seen. No other significant health effects have been seen in humans.

Rats and mice that ate RDX for 3 months or more had decreased body weights and slight liver and kidney damage.

It is not known whether RDX causes birth defects in humans; it did not cause birth defects in rabbits, but it did result in smaller offspring in rats. It is not known whether RDX affects reproduction in people.

How likely is RDX to cause cancer?

The EPA has determined hat RDX is a possible human carcinogen.

In one study, RDX caused liver tumors in mice that were exposed to it in the food. However, carcinogenic effects were not noted in rat studies and no human data are available.

Is there a medical test to show whether I've been exposed to RDX?

Medical tests are available that can measure RDX levels in your blood or urine. However, these tests can only be used if you have come in contact with RDX in the last few days. These tests can determine if you have been exposed to RDX, but they cannot be used to determine how much RDX entered your body.

These tests aren't available at most doctors' offices, but can be done at special laboratories that have the right equipment. However, they cannot be used to determine long-term health effects from RDX.

The usual immediate health effects (seizures, muscle twitching, or vomiting) from very high exposures would probably occur before you had the blood or urine test.

Has the federal government made recommendations to protect human health?

The Department of Transportation (DOT) has many regulations on the transportation of explosives.

The EPA recommends a drinking water guideline of 2 micrograms (μg) RDX per liter for lifetime exposure for adults.

The National Institute for Occupational Safety and Health (NIOSH) has recommended an exposure limit of 1.5 milligrams RDX per cubic meter of air (1.5 mg/m^3) for a 10-hour workday, 40-hour workweek.

The NIOSH short-term exposure limit, which is the highest level of RDX that they recommend workers be exposed to for 15 minutes, is 3 mg/m^3.

The American Conference of Governmental Industrial Hygienists (ACGIH) also recommends an exposure limit of 1.5 mg/m^3 in workplace air for an 8-hour workday, 40-hour workweek.

Glossary

Carcinogen: A substance that can cause cancer.

CAS: Chemical Abstracts Service.

Dissolve: To disappear gradually.

Evaporate: To change into a vapor or a gas.

Microgram (μg): One millionth of a gram.

Milligram (mg): One thousandth of a gram.

Tumor: An abnormal mass of tissue.

Reference

Agency for Toxic Substances and Disease Registry (ATSDR). 1995. Toxicological profile for RDX. Atlanta, GA: U.S. Department of Health and Human Services, Public Health Service.

Where can I get more information? For more information, contact the Agency for Toxic Substances and Disease Registry, Division of Toxicology, 1600 Clifton Road NE, Mailstop E-29, Atlanta, GA 30333. Phone:1-888-422-8737, FAX: 404-639-6359. ToxFAQs Internet address via WWW is http://www.atsdr.cdc.gov/toxfaq.html ATSDR can tell you where to find occupational and environmental health clinics. Their specialists can recognize, evaluate, and treat illnesses resulting from exposure to hazardous substances. You can also contact your community or state health or environmental quality department if you have any more questions or concerns.

ATSDR

2,4,6-TRINITROTOLUENE (TNT) CAS # 118-96-7

Agency for Toxic Substances and Disease Registry ToxFAQs September 1996

This fact sheet answers the most frequently asked health questions (FAQs) about 2,4,6-trinitrotoluene. For more information, call the ATSDR Information Center at 1-888-422-8737. This fact sheet is one in a series of summaries about hazardous substances and their health effects. It's important you understand this information because this substance may harm you. The effects of exposure to any hazardous substance depend on the dose, the duration, how you are exposed, personal traits and habits, and whether other chemicals are present.

SUMMARY: Exposure to 2,4,6-trinitrotoluene occurs through eating, drinking, touching, or inhaling contaminated soil, water, food, or air. Health effects reported in people exposed to 2,4,6-trinitrotoluene include anemia, abnormal liver function, skin irritation, and cataracts. This substance has been found in at least 20 of the 1,430 National Priorities List sites identified by the Environmental Protection Agency.

What is 2,4,6-trinitrotoluene?

(Pronounced 2,4,6-trī/ nīˈtrō-tōl/ yōō ēn)

2,4,6-Trinitrotoluene is a yellow, odorless solid that does not occur naturally in the environment. It is commonly known as TNT and is an explosive used in military shells, bombs, and grenades, in industrial uses, and in underwater blasting.

2,4,6-Trinitrotoluene production in the United States occurs solely at military arsenals.

What happens to 2,4,6-trinitrotoluene when it enters the environment?

- 2,4,6-Trinitrotoluene enters the environment in waste waters and solid wastes resulting from the manufacture of the compound, the processing and destruction of bombs and grenades, and the recycling of explosives.
- It moves in surface water and through soils to groundwater.
- In surface water, it is rapidly broken down into other chemical compounds by sunlight.
- It is broken down more slowly by microorganisms in water and sediment.
- Small amounts of it can accumulate in fish and plants.

How might I be exposed to 2,4,6-trinitrotoluene?

- Drinking contaminated water that has migrated from chemical waste disposal sites.
- Breathing contaminated air.
- Eating contaminated foods such as fruits and vegetables.
- Eating contaminated soil.

How can 2,4,6-trinitrotoluene affect my health?

Workers involved in the production of explosives who were exposed to high concentrations of 2,4,6-trinitrotoluene in workplace air experienced several harmful health effects, including anemia and abnormal liver function.

Similar blood and liver effects, as well as spleen enlargement and other harmful effects on the immune system, have been observed in animals that ate or breathed 2,4,6-trinitrotoluene.

Other effects in humans include skin irritation after prolonged skin contact, and cataract development after long-term (365 days or longer) exposure.

It is not known whether 2,4,6-trinitrotoluene can cause birth defects in humans. However, male animals treated with high doses of 2,4,6-trinitrotoluene have developed serious reproductive system effects.

How likely is 2,4,6-trinitrotoluene to cause cancer?

The EPA has determined that 2,4,6-trinitrotoluene is a possible human carcinogen. This assessment was based on a study in which rats that ate 2,4,6-trinitrotoluene for long periods developed tumors of the urinary bladder.

Is there a medical test to show whether I've been exposed to 2,4,6-trinitrotoluene?

Laboratory tests can detect 2,4,6-trinitrotoluene or its breakdown products in blood or urine. Detection of its breakdown products in urine is a clear indication of exposure. This test isn't available at most doctors' offices, but can be done at special laboratories that have the right equipment.

A simpler, but less specific test of 2,4,6-trinitrotoluene exposure is a change in the color of urine to amber or deep red due to the presence of its breakdown products. However, none of these tests can predict whether a person will experience any health effects.

Has the federal government made recommendations to protect human health?

Since 2,4,6-trinitrotoluene is explosive, flammable, and toxic, EPA has designated it as a hazardous waste.

The Department of Transportation (DOT) specifies that when 2,4,6-trinitrotoluene is shipped, it must be wet with at least 10% water (by weight) and it must be clearly labeled as a flammable solid.

The Occupational Safety and Health Administration (OSHA) set a maximum level of 1.5 milligrams of 2,4,6-trinitrotoluene per cubic meter of workplace air (1.5 mg/m^3) for an 8-hour workday for a 40-hour workweek.

The National Institute for Occupational Safety and Health (NIOSH) and the American Conference of Governmental Industrial Hygienists (ACGIH) recommend an exposure limit of 0.5 mg/m^3 in workplace air for a 40-hour workweek.

Glossary

Anemia: A decreased ability of the blood to transport oxygen.

Breakdown product: A substance that is formed when a chemical breaks down in the body.

Carcinogen: A substance that can cause cancer.

CAS: Chemical Abstracts Service.

Cataract: Clouding of the lens or capsule of the eye, causing partial or total blindness.

Milligram (mg): One thousandth of a gram.

Reference

Agency for Toxic Substances and Disease Registry (ATSDR). 1995. Toxicological profile for 2,4,6-trinitrotoluene (update). Atlanta, GA: U.S. Department of Health and Human Services, Public Health Service.

Where can I get more information? For more information, contact the Agency for Toxic Substances and Disease Registry, Division of Toxicology, 1600 Clifton Road NE, Mailstop E-29, Atlanta, GA 30333. Phone:1-888-422-8737, FAX: 404-639-6359. ToxFAQs Internet address via WWW is http://www.atsdr.cdc.gov/toxfaq.html ATSDR can tell you where to find occupational and environmental health clinics. Their specialists can recognize, evaluate, and treat illnesses resulting from exposure to hazardous substances. You can also contact your community or state health or environmental quality department if you have any more questions or concerns.

1. PUBLIC HEALTH STATEMENT

This statement was prepared to give you information about white phosphorus and white phosphorus smoke and to emphasize the human health effects that may result from exposure to it. The Environmental Protection Agency (EPA) identifies the most serious hazardous waste sites as in the nation. These sites make up the National Priorities List (NPL) and are the sites targeted for long-term federal clean-up activities. White phosphorus has been found in at least 77 of 1,430 current or former NPL sites. However, the total number of NPL sites evaluated is not known. As more sites are evaluated, the number of sites at which white phosphorus is found may increase. This is important because exposure to white phosphorus may harm you and because these sites are sources of human exposure to white phosphorus.

When a substance is released from a large area, such as an industrial plant, or from a container, such as a drum or bottle, it enters the environment. This release does not always lead to exposure. You can be exposed to a substance only when you come in contact with it. You may be exposed by breathing, eating, or drinking substances containing the substance or by skin contact with it.

If you are exposed to a substance such as white phosphorus, many factors will determine whether harmful health effects will occur and what the type and severity of those health effects will be. These factors include the dose (how much), the duration (how long), the route or pathway by which you are exposed (breathing, eating, drinking, or skin contact), the other chemicals to which you are exposed, and your individual characteristics such as age, sex, nutritional status, family traits, lifestyle, and state of health.

1.1 WHAT ARE WHITE PHOSPHORUS AND WHITE PHOSPHORUS SMOKE?

Pure white phosphorus is a colorless-to-white waxy solid, but commercial white phosphorus is usually yellow. Therefore, it is also known as yellow phosphorus. White phosphorus is also called phosphorus tetramer and has a garlic-like smell. In air, it catches fire at temperatures

10-15 degrees above room temperature. Because of its high reactivity with oxygen in air, white phosphorus is generally stored under water. White phosphorus does not occur naturally. Industries produce it from naturally occurring phosphate rocks.

White phosphorus is used mainly for producing phosphoric acid and other chemicals. These chemicals are used to make fertilizers, additives in foods and drinks, cleaning compounds, and other products. Small amounts of white phosphorus have been used as rat and roach poisons and in fireworks. In the past, white phosphorus was used to make matches, but another chemical with fewer harmful health effects has since replaced it.

In the military, white phosphorus is used in ammunitions such as mortar and artillery shells, and grenades. When ammunitions containing white phosphorus are fired in the field, they burn and produce smoke. The smoke contains some unburnt phosphorus, but it mainly has various burned phosphorus products. In military operations, such smoke is used to conceal troop movements and to identify targets or the locations of friendly forces. White phosphorus munitions are intended to burn or firebomb the opponents, in other words, to effectively produce widespread damage but not kill the enemy.

You will find more information on the physical properties and uses of white phosphorus and white phosphorus smoke in Chapters 3 and 4 of this profile.

1.2 WHAT HAPPENS TO WHITE PHOSPHORUS AND WHITE PHOSPHORUS SMOKE WHEN IT ENTERS THE ENVIRONMENT?

White phosphorus enters the environment when industries make it or use it to make other chemicals and when the military uses it as ammunition. It also enters the environment from spills during storage and transport. Because of the discharge of waste water, white phosphorus is likely to be found in the water and bottom deposits of rivers and lakes near facilities that make or use it. It may also be found at sites where the military uses phosphorus-containing ammunition during training exercises. Rainwater washout of these sites may contaminate nearby waterways and their bottom deposits. Hazardous waste sites that contain white phosphorus are also

potential sources of exposure to people. However, because white phosphorus reacts very quickly with oxygen in the air, it may not be found far away from sources of contamination.

The fate of white phosphorus smoke is similar to the fate of reaction products of white phosphorus vapor in air. White phosphorus vapor in air reacts with oxygen and is changed to relatively harmless chemicals within minutes. However, particles in the air may have a protective coating that makes them unreactive for a longer time. White phosphorus reacts mainly with oxygen in water and may stay in water for hours to days. However, chunks of white phosphorus coated with protective layers may stay in water and soil for years if oxygen levels in the water and soil are very low.

In water with low oxygen, white phosphorus may react with water to form a compound called phosphine. Phosphine is a highly toxic gas and quickly moves from water to air. Phosphine in air is changed to less harmful chemicals in less than a day. In water, white phosphorus builds up slightly in the bodies of fish. The other chemicals in white phosphorus smoke are mainly changed to relatively harmless chemicals in water and soil. White phosphorus may stay in soil for a few days before it is changed to less harmful chemicals. However, in deeper soil and the bottom deposits of rivers and lakes where there is no oxygen, white phosphorus may remain for several thousand years. White phosphorus binds moderately to soil and typically doesn't move deep in soil with oxygen-depleted rainwater.

Chapter 5 provides more information about the fate and movement of white phosphorus in the environment.

1.3 HOW MIGHT I BE EXPOSED TO WHITE PHOSPHORUS AND WHITE PHOSPHORUS SMOKE?

You may be exposed to white phosphorus by breathing in air that contains white phosphorus or by swallowing water or food contaminated with it. White phosphorus has rarely been found in air. Therefore, unless you are near military facilities during training exercises that use white phosphorus ammunition, exposure to it by breathing air will be insignificant. White phosphorus

has not been found in drinking water or any food other than fish caught in contaminated water and game birds from contaminated areas. The maximum level found was 207 milligrams of white phosphorus per kilogram (207 mg/kg) in the muscle of channel catfish caught from the Yellow Lake in Pine Bluff, Arkansas. Some people are exposed to low levels of white phosphorus by eating contaminated food. People who work in industries that produce or use white phosphorus, people who eat contaminated fish or game birds, and people who live near phosphorus-containing waste sites may be exposed to white phosphorus at higher levels than the rest of the population. Other than exposure of certain workers at the Pine Bluff Arsenal in Arkansas, very few studies exist that have information on exposure to high levels of white phosphorus.

Most known cases of fatal or severe exposure to white phosphorus resulted from adults or children accidentally or deliberately swallowing rat poisons or fireworks or handling munitions containing white phosphorus. Other known instances of severe exposure of workers were a result of accidents in white phosphorus loading plants. People, particularly those in the military who use phosphorus-containing ammunitions, may be exposed to white phosphorus smoke during warfare, training exercises, and accidents.

1.4 HOW CAN WHITE PHOSPHORUS AND WHITE PHOSPHORUS SMOKE ENTER AND LEAVE MY BODY?

White phosphorus can enter your body when you breathe air containing white phosphorus. We do not know if white phosphorus in your lungs will enter the blood. White phosphorus can also enter your body when you eat food or drink water containing white phosphorus or when you are burned by it. We do not know if white phosphorus can enter your body through skin that has not been cut or burned. If it enters your body when you eat, drink, or are burned, white phosphorus enters the blood rapidly. We do not know if it changes into other compounds in the blood. Most of the white phosphorus that enters your body leaves in urine and feces after several days. White phosphorus smoke can enter your lungs when you breathe air containing it. When that happens, we do not know if it will enter your blood or how it will leave your body. For more information, please read Chapter 2.

1.5 HOW CAN WHITE PHOSPHORUS AND WHITE PHOSPHORUS SMOKE AFFECT MY HEALTH?

Breathing in white phosphorus can cause you to cough or develop a condition known as phossy jaw that involves poor wound healing in the mouth and a breakdown of the jaw bone. Damage to the blood vessels of the mouth has been observed in rats breathing air containing white phosphorus. Most of what is known about the health effects of breathing this compound is from studies of workers. Current levels of white phosphorus in workplace air are much lower than in the past. If you eat or drink a small amount of white phosphorus (less than one teaspoon), you may vomit; have stomach cramps; have liver, heart, or kidney damage; become extremely drowsy; or die. Most of what is known about the health effects of eating or drinking white phosphorus is from reports of people eating rat poison or fireworks that contained it. White phosphorus is no longer found in rat poison or fireworks. The levels of it that you might be exposed to in food or water are much lower than the levels that were in rat poison or fireworks. We do not know if more serious health effects will occur in people who eat or drink white phosphorus-containing substances for a long time. If burning white phosphorus touches your skin, it will burn you. If you are burned with white phosphorus, you may also develop heart, liver, and kidney damage. We do not know if it can cause cancer or birth defects, or if it affects the ability of people to have children. Because of the lack of cancer studies on animals or people, the EPA has determined that white phosphorus is not classifiable as to human carcinogenic&y (that is, whether or not it causes cancer). If you breathe white phosphorus smoke, you may damage your lungs and throat. We do not know how white phosphorus smoke can affect your health if it gets on your skin. For more information, please read Chapter 2.

1.6 IS THERE A MEDICAL TEST TO DETERMINE WHETHER I HAVE BEEN EXPOSED TO WHITE PHOSPHORUS AND WHITE PHOSPHORUS SMOKE?

There are no medical tests to tell if you have been exposed to white phosphorus or its smoke. However, the health effects that can follow exposure may lead your physician to suspect exposure. For more information, please read Chapters 2 and 6.

1.7 WHAT RECOMMENDATIONS HAS THE FEDERAL GOVERNMENT MADE TO PROTECT HUMAN HEALTH?

EPA requires industry to report spills of white phosphorus of more than 1 pound. White phosphorus levels in workplace air are regulated by the Occupational Safety and Health Administration (OSHA), and recommendations for safe levels have been made by the National Institute for Occupational Safety and Health (NIOSH) and the American Conference of Governmental Industrial Hygienists (ACGIH). All three organizations set the inhalation exposure limit for white phosphorus in the workplace during an S-hour workday at 0.1 milligram per cubic meter of air (mg/m3). There are no federal government recommendations for white phosphorus smoke. More information can be obtained from Chapter 7.

1.8 WHERE CAN I GET MORE INFORMATION?

If you have any more questions or concerns, please contact your community or state health or environmental quality department or:

Agency for Toxic Substances and Disease Registry
Division of Toxicology
1600 Clifton Road NE, Mailstop E-29
Atlanta, Georgia 30333
(404) 639-6000

This agency can also provide you with information on the location of occupational and environmental health clinics. These clinics specialize in the recognition, evaluation, and treatment of illness resulting from exposure to hazardous substances.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN 18 1999

OFFICE OF
RESEARCH AND DEVELOPMENT

SUBJECT: Interim Assessment Guidance for Perchlorate

FROM: Norine E. Noonan
Assistant Administrator (8101R)

TO: Regional Administrators
Regional Waste Management Division Directors
Regional Water Management Division Directors

The purpose of this memorandum is to transmit the attached interim assessment guidance from the Office of Research and Development (ORD) relevant to Agency activities related to perchlorate. The development of this guidance is in response to requests to ORD from some of the Regional offices, as well as from individual States.

As you know, the Office of Solid Waste and Emergency Response (OSWER) has recently forwarded to you the final report of the February 1999, External Peer Review of the document entitled "Perchlorate Environmental Contamination: Toxicology Review and Risk Characterization." The external review document (ERD), subject of the peer review, was developed by ORD's National Center for Environmental Assessment (NCEA).

The human health and ecological assessment issues related to environmental contamination by perchlorate are complex. The ERD addressed an immediate need to bring more science into the assessment process, but at the time of the February 1999 peer review meeting, several key studies on perchlorate were underway or planned. These studies will provide some critical assessment information. These new data will be incorporated into the revised assessment document that will undergo a second external peer review in January 2000. Because ORD is committed to bringing the latest available science to bear on the human and ecotoxicology estimates, ORD is recommending that until the completion of the second review, EPA risk assessors and risk managers follow the attached interim guidance. This guidance has been reviewed by the Office of Water (OW), Office of Solid Waste and Emergency Response (OSWER), and the Office of General Counsel and is supported by both OW and OSWER.

We look forward to working with you as we come to closure on this aspect of the perchlorate contamination issues over the next nine months. If there are any questions or if you require additional information, do not hesitate to contact Annie Jarabek at 919-541-4847 (voice); 919-541-1818 (FAX); or jarabek.annie@epa.gov (E-mail).

Attachment

cc: Tim Fields, OSWER
Jonathan C. Fox, OW
William Farland, NCEA
Lt. Col. Dan Rogers, DoD
Annie Jarabek, NCEA

ORD Interim Guidance for Perchlorate

Because of remaining significant concerns and uncertainties that must be addressed in order to finalize a human health oral risk benchmark for perchlorate, the Office of Research and Development (ORD) recommends that Agency's risk assessors and risk managers continue to use the standing provisional RfD range of 0.0001 to 0.0005 mg/kg-day for perchlorate-related assessment activities. This recommendation is based on the determination that important new emerging data may have an impact on the proposed revised oral human health risk benchmark contained in the February 1999 External Review Document (ERD). Some background information and the reasons for this recommendation are detailed below.

In February 1999, an external peer review meeting was held in San Bernadino, California to review the document entitled "Perchlorate Environmental Contamination: Toxicology Review and Risk Characterization." This ERD was developed by ORD's National Center for Environmental Assessment (NCEA). The ERD, available on the Internet at http://www.epa.gov/ncea/perch.htm, was developed as part of a wider interagency effort to address environmental contamination issues related to perchlorate. More information on this effort is available at http://www.epa.gov/ogwdw/ccl/perchlor/perchlo.html. The external peer review was sponsored by the Office of Solid Waste and Emergency Response (OSWER) and the Office of Water. The final peer review report of the February 1999 meeting has recently been transmitted to you by OSWER.

As explained in the ERD, the current range of a provisional RfD value for perchlorate spans from 0.0001 mg/kg-day to 0.0005 mg/kg-day; this range was issued by the NCEA Superfund Technical Support Center based on assessments in 1992 and revised in 1995. If state or local environmental authorities decide to pursue site-specific clean-up or other water management decisions based on this provisional RfD range by applying the standard default body weight (70 kg) and water consumption level (2 L/day), the resulting provisional clean-up levels or action levels would range from 4-18 parts per billion (ppb). It should be noted that no cancer assessment was performed at this time.

The ERD presented an updated human health risk assessment as well as a screening-level ecological assessment of newly performed studies on the toxicity of perchlorate. The updated health assessment harmonizes noncancer and cancer approaches to derive a single oral risk benchmark based on precursor effects for both neurodevelopmental effects and thyroid neoplasia. Both of these are historically established effects often observed after disturbances in the hypothalamic-pituitary-thyroid feedback system. By their nature, each of these effects is likely to have a biological threshold. The proposed revised oral human health risk benchmark is protective of potential carcinogenic effects based on new perchlorate data on the lack of its genotoxicity and the reversibility of induced thyroid hypertrophy/hyperplasia. The proposed revised oral human health risk benchmark is 0.0009 mg/kg-day. No traditional RfD or cancer slope factor was proposed in the ERD. If state or other local environmental authorities choose to apply the same default values as above to the revised oral benchmark, a site-specific clean-up or action level of 32 ppb would result.

The Agency has committed to another external peer review as part of the process to more completely and accurately characterize the human and ecotoxicological risks associated with perchlorate contamination and to make this information available through the Integrated Risk Information System (IRIS). In the next assessment, NCEA will address comments made in the February 1999 report, as well as review and incorporate data from additional studies that were either nearing completion or recommended at that time. In addition to recommended studies on pharmacokinetics, developmental effects testing in another species and repeat motor activity evaluations are underway. Another important recommended activity underway is a National Toxicology Program-sponsored pathology working group (PWG) review of the thyroid and brain tissue from all previous and pending studies. This PWG review will provide for a common nomenclature of lesions and for a consistent pathology review across studies, with the goal to reduce variability in the data. Further, an interlaboratory validation study of the hormone analyses (T4, T3, and TSH) across participating laboratories will be performed. Additional ecotoxicology studies, including some site-specific and farm gate analyses of food crops, are also either being reviewed or already underway.

The purpose of the next external peer review will be to evaluate these additional data and to review the draft final NCEA assessment. All of the perchlorate testing and study activities, whether underway, in review, or planned, are being timed to support the goal of the next external peer review in January 2000. As mentioned above, this next peer review is intended as part of the IRIS process. After revision to reflect any additional comments or recommendations, the final NCEA assessment will then go to IRIS consensus review.

Because new analyses and data are to be considered, we can predict that the human and ecotoxicology benchmarks are likely to change. The new estimates will reflect greater accuracy and may be either higher or lower than the harmonized benchmark proposed in the February 1999 document (0.0009 mg/kg-day). *Therefore, ORD recommends that Agency risk assessors and risk managers continue to use the standing provisional RfD range of 0.0001 to 0.0005 mg/kg-day because of continued uncertainty with respect to the impact of the pending data and analyses on the final estimate.* This recommendation helps to ensure that the Agency bases its risk management decisions on the best available peer reviewed science and is in keeping with the full and open participatory process embodied by the proposed series of peer review workshops. It should be noted, that due to the uncertainty of whether the final oral human health risk benchmark will increase or decrease based on the new data and analyses, the standing provisional RfD range is the more conservative of the estimates available at this time and, therefore, more likely to be public health protective in the face of this uncertainty. This is also consistent with Agency practice that existing toxicity estimates remain in effect until the review process to revise them is completed.

This document provides guidance to EPA Regions concerning Agency activities related to perchlorate. It also provides guidance to the public and the regulated community on how EPA intends to exercise its discretion in carrying out these activities. The guidance is designed to implement national policy on these issues. The document does not, however, substitute for EPA statutes or regulations; nor is it a regulation itself. Thus, it cannot impose legally-binding requirements on EPA or the regulated community, and may not apply to a particular situation based upon the circumstances. EPA decisionmakers retain the discretion to adopt approaches on a case-by-case basis that differ from this guidance where appropriate. EPA may change this guidance in the future.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
ONE CONGRESS STREET SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

emorandum

ate: 26 July 2001

rom: Sarah Levinson, Human Health Risk Assessment Support
Technical Support Branch

o: Todd Borci, Project Manager
MMR Project Team

ubj: Recommendations Regarding Human Health Risk Evaluation of Perchlorate: Application to MMR Project Activities

In response to detections of perchlorate in groundwater samples at MMR, perchlorate has become a chemical of interest at the MMR. Neither EPA nor MA DEP has formally adopted a safe drinking water standard or health advisory for perchlorate in public water supplies. However, the Agencies are aware and are concerned about the potential for perchlorate to cause adverse human health effects (especially on the thyroid) were exposure to occur. As such, the purpose of this letter is to communicate current EPA policy regarding human health risk evaluation of perchlorate in groundwaters. This policy is based upon my communications with the perchlorate chemical manager Annie Jarabek (ORD), Peter Grevatt (OSWER Sr. Scientist HQ), and other EPA Regional toxicologists.

While the issues surrounding risk evaluation of perchlorate are complex and are the subject of review at present, it has been and continues to be the position of EPA that human health risk evaluation of perchlorate should proceed using the provisional oral reference dose (RfD) issued by EPA's NCEA Superfund Technical Support Center of 0.0001 to 0.0005 mg/kg-day. This position was articulated in a guidance of June 18, 1999 from Norine Noonan (ORD) to all Regional Administrators and all Waste and Water Management Division Directors (copy attached). While issued as interim guidance, it was to remain in effect until such time that a final assessment of the hazard to human health posed by exposure to perchlorate was formally adopted and placed on EPA's IRIS database. The range of oral reference doses issued by EPA in 1992 and later revised in 1995 of 0.0001 to 0.0005 mg/kg/day is based on adverse effects of the thyroid gland and has not been superceded by an IRIS value at present.

Since 1995, EPA has attempted to bring the latest available scientific information to bear on a health protective benchmark value for perchlorate and in 1999, EPA released an External Peer Review

Draft document ("Perchlorate Environmental Contamination: Toxicology Review and Risk Characterization"). However, because EPA believes important new studies that were not available in 1999 are either underway or planned and are anticipated to have in impact on the proposed human health risk benchmark, EPA does not recommend use at this time of the 0.0009 mg/kg/day health risk benchmark contained in the 1999 External Review Document. This policy helps to ensure that EPA bases its risk management decisions on the best available peer reviewed science and is consistent with EPA practice that existing toxicity estimates remain in effect until the review process to revise them is completed.

Thus, using the range of provisional oral reference doses (0.0001 to 0.0005 mg/kg-day) suggested be used in this interim period and in keeping with prudent public health measures assuming that a young child (15 kg body weight, 1 l/day water ingestion rate) represents a plausible receptor, the concentration of perchlorate in water that would not exceed the provisional reference dose for a child equates to approximately 2 ppb -8 ppb (1.5 ppb - 7.5 ppb). Were one only concerned about effects on adults (2 l/day ingestion rate, 70 kg body weight), then the concentration of perchlorate in water that would not exceed the provisional reference dose for an adult approximates 4-18 ppb (3.5ppb -17.5 ppb). As the child receptor is consistent with the beneficial use of the aquifer as a public drinking water supply, I strongly advise consideration be given to protecting the young child receptor population for remedial decisions involving perchlorate in groundwater at MMR.

Attachment (EPA Memo from N. Noonan to Regional Administrators 6/18/99)

EXHIBIT 8

THE WALL STREET JOURNAL.

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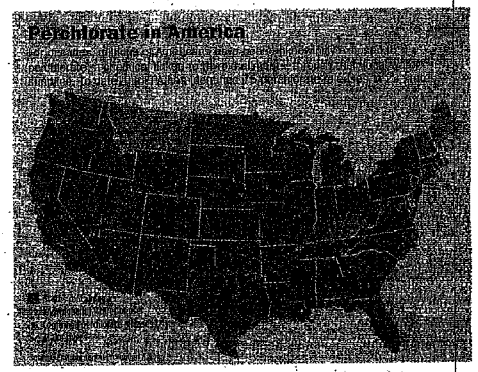

Seeping Threat

A Fuel of Cold War Defenses Now Ignites Health Controversy

Perchlorate Runoff Makes Way To Water Supply of Millions; Pentagon Clashes With EPA

Greg Voetsch's Two Tumors

By PETER WALDMAN

RANCHO CORDOVA, Calif.—For years, Greg and Doris Voetsch felt they were living a suburban dream here on the banks of the American River.

Just 15 miles from downtown Sacramento, they raised four kids on home-grown cherries, pears, cucumbers and string beans, along with salmon and rainbow trout caught in the Sierra-fed waters flowing just beyond their back door. Mr. Voetsch, a landscaper, used tobacco juice, instead of pesticides, to keep the aphids at bay. Snow-melt was their air-conditioning, cooling the hot summer breezes. The cost of living was "almost nothing," Mr. Voetsch says.

But trouble seeped into their paradise. In 1983, 13 years after the family moved here, surgeons removed two tumors, each of a different type of cancer, from Mr. Voetsch's thyroid gland. Shortly after, his two older daughters, both in their 20s at the time, had surgery to treat thyroid-related problems. Last year, his 67-year-old wife, who has had thyroid trouble for years, had a benign brain tumor removed. The couple's daughter-in-law, who grew up nearby, also has thyroid problems. Her son—the Voetsches' grandson—is autistic.

Greg Voetsch

Five years ago, the Voetsches learned that the home they bought in 1970 lies on the edge of a so-called plume of underground water polluted with waste from a nearby missile factory. Among the chemicals found in local drinking wells is perchlorate, the main ingredient of solid rocket fuel and a known toxin. The Voetsches believe it was in their water and, they suspect, their garden soil. "We lived off the land and never thought twice about it," Mr. Voetsch says.

In the human body, perchlorate affects production of thyroid hormones—a phenomenon that the Environmental Protection Agency says can cause thyroid ailments such as Graves' disease and cancer in adults. Fetuses and newborns, the EPA says, are at even greater risk, susceptible to neurological and other developmental damage.

For decades, millions of Americans have been unknowingly exposed to perchlorate through their local water supplies. No one denies that the chemical is toxic. But the level at which it becomes dangerous in drinking water is the subject of a fierce debate that pits the EPA against the Pentagon and its defense-industry allies. As a result, the U.S. is still years away from establishing a nationally enforced standard, and until it does so, a poisonous chemical lingers in the environment in amounts that could still be causing the slow spread of serious disease on a large scale.

To date, the EPA has identified 75 perchlorate releases in 22 states, including Arizona, Texas, Nebraska, Iowa, New York, Maryland and Massachusetts, as well as California. The Colorado River, the main water source for about 15 million homes across the Southwest, contains perchlorate at roughly seven parts per billion—seven times the level that the EPA's National Center for Environmental Assessment says is safe.

Defense-industry dumping is suspected in nearly all these cases, though perchlorate has also been linked to fireworks and other explosives, automobile airbags and Chilean fertilizers, some of which may have been used near the Voetsches' home. The EPA says it will take hundreds of years and cost several billion dollars to clean up the known plumes.

Perchlorate Reaches Water Supply of Millions

The EPA wants suspected water supplies tested nationwide for perchlorate, but the Pentagon, which argues perchlor-

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Continued From First Page

ate isn't dangerous in small doses, is resisting in many cases. Instead, the Pentagon has asked Congress for an exemption from environmental laws covering the cleanup of explosive residues at operational sites.

It's impossible to determine definitively whether perchlorate caused the Voetsches' ailments and similar maladies reported by hundreds of other people in affected areas. California's Department of Health Services is studying local health statistics for correlations between perchlorate levels in local drinking water and rates of thyroid and other disorders associated with the chemical. Eight states have passed advisory limits on perchlorate, ranging from one part per billion in Maryland, Massachusetts and New Mexico, to two ppb in California and 18 ppb in Nevada.

The EPA worries even the smallest traces of perchlorate are dangerous, particularly to infants at risk of neurological damage because thyroid-hormone production is crucial to normal brain development. In January, the agency's national assessment center proposed a draft "reference dose" for perchlorate in drinking water of one part per billion. That recommendation, when finalized after a peer review process, goes to the EPA's Office of Water, which ultimately proposes a national standard after weighing costs and benefits.

"After everything I've seen on perchlorate, I'm a lot more concerned about even subtle deficiencies of thyroid hormone on brain development than I was before," says biologist Thomas Zoeller, an endocrine expert at the University of Massachusetts at Amherst and one of the 17 peer reviewers of the EPA's draft reference-dose report.

Billions in Cleanup Costs

The Pentagon and several of its major contractors, all facing billions of dollars in possible cleanup and liability costs, say perchlorate is perfectly safe in trace amounts. They argue the chemical, an ordinary salt ion similar to nitrate, should be allowed in drinking water in concentrations up to 200 ppb. "The scientific basis for believing there's harm has not been established," says Maureen Koetz, assistant undersecretary of defense for the environment.

That perchlorate is an issue at all is a legacy of the Cold War, when the priorities of containing communism trumped domestic considerations for the environment and public safety. The military started using perchlorate in solid rocket fuel and other propellants in the 1940s. At the time, the chemical wasn't considered very toxic. Millions of tons of it were simply flushed onto the ground, left to flow unimpeded into streams and underground aquifers.

The polluting continued for years after evidence began to mount of the dangers of perchlorate. A three-month investigation by The Wall Street Journal has found that even after California regulators tried to control disposal of the chemical in the 1950s, companies dumped it with impunity. It wasn't until the 1970s, after passage of federal clean-water laws, that the defense industry began trying to contain perchlorate waste for treatment. But by then, the chemical had already begun its long, slow seep into water supplies nationwide.

As late as 1976, in fact, Aerojet-General Corp., operator of the missile plant near the Voetsches' home, built a special, 3,500-foot pipeline to dump toxic waste into unlined earthen pits—directly disobeying a local water-board order issued just months earlier, state documents show. At first, Aerojet told investigators the pipe was just a stopgap measure to bypass a clogged holding pond.

"A 3,500-foot pipeline may not quite be temporary," acknowledges William Phillips, longtime general counsel of Aerojet's parent, GenCorp of Sacramento. But Mr. Phillips and other defense-industry officials say that the contractors' disposal practices were state-of-the-art at the time, particularly for a chemical they didn't—and still don't—consider very harmful. Moreover, the defense suppliers say they followed all orders and guidelines issued by the Pentagon, which owned and managed most of the perchlorate supply and put its own inspectors inside factories to ensure proper handling.

The Pentagon, for its part, says its job is national security, not environmental safety. "We are no different from any other set of individuals who operate in states and localities and follow the laws," says Ms. Koetz, the assistant undersecretary of defense. "We do not consider it our job to get out in front of the health and environmental regulatory agencies in terms of discovering" pollution risks.

"Should someone have connected the dots in 1962, 1972 or 1982? Absolutely," says Kevin Mayer, an EPA Superfund official in San Francisco and the agency's point man on perchlorate. "But it didn't happen. There isn't any one person or one agency that definitively dropped the ball. Everyone did nothing."

That's what upsets people living in perchlorate-polluted areas. Though tests revealed high levels of perchlorate in the Voetsches' neighborhood water as far back as 1963—seven years before they moved in—state water regulators declared local wells safe. The Voetsches joined a class-action lawsuit in 1998, filed in Sacramento state court, accusing Aerojet, Boeing Co. and two local water utilities of negligence and fraud. The defendants contest the allegations, and the case is pending.

"I think they knew it was dangerous and just kept doing it," says Mr. Voetsch, now 68 years old. "There was nobody there to stop them, and nobody was the wiser."

Perchlorate fueled the takeoff of American rocketry. During World War II, the Navy tapped Theodore von Karman, a Hungarian-born aeronautics professor at California Institute of Technology, to develop engines powerful enough to lift planes off the short flight decks of aircraft carriers. He and some other rocket hobbyists from CalTech founded Aerojet in Pasadena, Calif. Their breakthrough: so-called jet-assisted takeoff rockets, fueled by solid perchlorate compounds that were highly charged but stable enough to be handled safely aboard ships.

Perchlorate, dubbed "powdered oxygen," is combusted inside a rocket engine with aluminum powder and a rubber-like polymer to stoke an intense burn. To propel a rocket, the solid fuel must be ground and molded into a particular shape. Over time, the fuel breaks down, requiring continual replacements. That's why, for more than 40 years, tons of perchlorate were routinely flushed from rockets and missiles onto the ground and into water supplies.

Aerojet began manufacturing at a plant in the San Gabriel Valley town of Azusa, Calif., about 40 miles east of downtown Los Angeles. Nearly from the start, it had discharge problems. In 1949, the Los Angeles County engineer warned the company in a letter that dumping its hazardous waste into "cesspools" and "seepage beds" posed an "extreme hazard" to the underground water supply. "I cannot too strongly emphasize the necessity of obtaining a sewer connection in the shortest possible time," pleaded the county engineer, who noted Aerojet was already in violation of local discharge restrictions. Aerojet was never punished, and its Azusa plant was connected to an industrial sewer line in 1952.

Move Out of the City

Hemmed in by the burgeoning Los Angeles suburbs, Aerojet moved most of its rocket operations north to some abandoned gold-dredging fields in Rancho Cordova, about 15 miles east of Sacramento. In 1951, shortly after buying the site, an Aerojet employee calculated that about 1,800 gallons of liquid waste, plus 300 pounds of ammonium perchlorate, would flow into the underground aquifer every day. Most of the waste would have "a deleterious effect on both plant life and the underground water supply," he warned in an internal memo. But ammonium perchlorate might "be beneficial in a sewage stream and possibly be slightly beneficial on plant life," he added.

As in the San Gabriel Valley, Aerojet designed a system in Rancho Cordova to channel waste into unlined leaching ponds, apparently assuming whatever pollutants did reach groundwater would

be diluted to safe levels. But when those designs were circulated for comment to California's water, health, and fish-and-game departments in Sacramento, the regulators unanimously panned the proposed "percolation beds" as posing grave pollution risks to streams and underground aquifers, state documents show.

Officials sought specific toxicity advice on perchlorate from a botany professor at the University of California at Davis. He replied that perchlorate was "known to be toxic to plant life" and was unlikely to break down "in course of percolation through gravel." For treatment, he recommended evaporation in "sealed beds" and "absorption and contact with organic matter."

Today, this so-called biological method is a common way of extracting perchlorate from water. "It's astonishing how right he was," says Mr. Mayer of the EPA.

On May 15, 1952, California's Central Valley Regional Water Pollution Control Board, over Aerojet's objections, issued Resolution No. 127, barring "entry" of perchlorate and eight other chemicals into local groundwater and the nearby American River. That same year, medical researchers published their findings that perchlorate blocks the uptake of essential iodide into the thyroid gland, thus inhibiting thyroid-hormone production.

Neither the medical findings nor the water board's order had much effect. By 1955, regulators were finding perchlorate in local groundwater. Though hampered by primitive test methods and Navy secrecy, a state hydraulic engineer reported that untreated discharges of some 310 pounds a day of perchlorate were being dumped into "abandoned gold dredger pits." The good news, he reported, was that the waste was seeping into the ground more slowly than expected. The bad news, reported a few months later, was that a nondrinking well on Aerojet's property was contaminated with 1,000 ppb of perchlorate, indicating "waste water from the sump is commingling with underlying groundwater."

Mr. Phillips, the GenCorp general counsel, says Aerojet's disposal practices met all safety and regulatory requirements of the day. "You were supposed to put [perchlorate] in these pits," he says. "We thought the pits were impermeable."

In 1957, a national task group on underground waste reported perchlorate contamination had spread over "several square miles" east of Sacramento. The group's report, published in the American Water Works Association Journal, described perchlorate as a "weedicide" toxic to plants at 1,000 to 2,000 ppb. It said the perchlorate plume near Sacramento ranged from 3.5 million to five million ppb. Also that year, some Harvard University researchers, using studies on guinea pigs, found that perchlorate, after passing through the placenta from the mother, depleted thyroid-hormone production in fetuses.

In 1958, the Water Pollution Control Board notified Aerojet that its discharges were "consistently in violation of the board's requirements." At a special briefing for state agencies in 1960, board engineers described Aerojet's operations as a mess, with "four or five major discharges" into a creek feeding the American River and many smaller releases onto the ground. Aerojet, citing security, wouldn't tell regulators all the chemicals it was using, according to regulators' documents from the briefing.

"We pointed out that just because we do not know what is going on in this area, an area of extremely permeable sediments, the board should not give industry a blank check to discharge anything [it] desired to the groundwater basin," a state engineer wrote after the briefing.

The upshot was Resolution 62-21, the board's 1962 order to Aerojet not to discharge anything "deleterious to human, animal, plant, or aquatic life" into local waters. The resolution set maximum discharge levels for 21 chemicals—1,000 ppb for perchlorate—and ordered Aerojet, for the first time, to "disinfect" all waste before it left Aerojet's property.

But this was the year of the Cuban missile crisis, and Aerojet had other concerns. A unit of General Tire at the time, Aerojet was playing a big part in helping the U.S. close the missile gap with the Soviet Union. At the height of the rocket race in the early 1960s, Aerojet's Sacramento County facility employed 22,000 workers in three shifts, seven days a week. In 1962, they helped build and deploy the first solid-fuel intercontinental ballistic missile, the Minuteman I. Because it didn't require hours to load, as liquid-fuel rockets do, the Minuteman is believed to have helped steel President Kennedy's nerve during the Cuban missile crisis.

Aerojet's operations were overseen by 300 to 400 full-time Pentagon inspectors who approved every facet of design, production and waste disposal, says Aerojet's Mr. Phillips. "Had we known we could have done something to keep this [perchlorate contamination] from happening, they would have given it to us," he says. "Everybody involved thought they were doing the right thing."

Burning the Stuff

In 1961, Aerojet had begun burning its excess perchlorate, along with drums of the chlorinated solvent trichloroethylene, or TCE, which is now considered carcinogenic. Still, large quantities of the chemicals continued to go into the ground, according to accounts by former Aerojet employees given to California investigators in a 1979 criminal probe. (That state investigation was dropped in the mid-1980s, when Aerojet agreed to sign a consent decree to clean up its waste.)

In write-ups of those witness accounts obtained by the Journal, several employees described a chemical "sludge" left over after burning that Aerojet would let seep into the ground or would bury in separate pits. Former employees, including one identified as the foreman of Aerojet's chemical-waste-disposal unit from 1963 to 1966, said they dumped hazardous chemicals into a septic lagoon meant for human waste. Witnesses also said many workers continued dumping perchlorate and TCE into "rock piles" and open ponds. (TCE was heavily used to clean missile parts laden with solid rocket fuel.)

Meanwhile, tests of the underground aquifer at the Aerojet site showed steadily rising concentrations of perchlorate—from 18,000 ppb in the mid-1950s to 91,000 ppb in 1979. In the decade after 1955 alone, Aerojet processed roughly 19 million pounds of ammonium perchlorate at "grind station" Line 03, company documents say. The "daily washdown" of the area flowed into unlined ponds.

The water board issued more discharge orders, with little effect. In February 1976, for example, the board granted permission to Aerojet's Cordova Chemical unit to dig an injection well for inserting waste deep underground. The board's order explicitly barred "pollution" and discharging waste to any "surface drainage courses." Yet just three months after that order came out, Cordova built the 3,500-foot pipeline to channel waste straight into an unlined dredger pit.

"That's the worst thing I know about on this whole place," says Aerojet's Mr. Phillips. The general counsel says that Aerojet never hid its perchlorate contamination. He points out that the company notified the water board in the mid-1970s that it detected perchlorate in its groundwater at 50 times the board's allowable limit. No one worried about it then, Mr. Phillips says, because, among other reasons, Aerojet's wells weren't for drinking.

Perchlorate became a drinking-water concern in 1985, when the EPA detected it in wells serving about 42,000 households near Aerojet's original facility in the San Gabriel Valley, near Los Angeles. The agency found concentrations ranging from 110 ppb to 2,600 ppb. But five of the six so-called field blanks—samples of purified water that were also tested to assure data quality—inexplicably tested positive for perchlorate. Flummoxed, EPA reviewers threw out most of the test results as unreliable. (Today, some EPA officials believe those field blanks probably came from Colorado River water or other tainted sources.)

EPA scientists asked the federal Centers for Disease Control in Atlanta for guidance on possible health risks from perchlorate. The response, written by the Agency for Toxic Substances and Disease Registry on Jan. 26, 1986, underscored the same toxicity concerns the Pentagon and EPA are still arguing about 17 years later. The agency "strongly recommended" retesting the San Gabriel wells.

"Although the limited data available does not suggest that several [thousand ppb] of perchlorates would represent an acute threat to public health," the toxic-substance agency letter concluded, "the effects of continued low-level perchlorate ingestion need to be described as soon as possible."

Superfund Sites

Those effects remained undescribed for more than a decade afterward. In 1992, the EPA, citing the 1952 study on perchlorate's effects on thyroid-hormone production, issued its first health assessment of the chemical, proposing an initial reference dose for perchlorate of four ppb in drinking water. By then, Aerojet's facilities in Northern and Southern California had both been named EPA Superfund sites because of contamination by TCE and other known carcinogens. The Sacramento facility, in fact, was treating groundwater for other toxic agents and reinjecting it into the aquifer with 8,000 ppb of perchlorate still in it—with regulators' full assent.

"We did not have any data which indicated that perchlorate had been identified as a contaminant of concern," testified Thomas Pinkos, who oversaw Aerojet's cleanup for the regional water board from 1979 through 1988, in a recent deposition.

After the EPA's 1992 health warning, state officials watched warily as Aerojet's perchlorate plume spread toward drinking wells in Rancho Cordova. At the time, the most-sensitive test equipment could detect perchlorate at levels only above 400 ppb. The defense industry, meanwhile, was fighting the EPA's health assessment, arguing in a 1995 report to the EPA that the reference dose should be 42,000 ppb in drinking water. Aerojet itself grew less cooperative with state officials, regulators say. "Plumes tended to stop at their fences," one quips.

Kevin Mayer

The logjam broke in early 1997, when a California state lab, prodded by residents in Rancho Cordova, developed a new method for measuring perchlorate down to four ppb. With the lower detection limit, the substance quickly turned up in Rancho Cordova's wells at levels reaching 300 ppb.

The Voetsches learned in the media about the thyroid-disrupting contaminant shuttering nearby wells. Mr. Voetsch says he attended several community meetings, following up with various public and private officials to pursue his family's case. But the only person who returned his calls, he says, was a local geographer and Navy vet named Larry Ladd, who has made perchlorate pollution his passion. The Voetsches then joined the class-action lawsuit, led by the law firm that employs Erin Brockovich, the toxic-tort paralegal played by Julia Roberts in the film of the same name. The suit, among several filed over perchlorate contamination, is mired in the courts, and Mr. Voetsch says he hasn't heard from the lawyers in years.

"I'm thoroughly convinced no one wants to know what's going on here," Mr. Voetsch says.

The firm's chief attorney, Edward Masry, says the perchlorate clients haven't been contacted in several years because a judge put a stay on their case, pending legal motions, but should be hearing from the firm shortly.

With more-sensitive tests, perchlorate quickly turned up in several water supplies in Southern California. In 1997, the San Gabriel Valley plume—11 years after its initial discovery—had spread to a five-square-mile area beneath about 250,000 residents, according to the San Gabriel Basin Water Master.

In nearby San Bernardino County, perchlorate plumes prompted closure of dozens of wells, threatening some communities with water shortages. When local Defense Department officials got wind of a plume in Redlands, Calif., they circulated an internal "bellringer" report telling colleagues to keep the information secret. The June 1997 report noted 250,000 residents could be "adversely affected," with "pregnant women and children" among the most at risk. Yet, citing the local outrage at perchlorate's discovery in wells near Sacramento several months earlier, the report warned of "far reaching ramifications when the public learns of the situation." Its conclusion: "Future procurement programs could be adversely affected due to increased environmental costs."

Plumes Spread

In 1997, the Pentagon and several defense contractors, under EPA pressure, launched the first toxicological studies to determine perchlorate's effects at low exposure levels—the same studies that ultimately led to the EPA's reference dose this year. Meanwhile, perchlorate plumes popped up at defense sites all across the country—Texas and Utah in 1998, then Kansas, Missouri, Nebraska, Iowa, West Virginia and Maryland the next year.

When the Metropolitan Water District of Southern California found the chemical in taps in Los Angeles, scientists traced the plume 400 miles up the Colorado River to Lake Mead, above Hoover Dam. From there, they tracked the plume 10 miles westward, up a desert riverbed called the Las Vegas Wash, to Kerr-McGee Corp.'s giant ammonium perchlorate plant in Henderson, Nev.

The Navy built the plant in the 1940s to make perchlorate compounds for the war. Inherited by Kerr-McGee in a 1967 merger, the facility spilled thousands of pounds of perchlorate waste every day through the mid-1970s into unlined evaporation ponds. The chemical leached into shallow groundwater over the years, seeping into the Las Vegas Wash, the main drain into Lake Mead for wastewater coming from Las Vegas.

Perchlorate was detected in Kerr-McGee's groundwater back in the mid-1980s, and it was ignored. The company was then treating the aquifer for the metal chromium-6, and reinjecting high levels of perchlorate-tainted water back underground, say officials of Nevada's Division of Environmental Protection. "The guidance on perchlorate was lacking," says Patrick Corbett, director of environmental affairs for Kerr-McGee, based in Oklahoma City.

Kerr-McGee is spending roughly $70 million to extract perchlorate, too, but is catching only about half the 900 pounds a day seeping into the Las Vegas Wash, EPA officials say. The company, which has filed a lawsuit seeking Pentagon reimbursement for the cleanup costs, says it's adding new systems to capture much more of the perchlorate. Still, so much perchlorate has already entered Lake Mead that the levels below Hoover Dam—all the way out to Los Angeles—have hardly budged in five years, ranging from five to 10 ppb.

'Decades of Dilution'

"It will probably take decades for the dilution effect to flush it all out," says Douglas Zimmerman, an environmental regulator in Nevada.

In addition to slaking thirsts across the Southwest, the Colorado River water irrigates 95% of America's winter lettuce crop, grown in Yuma, Ariz., and California's Imperial Valley. The EPA says it still doesn't know if lettuce and other vegetables accumulate perchlorate from irrigation water, but preliminary indications aren't good. Tests on several vegetable samples from a perchlorate-contaminated farm in Redlands found the plants concentrated perchlorate from local irrigation water by an average factor of 65, according to calculations by Renee Sharp of the Environmental Working Group in Oakland, Calif., one of the few nonprofit groups focused on perchlorate contamination. That means the perchlorate dose in the vegetables was 65 times the amount in the water.

"If people are eating it, on top of drinking it, the EPA will have to lower its proposed drinking-water standard substantially," Ms. Sharp says.

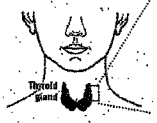
For now, that standard is only a recommendation. Enactment of a national standard will have to wait until either the EPA or the defense establishment prevails. Meanwhile, Aerojet and Lockheed Martin Corp. are already spending hundreds of millions of dollars to extract perchlorate from aquifers they polluted in California, with much of it being reimbursed by the Pentagon.

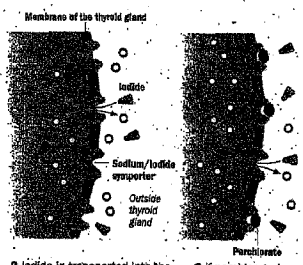
Sandra Lester thinks it's too little, too late to help her. She grew up on Rancho Cordova's perchlorate plume, near the Voetsch family, and fell sick with Graves' disease at age 15. Now 20, she wants to become a large-animal veterinarian, but is still enfeebled by skin problems, muscle pains and other complications of her disease. She blames perchlorate and had joined another class-action suit, but she heard this month that the law firm is dropping her case.

"It doesn't seem like the government cares very much about this problem," she says. "It's not like perchlorate is killing people. It's slow."

Blocking Agent

In the human body, perchlorate inhibits production of thyroid hormones, essential to normal organ development in babies, especially brain development.





1 Iodide from foods, such as salt, enters the body.

2 Iodide is transported into the thyroid by the sodium/iodide symporter (NIS) as sodium is transported out. The iodide is then used to produce thyroid hormones.

3 If perchlorate is ingested, it blocks the symporter, disrupting the uptake of iodide.

Sources: Environmental Protection Agency; Environmental Working Group

Greg and Doris Voetsch *(left) believe perchlorate made their family sick. Sandra Lester (bottom left) got thyroid disease at 15. Larry Ladd (bottom), with daughter Melody, pressed California and Aerojet to test for perchlorate in local drinking wells.*

THE WALL STREET JOURNAL. MONDAY, DECEMBER 16, 2002 A9

The Debate Over Safety Levels

Perchlorate is one of a newly recognized group of toxins called endocrine disrupters—chemicals such as dioxin and PCBs that can alter hormonal balances and thus impede human reproduction and development.

The debate is over how much perchlorate causes harm, and whether fetuses and infants are more susceptible than adults to perchlorate's effects at very low doses.

The EPA, citing experiments on rats and epidemiological studies in Arizona and California, says perchlorate is dangerous in drinking water at levels above one part per billion. The Pentagon and defense industry, citing human experiments and epidemiological studies in Chile, say perchlorate is safe in drinking water below 200 ppb. Billions of dollars in cleanup and liability costs may hang in the balance, since most perchlorate plumes in the U.S., including the Colorado River, range between four and 100 ppb.

In 1993, several defense contractors, backed by the Pentagon, created the Perchlorate Study Group to research toxicity. The group's "goal," according to an internal document written in 1996 by Gen. Corp's Aerojet subsidiary, was "to provide EPA with a scientific-based argument to justify a higher [reference dose] and thus a more reasonable remediation standard." The industry group has spent roughly $7 million on toxicity studies.

Yet, as with other contentious toxins such as arsenic and lead, the more information EPA scientists learned about perchlorate, the more they worried about its effects. Their main concern focuses on changes found in the brain size of laboratory rat pups exposed to low doses of perchlorate in utero. Such changes in so-called brain morphometry indicate perchlorate's thyroid effects may cause permanent neurological damage—in rats as well as people, the EPA says, because the thyroid system works similarly in both species.

The Pentagon and its allies say the rat studies, which the industry's study group directed and sponsored, used poor autopsy techniques on the rats. And why trust rat data, they argue, when human data are available? The Pentagon and its allies cite an Oregon study that found small doses of perchlorate, given orally to adult volunteers, had little effect on thyroid-hormone levels.

The EPA says the human study didn't examine the most-sensitive subgroups—pregnant mothers and infants—and was much too brief to measure the effects of long-term exposure.

To counter, the defense establishment cites an epidemiological study of three Chilean villages with varying levels of naturally occurring perchlorate in their drinking water. The study's conclusion: Perchlorate had little effect on the thyroid-hormone levels of newborns and children in the three villages studied.

The EPA prefers a different epidemiological study that it claims shows "strong evidence" of perchlorate's danger to infants. That study found California babies born to mothers exposed to trace amounts of perchlorate in drinking water had lower thyroid-hormone levels at birth than did infants of non-exposed moms. California's Office of Environmental Health Hazard Assessment recently used that study, and other human data, to derive its own "health goal" for perchlorate in drinking water of two ppb.

—*Peter Waldman*

CAPE COD TIMES
April 24, 2002

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Military cash flows for new water supply

By KEVIN DENNEHY
STAFF WRITER

BOURNE - The military this week delivered $2.7 million to help the beleaguered Bourne Water District solve a potential water shortage, weeks after pollution from Camp Edwards forced the closure of half the district's supply wells.

The money will come from the military's $300 million Environmental Restoration account, made up of Army, Air Force and Army National Guard funds.

When added to money provided three years ago to replace wells threatened by another plume of groundwater pollution, the Bourne district has more than $4 million with which to explore new water supply sources and link to a clean source.

Groundwater tests continue to show that trace levels of the chemical perchlorate, a component of rocket propellant and munitions, have moved off base toward the district's water supply.

All threatened wells have been shut off, and no contaminated water is reaching any homes, according to the military.

But to make up for lost water, about $1.85 million of the military money will be spent linking Bourne with a clean-water source before the summer and its increased water demand arrive.

A 3-mile pipeline will link the Bourne district water main, located near the Otis Rotary on Route 28, to a military-funded water supply located on the other side of the base in Sandwich.

"We are on a fast track to get that water main across (Route 28), probably in the next two weeks," said Ralph Marks, the Bourne Water District superintendent who has pushed the military for help since the first traces of contamination were found in February.

EXHIBIT 9

State officials want to complete the work near the rotary before the busy Memorial Day weekend, Marks said.

According to an agreement signed yesterday, the Army Corps of Engineers will begin digging by mid-May.

Crews will begin digging the pipeline from both ends, and are expected to link up by June 28.

Future supplies

The Bourne district includes about half of the Upper Cape town, including neighborhoods of Cataumet, Pocasset and Monument Beach. About 19,000 people are served by the district during the summer.

The district does not include customers in Sagamore, South Sagamore or Buzzards Bay.

District officials say they are still evaluating the problem and aren't sure what costs they'll run into. For now, the military funding will pay for the supply line to the base and other costs.

While all tainted supply wells are now shut off, there remains concern in the community about future water supplies.

During a meeting last night of the panel that monitors the Camp Edwards cleanup, more than 100 Bourne residents crowded into a Best Western Hotel reception room to learn more about the problem.

Health concerns

Both residents and Impact Area Review Team members pressed the state's Department of Public Health to assess whether past exposure to the contamination has affected public health.

While perchlorate is not considered a cancer causing substance, it can affect the thyroid gland, potentially slowing metabolism, growth and development, according to the federal Environmental Protection Agency.

The state has suggested that no "sensitive" people - including children and pregnant women - consume water contaminated with even small traces of the chemical.

David Williams of the DPH said last night that there is no evidence that the chemical has caused health problems to date.

But Richard Hugus of Falmouth, a member of the Impact Area Review Team, said it would be "a miracle" if the military caught the perchlorate plume before it reached the water supply.

He and others pushed the DPH to look at past records to determine whether there are any higher levels of thyroid disease in the region.

In the meantime, the military has scrambled funds for the problem in near-record time, said Mike Minior of the Air Force Center for Environmental Excellence, which is running the cleanup of the southern portion of the Massachusetts Military Reservation.

"The folks above us recognized the seriousness of the situation," he said. "And they did everything they could to expedite moving the money to the Bourne Water District."

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boston.com Home

THIS STORY HAS BEEN FORMATTED FOR EASY PRINTING

Work to clean Cape Cod pollution continues as Pentagon seeks environmental exemptions

By Melissa B. Robinson, Associated Press, 5/27/2002 12:34

WASHINGTON (AP) Five years of investigation at the Massachusetts Military Reservation on Cape Cod has yielded evidence that groundwater pollution is more extensive than even the U.S. Environmental Protection Agency thought when it ordered the military to look into the problem.

Now, environmental experts are wondering if there's enough clean water left on the upper Cape to correct a shortfall in drinking water for local residents, due to base pollution, that could reach 11 million gallons per day by 2020.

"This was an area that was the hope for the future of the Cape's water supply," said Betsy Higgins, director of environmental review for EPA's New England office. "They're finding a lot more contamination than anyone ever thought we would find."

The reservation is a 22,000-acre military base that's been used for training by the Army, Air Force and National Guard since 1911.

Underneath is Cape Cod's sole source aquifer, the only drinking water source for the Cape's 200,000 year-round and 500,000 seasonal residents. Sandy soil makes the aquifer vulnerable to contamination, which can travel quickly.

The EPA's precedent-setting cleanup order in 2000 marking the first time the military was required to clean an active training ground is focused on Camp Edwards, an Army National Guard training range and impact area occupying the northern 15,000 acres. Otis Air National Guard Base occupies the southern third of the area.

Progress has been made since 1997, when the EPA first ordered the investigation that led to the cleanup. The Guard took a series of immediate actions to contain pollution, and feasibility studies are ongoing in five major cleanup areas.

But as work has gone on, more and more pollution has turned up, sometimes at very high levels.

Most recently, perchlorate, a pollutant associated with rocket fuel that's suspected of causing thyroid disease, showed up in water supply wells in Bourne, forcing the community to connect to an alternate water supply provided by the military. The supply is permanent but now provides about 3 million gallons a day, a fraction of what will ultimately be needed.

On the camp itself, explosives contaminants have turned up in about 100 monitoring wells, and in 53 of them at levels exceeding EPA's health advisory, EPA data showed. More than 200 monitoring wells have been installed throughout the camp.

In the part of the camp known as demolition area 1, the explosives-related, possibly cancer-causing contaminant RDX has been found in groundwater at concentrations as high as 370 parts per billion, well above the EPA's standard of two parts per billion, data showed.

EXHIBIT 10

In the range's southeast corner near the most productive part of the aquifer perchlorate concentrations as high as 311 parts per billion have been found near the base boundary, upgrade from Snake Pond, a swimming pond for a children's camp, data showed. EPA doesn't have a standard established for the contaminant but suggests a range of 4-18 parts per billion for adults.

If people are exposed to contaminants at levels above EPA standards, which generally are based on the risk of long-term health effects after a lifetime of exposure, it doesn't necessarily mean they will get sick, only that they are at increased risk for health problems.

Even so, many who live near the base, which is surrounded by Bourne, Falmouth, Mashpee and Sandwich, have long worried about the potential negative impact on health as well as on water supplies, which are already stressed by dry weather and population growth.

"Everybody drinks bottled water," said Joel Feigenbaum of Sandwich, who has compiled state public health data to track cancer rates on the upper Cape. "Even in areas where it's safe, nobody believes it's safe because there's been so much happening."

Overall, the military has committed $350 million over 15 years to the cleanup, and EPA believes it will take all of that to get the project done. It is expected to be several years before EPA knows the full extent of damage to the aquifer, after which the military will have to figure out how to provide enough clean water for the neighboring communities.

"We will be looking at long-term solutions," said Ray Fatz, the Army's deputy assistant secretary for the environment.

Meanwhile, national military leaders who have complained about the reservation cleanup order are worried that they will be forced to take similar actions elsewhere.

"The potential for cessation of live-fire training at other ranges is of great concern to us," Mario P. Fiori, assistant Army secretary for installations and environment, complained in testimony to a House subcommittee on military readiness earlier this year.

Defense officials have aggressively sought environmental exemptions from Congress, arguing that soldiers can't properly train if they can't use live fire or are otherwise restricted due to laws protecting air, land, water, wildlife and plants.

In Massachusetts, because soldiers have been limited to plastic, frangible and green ammunition, Army Reserve and Guard troops have had to do some training at Fort Drum in New York, adding 12 hours of travel time to already tight training schedules, Fiori said.

The outlook for the exemptions is unclear.

The House voted to exempt military installations from having to designate habitat areas for endangered species if a separate natural resources management plan is in place, and to excuse forces for accidental kills of migratory birds during operations fewer exemptions than the Pentagon originally sought.

In the Senate, a key committee failed to endorse the changes. However, individual senators could propose such exemptions as amendments to larger bills up for debate in the coming months.

On The Net:

New England EPA: http://www.epa.gov/region1/

National Guard: http://www.ngb.dtic.mil/

http://www.sunspot.net/news/health/bal-water04,0,4562084.story?coll=bal-local-headlines

From Friday's Sun

Group calling for cleanup of perchlorate in Aberdeen

1 well shut after chemical was detected this week

By Lane Harvey Brown
Sun Staff

October 3, 2002, 10:32 PM EDT

The community watchdog group that monitors environmental cleanup at Aberdeen Proving Ground called on the Defense Department Thursday to authorize an immediate cleanup of chemical contamination found in the town of Aberdeen's wells.

The call was made after tests this week found perchlorate, a chemical used in rocket fuel and explosives, in the town's treated drinking water at a level of 1 part per billion, the state's maximum allowable level.

The test results spurred city officials to shut down one well and halve production at two others.

"The Aberdeen well field is contaminated with perchlorate from military activities, and this contamination must be treated now," the Aberdeen Proving Ground Superfund Citizens Coalition said in a statement.

The Army is in "constant discussions with EPA" about the perchlorate issue, and is very concerned about avoiding public health hazards, John Paul Woodley Jr., assistant deputy undersecretary of Defense for environmental matters, said Thursday. He added that the Environmental Protection Agency has not issued a regulatory standard for perchlorate. "The first question is if the levels that have been found are hazardous to the people who are exposed to it," he said.

EPA spokeswoman Robin Woods said Thursday that it could be five years before a regulatory standard is adopted, but that the agency could alter that schedule.

Steven R. Hirsh, an EPA remedial project manager, said the agency can order a site cleanup without a regulatory standard. Asked whether such a measure is being considered at APG, he said, "Yes, that's a possibility."

Woodley said that if the EPA or the state identified hazards and recommended ways to deal with them, the Department of Defense "would be anxious to avoid a hazardous condition whether there was an order or not."

APG officials acknowledge that the perchlorate is probably the result of training exercises using smoke grenades and explosive devices in the northern corner of the training ground.

Perchlorate was discovered at the installation in March last year, and two still poorly defined "plumes" containing the chemical, ranging from 10 parts per billion to 20 parts per billion, have gravitated to some of Aberdeen's production wells, which are along the post boundary.

Perchlorate interferes with thyroid function and can cause neurological damage to fetuses, newborns and children, experts say. In some cases, prolonged exposure to perchlorate has been linked to thyroid cancer.

EXHIBIT
11

Thomas Zoeller, a professor of biology at the University of Massachusetts Amherst, said much remains to be learned about perchlorate. That is why advisory levels such as Maryland's tend to be low, he said.

The city and Army tested the finished water three times this week. One test detected the chemical in the water at 1 part per billion. The two subsequent tests found levels lower than the reporting limit of 1 part per billion.

Randolph C. Robertson, Aberdeen's director of public works, said Thursday he is confident that the city can maintain a safe supply of drinking water by curtailing the flow from the contaminated wells and using more county water.

"The water is safe," he said. "We wouldn't put it out if it weren't."

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Senator ENSIGN. Thank you for your testimony.

Just very quickly, Mr. Benevento, could you clear up whether the official position of the State of Colorado and the Governor of the State of Colorado is to endorse the position Mr. Mears just took?

Mr. BENEVENTO. The executive branch position is consistent with my testimony.

Senator ENSIGN. Thank you.

First I do want to say, Mr. Benevento, it is not like you came here and just parroted what the military said. I thought you had some very interesting suggestions and I think that this subcommittee has to look at that as well as the military and try to work it

with those. That is the kind of what I was talking to the last panel about, the types of things that we need to look at. We need to look at—you were not coming here just attacking. You were not saying that what they are trying to do is just roll back environmental legislation. You were trying to say here, we support readiness and here are some positive suggestions to go forward.

I think that that is what we need to be looking at, and I know that that is what the DOD is looking for and certainly what this subcommittee is looking for.

I want to start with Mr. Cohen. The Readiness and Range Preservation Initiative addresses issues related to endangered species, marine mammals, cleanup of operational ranges, and air pollution. Can you briefly describe the rationale and need for the legislative relief? There has been a lot of back and forth whether just use exemptions, just current law. Mr. Mears just talked about it is working, why try to "roll back" environmental laws?

Mr. COHEN. Yes, sir. Thanks very much. I would like to clarify that our essential problem is not with the existing regulatory policy or existing State regulators or existing Federal regulators. To the contrary, they have worked hard and have been very sensitive to the needs of military readiness. Our basic problem is that these regulatory policies are under threat from litigation policies and that litigation outcomes are what would reverse these regulatory policies and produce unacceptable outcomes for military readiness.

In terms of the exemptions available to us, I would like to address what the prior panel——

Senator ENSIGN. Let me just stop you right there.

Mr. COHEN. Yes, sir.

Senator ENSIGN. Correct this statement if I miss, if I am stating it wrongly. What the military is looking to do is not roll back, but to maintain virtually the status quo of what has been.

Mr. COHEN. Yes, sir.

Senator ENSIGN. That the courts are, I guess, putting on extra burdens to stop you from doing the environmental balance that you have been doing. Is that a correct statement?

Mr. COHEN. Yes, sir.

Senator ENSIGN. Thank you. Go ahead.

Mr. COHEN. In terms of the availability of exemptions as an alternative, or the absence of a "train wreck," so to speak, of a disastrous injunction or a hostile court ruling that would really stop readiness cold, first with respect to the exemptions. The exemption that the witness referred to in the previous panel in the Armed Forces Code, 10 U.S.C. Section 2014, affords us at most a 5-day ability to suspend an activity by an executive branch regulator. It has no effect with respect to States. Again to return to the point that I first made, our problem is not with Federal regulators or State regulators. Our problem is with litigation and section 2014 does not apply to court decisions.

Thus, for example, there is no adverse regulatory decision in the SURTASS LFA case that we could apply section 2014 to. The adverse problem that we face is a litigation which has resulted in an injunction. Section 2014 is useless for that.

With respect to using exemptions more generally as a means of enabling everyday readiness activities, it seems to the Defense De-

partment unacceptable as a matter of public policy that a systemic problem, which we believe we have documented over years of testimony, is affecting across the country.

Basic military activities that have gone on as long as we have had Armed Forces and will have to go on in the future as long as we have them as well, should not be forced to proceed by virtue of emergency exemptions that were intended to be of short duration and to apply to quite limited geographic locales.

So we have a philosophical disagreement that we should proceed by exemptions rather than trying to adjust the underlying statutory structure in ways that make sense. The analogy we like to use is that, just as every car ought to have an emergency road repair kit, every statute ought to have an emergency exemption (as the MMPA does not). But if the only way you get to work every morning is by using your emergency repair kit, there is something wrong with your car and it needs to be repaired. That is what our proposals seek to do.

With respect to the justification for each of our specific provisions, I can state that very briefly. With the ESA, what we are trying to do is reaffirm the legality of what Ms. Clark did back in the Clinton administration, which was to take a case-by-case look at our INRMPs, our management plans, at each installation, and decide which ones were sufficiently protective of the habitat of endangered or threatened species to say, "this is functionally good enough that we do not need to designate critical habitat at this installation."

That was a perfectly reasonable decision. It is not a blanket or sweeping determination that says wherever we have an INRMP there is no critical habitat designation. It is a case-by-case, site-specific determination that has been made in the last two administrations. But that policy is under threat from litigation.

As I mentioned, in just a few days the Interior Department will be required to revisit the decisions that Ms. Clark was referring to in her earlier testimony, and we are quite concerned, as Interior testified earlier, that a recent district court decision has placed an even larger cloud over the legality of that.

Our opponents in that litigation are saying, not that the specific Miramar and Pendleton INRMPs are bad, but that no INRMP, no matter how good it is, can ever substitute for critical habitat designation as a matter of law. All that our amendment would do is remove that legal argument. They would still be in a position to say that any particular INRMP is not good enough to justify non-designation of critical habitat.

With the Marine Mammal Protection Act, again what we are trying to do is to safeguard regulatory policies that NOAA has already in place, but that were significantly destabilized by the SURTASS LFA decision, among others. In the SURTASS LFA decision, the regulatory definition of harassment, which closely tracks the definition that we are trying to propose as a matter of legislation, was held to be contrary to law by the district court, and so too was the agency's 20-year-old regulatory understanding of what was meant by the so-called "small numbers" requirement.

Again we are trying to rehabilitate and revive those regulatory interpretations, which are longstanding. Again, we think that a

regulatory structure which focuses on biologically significant behaviors is not an exemptive structure at all. To say that someone is not going to be regulated for biologically insignificant activities—I do not think that you could find one person in a hundred who would call that an exemption of any kind, much less a sweeping one. It is like saying that someone who rides a bicycle enjoys a sweeping exemption from auto emissions standards.

With respect to our RCRA and CERCLA provisions, again this is an attempt to codify the prevailing regulatory policy that EPA and the States have in force with respect to our operational ranges since those two statutes were passed. As Mr. Benevento has testified, no one tries to regulate our operational ranges on a day-to-day basis under RCRA or CERCLA. But there is ongoing litigation and the threat of further litigation.

Senator ENSIGN. What did you think about his suggestion about the definitions on operational ranges, active-inactive, to make the States have more of a comfort level?

Mr. COHEN. Yes, sir. Actually, we are proposing in another part of our defense authorization a definition of operational ranges, both active and inactive, which tracks the definition of active and inactive ranges in the Military Munitions Rule. We have already agreed with EPA and have language at OMB on language that would tighten up the definition of operational ranges to make clear that both active and inactive ranges have to be under the jurisdiction, custody, or control of the Defense Department, not operated or owned by a contractor.

I thought many of his suggestions were very well taken.

Senator ENSIGN. I would like to get some of the suggestions that he has taken and get us, not only get Mr. Benevento a response, but also get this subcommittee a response to his suggestions, because they seemed, at least some of them—if some of them are not reasonable, then maybe we can get that.

[The information referred to follows:]

The Department has taken very seriously the comments and suggestions made by Mr. Benevento and we have revised the language for our RCRA/CERCLA legislative requests accordingly. In that vein we have been in constant contact, not only with Mr. Benevento, but with a variety of State representatives. I have personally met with a number of State Attorneys General, and we have had discussions with the National Governors Association, the Environmental Council of the States, the National Conference of State Legislators and the Association of State and Territorial Solid Waste Management Officials and numerous States individually. The result of this consultation, I believe, is new language that clearly addresses the issues raised by Mr. Benevento, who now strongly supports the proposals as revised with his input.

I will come back for a second round, but let me turn it over to Senator Akaka.

Senator AKAKA. Thank you very much, Mr. Chairman.

Mr. Benevento and Mr. Mears, last fall our committee received a letter signed by 33 State attorneys general opposing proposals to exempt the DOD from the CAA and the cleanup statutes. With regard to RCRA and CERCLA, the letter stated, and I am quoting:

> "The amendments to RCRA and CERCLA would preempt State and EPA authority over munitions-related and explosives-related wastes at a broad range of sites, including up to 16 million acres of former ranges that may be contami-

nated with unexploded ordnance, Department of Energy facilities, and even private sites, as well as current military bases. Ignoring the environmental consequences of military training will benefit neither the environment, public health, nor military readiness, as the experience at the Massachusetts Military Reservation demonstrates. There, decades of military activities contaminated a sole source aquifer with explosives contaminants, causing closure of several municipal drinking water supply wells and prompting EPA to order cessation of live-fire training. While the military environmental regulators have subsequently reached agreement on how to balance military training and environmental protection at MMR, it is certainly not a model for sustainable range use."

Mr. Benevento and Mr. Mears, do you agree or, my question is, why do you agree or disagree with the concerns raised in the letter from the 33 State attorneys general?

Mr. BENEVENTO. I think the concerns raised by the State attorney generals were based upon some earlier language that DOD had proposed. Frankly, I talked with Mr. Cohen and I have talked with the Armed Services staff about what exactly—what do you want to do here? What exactly are you trying to get at? My understanding of what they are trying to get at under RCRA is not to protect any off-site release. I think we would have concerns if they did.

Explicitly what they are trying to do is protect the ability to use active and inactive ranges without any potential interference from environmental statutes. I think we can craft something that limits it to a piece of property. I really think what we are talking about here is looking at a piece of property and saying, okay, this piece of property is going to have a limited exemption, limited to the time that they are using it or potentially could use it, and then afterwards all of the full force and weight of the laws will come back once it is taken off of active or inactive status.

A lot of these environmental laws have much more sweeping exemptions in them already. I think if you look at RCRA, you can go down a list of everything from in situ mining to anything you place into a domestic treatment, a domestic waste water system, is exempt from RCRA.

This is a much more limited exemption. Really what it does under RCRA—really what it does is it says, okay, you have this piece of property for the time that they are using it for military preparedness, military readiness activities—and I am no expert on what that is, so I have to assume that the experts know what they need and when they need it—we, the regulators, are not going to, as long as there is no off-site migration, are not going to be in there regulating it.

Second, I think that they are willing—it has to be a readiness activity on an active range, for example, under RCRA. So in conversations I have had with DOD, if it is an open burning, open disposal of waste through open burning, open detonation (OBOD), they would still come to us and seek a RCRA permit. However, if they are doing OBOD for training purposes we currently do not permit that, and this would merely codify what we do not do.

Everybody keeps asking us for specific examples. I think what we are trying to do here is avoid having a specific example by codifying what we already do.

Senator AKAKA. Mr. Mears?

Mr. MEARS. Thank you for the question, Senator. Yes, we do agree with that letter, had a hand in drafting it. The reasons why we support it in summary actually have been captured by Mr. Benevento in his testimony. The way the legislation is currently crafted, particularly as it relates to RCRA and CERCLA, it plays with the fundamental waiver of sovereign immunity. It plays with some very fundamental definitions: solid waste in the RCRA statute, the definition of "release" under Superfund.

Amending these provisions of those statutes has far-ranging, sweeping effect. Mr. Benevento's suggestions may be ways to narrow this legislation that get to the DOD's proposal. However, they are fundamentally different than the legislation that has been proposed to date.

Senator AKAKA. Mr. Benevento and Mr. Mears. Earlier this year the State and Territorial Air Pollution Program Administrators (STAPPA) and the Association of Local Air Pollution Control Officials (ALAPCO) wrote a letter to the Chairman of the House Armed Services Committee stating their opposition to proposals to exempt certain DOD activities from requirements of the CAA. The letter states, and I am quoting: "STAPPA and ALAPCO believe that the proposed CAA exemptions are unwarranted and will impede local, State, and Federal efforts to attain and maintain health-based national ambient air quality standards and deliver healthful air to our citizens. Such exemptions would also interfere with our efforts to protect air quality in national parks and other important ecosystems.

"The proposed exemptions would allow military readiness activities, alone among air pollution activities that our members regulate, to cause or contribute to violations of health-based NAAQs, increase the frequency or severity of such violations, or delay timely attainment of the standards or interim milestones. Moreover, this approach would impose inequitable burdens on the industries we regulate, as well as on the public. State and local air pollution control officials will still feel the responsibility to deliver truly healthful air to the public we serve and therefore we will have no choice but to call upon other sectors in order to obtain the emission reductions we can no longer secure from military facilities."

Mr. Benevento and Mr. Mears, again, why do you agree or disagree with the concerns raised by the STAPPA and ALAPCO letter?

Mr. BENEVENTO. The letter really says two things. It said it will make air quality worse and it will not make air quality worse because what will happen is we will go after and get the emissions reductions from other sectors. I think that this one requires a lot of thought and a lot of work because you are dealing with off-site impacts.

In Colorado, if you look at a major metropolitan area, which is where you are going to have most of your NAAQs concerns, if you look at Colorado, if you look at Denver and Colorado Springs, which are really the two areas this would impact, and you look at

the proportion of—you look at the emissions budget and the military's contribution for the defined activities, not the entire contribution but really the readiness activities that are spoken about in the bill, you would find them to be an extraordinarily small amount.

Now, I am just speaking for Denver and Colorado Springs. I am not speaking for the Nation, of course. But you would find they are an extraordinary small amount. They are something that normally, unless there is going to be a big change at these bases, that normally we would not even consider. Denver, Colorado is lucky. We have no areas that are in nonattainment for any air quality standard.

So I think you have to do a few things with this one. I do not think it is unresolvable. I think it is resolvable. I think I disagree with the tone of that letter in that it just points out every single problem that could potentially arise, some of which I think are actually contradictory to each other, but it does not point out any solutions.

I think there are solutions that are possible by requiring offsets of other base activities that are not military readiness activities. I mentioned trading programs. I mentioned something like the natural events policy which we use in Colorado, which I think you still get into a little bit of off-site impacts there, but could at least provide part of a solution to the issue.

Senator AKAKA. Mr. Mears?

Mr. MEARS. Thank you, Senator. I really have to defer to those air authorities for their expertise in the area of air quality. But I can say that the concern about the breadth of the provisions as they relate to the CAA are significant concerns, and the language could have broader-reaching impacts than have been stated the intent of the DOD to achieve.

It creates in a sense a legal fiction, in the sense that it suggests that a region—a State would not necessarily have to find that a region was in nonattainment with the air quality standards by virtue of the fact that there was, even though the emissions levels might be above the actual standard, if the reason for that is the emissions from the DOD.

These standards are set based on public health. The public health, the effects on folks, on kids that get asthma, the various kinds of public health impacts of air quality, will not go away as a consequence of this statute. It will put the State air administrators and folks like Mr. Benevento in the awkward position of having to find other ways to meet that standard, because they are accountable to the citizens of their States to ensure that they do have a regulatory program that achieves those standards.

Senator AKAKA. My time has expired, Mr. Chairman. Thank you.

Senator ENSIGN. Mr. Cohen, I had this question briefly for EPA earlier and I want to ask it to you, about perchlorate, especially as it relates to Lake Mead. Will the administration's proposals in any way affect the cleanup efforts related to drinking water sources such as Lake Mead?

Mr. COHEN. No, sir, not at all, for multiple reasons actually. The Lake Mead perchlorate situation as I understand it was largely caused by the residue of industrial processes, disposal practices

from a manufacturing facility, and a catastrophic accident that occurred in 1988. None of those are remotely affected by our Readiness and Range Preservation Initiative, which only affects—certainly is only intended to affect and we are trying to clarify would only affect—our operational ranges.

Senator ENSIGN. We have your commitment that that language will be clarified so that it does not affect at all in any way the Defense Department's responsibility in helping the cleanup with perchlorate going into Lake Mead?

Mr. COHEN. Yes, sir.

Senator ENSIGN. Thank you.

Also, we were just talking about air impact. How much of an air impact is involved with the DOD conformity typically? In other words, I do not know if you can quantify it, and also maybe relate it to the ability in the future to locate the F–22 and the Joint Strike Fighter.

Mr. COHEN. Sir, you have put your finger exactly on the concern that we have and what is really motivating us. In the past we have had a number of near misses where it was only by fortuitous circumstances that we were able to relocate existing weapons systems. There was one instance in California, for example, where we were only able to relocate a weapons system to the LaMoore Naval Air Station because of the coincidence that there was a nearby bomber base that was closing.

Those are the sorts of near misses that we want to avoid by building a bit of extra flexibility into the act. That flexibility, the 3-year window that we would have to come into compliance, would give us the opportunity and the time to actually do the things that Mr. Benevento was discussing, try to adjust our nonreadiness activities, to try and make offsets on-base, or to purchase offsets, or to work with the State to revise the State Implementation Plan. Any of those are possibilities, but they do take time, and under the current statutory regime there is no flexibility. We cannot even begin to implement the activity. We could not begin to base a new weapons system unless we could demonstrate conformity from the get-go.

So what we are trying to do is build in a window of time where we could both begin the readiness activity, but at the same time take that opportunity to try to find the offsets that would permanently bring us into conformity.

With respect to your question about weapons systems, we are trying right now—and we will get back to you, sir, for the record—to come up with some examples, characteristic examples of some of the emissions outcomes that we would expect from a normal-sized deployment of a new weapon system. That is currently being prepared. We had hoped to have it available by today.

[The information referred to follows:]

Please see Mr. Cohen's response to QFR #3 for this information.

But characteristically, even our largest military readiness activities at a base would generate only some hundreds of tons of emissions in air basins whose emissions budgets can run into the thousands and tens of thousands of tons. To that end, I would like to quote actually a letter that was sent by former EPA Administrator

Carol Browner to then-Secretary of Defense Cohen. The letter was specifically about PM–2.5, but I think the closing paragraph is very telling:

"In summary, defense sources are a small part of the air quality problem and provide a unique and critical need for the Nation's security. I look forward to continuing to work with you and DOD on issues related to environmental compliance by military facilities."

So that is the Administrator's imprimatur, not only for our readiness activities, but for all DOD activities, that they are only a small part of the air quality problem. We would not be here, sir, asking for this added flexibility if we thought that there would be serious health impacts on the surrounding communities in the air basins where we have our bases.

Senator ENSIGN. Thank you.

I want to talk along these lines. It is my understanding that the administration's proposal for management of munitions on operational ranges is consistent with EPA's military munitions rule. I believe this proposal also preserves the authority to address imminent and substantial endangerment on the range. Mr. Cohen, why is it necessary to codify existing regulatory policy and how will communities be assured that human health and the environment will be protected on operational ranges?

Mr. COHEN. The reason again, sir, for having to codify existing practices and existing policy is that they are under threat from litigation. There is a case at Fort Richardson in Alaska, in which there is an ongoing effort to attempt to characterize our training activities at that base as the creation of solid waste for purposes of RCRA and a release for purposes of CERCLA, both of which are regulatory triggering events. They require regulatory responses.

While that is only one litigation, it is certainly indicative of a trend that we are concerned about, because the groups that brought that litigation at the time that they brought it did, I believe, express a desire to take that litigation on the road. In fact, if a court were to establish that precedent, it would be very difficult for the Defense Department to distinguish the live-fire training that we do at Fort Richardson from the training we do at basically all of our operational ranges.

Senator ENSIGN. So why not just use exemptions?

Mr. COHEN. Sir, then it would be necessary for us to do it at all of our operational ranges, certainly all of our active ranges, for routine test and training activities, which seems to us to be very different than the intention of Congress in providing for time-limited and site-specific exemptions.

In terms of what we are doing to try to foster range sustainment and also to build the confidence of communities in our efforts, there are a whole suite of policy directives that we have prepared or are preparing. The DOD directive on sustainment of ranges and operating areas was signed by the Deputy Secretary on January 10 and is now in effect. It is designed to establish capstone-level guidance to DOD and the Services on an overall policy for test and training, range sustainment planning, management, coordination, and outreach, and as a capstone directive it is intended to serve as a guide for the development or revision of all the other directives of the Department applicable to range sustainment.

It requires that range planning and management must identify range requirements for training and testing, identify encroachment concerns and other inhibiting factors to the ranges, and develop responsive plans to address any conflicts. Coordination and outreach on sustainment issues that include off-range stakeholders is also directed, with a goal of promoting understanding of range management and use decisions and working with outside groups to consider their concerns and work cooperatively to address shared concerns.

In addition, sir, other related policies on noise, active range clearance, air installation compatibility, use zones, and outreach are in formal staffing now and should be published later this year. We are also dramatically expanding our outreach efforts to communities with respect to range sustainment. That includes not only the discussions that we have been having with Mr. Benevento and some of the other State groups, but much more decentralized, locally based discussions with communities, private parties, and nongovernmental organizations.

Last year we signed the Munitions Action Plan in coordination with EPA, which is again designed to promote sustainable use of our ranges and promote public confidence in our range management activities. We have a green munitions program that we are working on, again cooperatively with the regulators.

In short, a whole series of programs, policies, and resources are being brought to bear on this, because we realize that we cannot justifiably ask for this regulatory treatment of our operational ranges, unless we can make a case both to Congress and to the communities that we have valid sustainment policies in place.

Senator ENSIGN. It is Senator Akaka's, but I think he would probably like to hear from both of you on what Mr. Cohen has just talked about. So I will start with Mr. Mears and then we will go to Mr. Benevento.

Mr. MEARS. Sure. There was a number of points that Mr. Cohen just addressed. One that jumps out at me is the concern about the threat of litigation by citizens groups, and that may ultimately prove to be a concern. It should not be a concern now. I have had the chance to review the pleadings in that case and they have not proceeded to any decisions in that court. I think it is premature to assume that there is actually a likelihood that, for instance, in the arena of RCRA there will be precedent-setting law set that will impede the DOD at other sites around the country.

In fact, the pleadings are fairly light on the RCRA end. The State of Alaska is not actually delegated to implement the RCRA statute and there is not—the definition of solid waste is not, at least at present, at issue in that case. So I think it is premature to presume based on that litigation that there is a need to change the statute.

Mr. BENEVENTO. I think what we want to avoid, whether it is RCRA, CAA, or any other law, is a district-by-district decision-making process, district court-by-district court, or appeals-by-appeals, that could lend to different implementation throughout the country. I think it is a legitimate policy call for Congress to say there are certain military readiness activities in certain active and inactive ranges that while they are in use deserve to be exempted

from environmental regulations, and then if there is a cleanup necessary we can follow on with a cleanup afterward.

So I think if what you are seeking to do is avoid a different application based upon court decisions, it would make sense for Congress to just make a call and step in and broadly do what the intent of the legislation is. I think what you want to avoid is what has happened with wetlands policy in the country, where you have different district courts making decisions and you basically have a different wetlands law depending upon where you live in the country.

Senator ENSIGN. Senator Akaka.

Senator AKAKA. Thank you, Mr. Chairman.

Mr. Mears, Mr. Cohen has characterized the DOD proposal as codifying the munitions rule. Would you like to comment on that?

Mr. MEARS. Thank you, sir. Yes, the munitions—actually, the statutory provisions that have been suggested, the amendments, go further than the munitions rule. The munitions rule, of course, because it is a regulation, cannot amend the statutory definition of solid waste, which this legislation does. That has, as a practical matter, the impact of potentially—of clearly impeding the State's ability to bring imminent and substantial endangerment claims.

The fact that EPA retains some authority to bring those claims is of small comfort to the States. We, over the past few decades, have become the primary implementers of these statutes. We have invested significant resources and developed significant expertise in the application of these laws to these sites in these States, and as a consequence, EPA has withdrawn its investment in large part in those States like Washington that has a very strong and effective program.

We cannot rely on EPA to be the ones that step in and identify problems and work with these defense installations to solve those problems. So again, there are other ways in which the munitions rule is more narrow than this legislative proposal, but it is not exactly accurate. It may be the intention to try to achieve simply what is in the munitions rule, but the statutory language as proposed is much broader.

Senator AKAKA. I want to say thank you very much for your responses, and I want to take the time to thank the chairman for calling this hearing. I also want to thank the chairman and his staff for calling such three great panels today. Without question, this will be very helpful to the committee.

Thank you very much.

Senator ENSIGN. Thank you, Senator Akaka, and for working with us.

I want to thank the panel for your excellent testimony, really all three panels today. I think it was a very helpful discussion and we got some good testimony on the record, and hopefully we can now go forward and improve the legislation, address some of the concerns that were brought up today, and come out with something that everybody I talked about, and that is the need for balance.

We are at war. I think it now comes into focus of how important readiness is and training, and for us to be able to go forward, protecting the environment, protecting human health and safety, but at the same time making sure that our Armed Forces have the

training and readiness that they need to fight a war when they are called upon to fight that war.

Also, just very briefly, Senator Allard, Mr. Benevento, wanted to be here today, but unfortunately he was unable to attend because he is on the floor helping a judicial nominee from Colorado. So he wanted to be here and welcome you, but he was unable to do that.

Senator AKAKA. Mr. Chairman, I would like to take the time to thank my staff also.

Senator ENSIGN. Ours as well. I think both staffs did a great job preparing. Once again, it is just terrific to work with this subcommittee staff. They are very professional in the way they work with all the witnesses and get us ready for these hearings.

So thank you all very much, and this hearing is adjourned.

[Questions for the record with answers supplied follow:]

QUESTIONS SUBMITTED BY SENATOR JOHN ENSIGN

ADMINISTRATION ENVIRONMENTAL LEGISLATIVE PROPOSAL

1. Senator ENSIGN. Mr. Cohen and Mr. Suarez, during the hearing on April 1, 2003, Doug Benevento, Executive Director of the Colorado Department of Public Health and Environment, testified that he wanted to offer some suggestions on the administration's legislative proposal on the Resource Conservation and Recovery Act (RCRA), the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and the Clean Air Act (CAA). Could you provide responses to suggestions proposed by Mr. Benevento in his testimony at the April 1, 2003, hearing before the Subcommittee on Readiness and Management Support?

Mr. COHEN. The Defense Department has worked very extensively with Mr. Benevento since the hearing to refine our RRPI RCRA/CERCLA proposal. As a result of these very cooperative, informative discussions, the Defense Department has recently submitted to EPA a modified version of the Department's current RCRA/CERCLA proposal that would narrow the circumstances in which the Department's RCRA provision would apply in the event of off-range migration. (Attached) EPA is currently reviewing this proposal.

U. S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

MAY 12 2000

The Honorable Thomas M. Davis, III
Chairman
Committee on Government Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letter dated March 13 requesting information related to litigation filed against the Department of Defense or the Military Departments alleging violations of environmental laws. We also appreciate the willingness of the Committee staff to meet with Department of Justice personnel on April 8 in order to discuss the scope and purpose of the request. Based upon your letter and the meeting, the Environment and Natural Resources Division generated the summaries and tables attached to this letter.

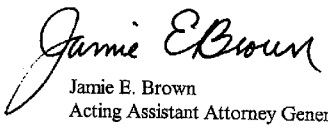
First, enclosed are case summaries of legal actions brought against the Department of Defense under the federal statutes identified in your March 13 letter for the period 1995-present that are directly related to military training or readiness activities. The summaries, which are separated by the responsible Environment and Natural Resources section (Environmental Defense or Wildlife and Marine Resources), provide: case name; the judicial district in which the case was filed; the status of the case (ongoing, closed, or appeal pending); and an overview of the case. A number of these cases were discussed at the April 8 meeting with Committee staff, and we hope these written summaries are helpful.

Second, enclosed are a series of tables that list cases brought against the Department of Defense under federal statutes identified in your March 13 letter for the period 1995-present. The tables, which are broken down by Environment and Natural Resources section (Appellate, Environmental Defense, or Wildlife and Marine Resources), list: case name; the judicial district in which the case was filed; case number; client agency; statute under which the suit was brought; and, if attorneys fees were paid, the amount of attorneys fees. As discussed during the April 8 meeting, the Division has excluded from these tables cases brought against the Army Corps of Engineers in relation to the Corps' administration of section 404 of the Clean Water Act and cases brought under the Comprehensive Environmental Response, Compensation and Liability Act against the Department of Defense or the Military Departments. The cases referenced in these tables but for which summaries are not provided do not directly relate to military training or readiness activities.

As to the other information requested, the Environment and Natural Resources Division does not have legal policies or procedures governing environmental litigation involving military activities. Furthermore, Department of Justice regulations provide that the Office of the Solicitor General determines whether, and to what extent, appeals will be taken by the United States to appellate courts. *See* 28 C.F.R. § 0.20(b). The Solicitor General possesses the authority to make all decisions regarding appeals, including appeals to the United States Supreme Court. The Office of the Solicitor General generally provides the Division as well as affected agencies, including the Department of Defense, with the opportunity to provide input prior to making decisions as to whether an adverse decision should be appealed.

We trust that this information is responsive to your request. If we can be of further assistance on this or any other matter, please do not hesitate to contact this office.

Sincerely,



Jamie E. Brown
Acting Assistant Attorney General

Enclosures

cc: The Honorable Henry A. Waxman
Ranking Minority Member

Appellate Section

CASE NAME	DISTRICT	COURT NO.	AGENCY	STATUTE	STAGE	ATTNY'S FEES
ARTHUR WEST V. SECRETARY OF DEFENSE	Washington, West	98-35681	Dept of Defense	CWA	Closed	
CENTER FOR BIOLOGICAL DIVERSITY V. DANZIG, ET AL.	District of Columbia	00-3044	Dept of Navy	MBTA	Closed	
CHEMICAL WEAPONS WORKING GROUP V. DEPARTMENT OF THE ARMY	Utah	96-4166	Dept of Army	RCRA	Closed	
FAMILIES AGAINST NERVE GAS INCINERATION V. ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION	Alabama, Middle	2-000595	Dept of Army	CAA, RCRA	Closed	
FORT ORD TOXICS PROJECT, INC V. CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY	California, North	98-16160	Dept of Army	RCRA	Closed	
GROUND ZERO CENTER FOR NON-VIOLENT ACTION V. UNITED STATE DEPARTMENT OF THE NAVY, ET AL.	Washington, West	01-5339	Dept of Navy	ESA	On Appeal	
HELEN FROST, JOHN DOE I-VI V. WILLIAM PERRY, ET AL.	Nevada	96-16892	Dept of Defense	RCRA	Closed	
MISSOURI COALITION FOR THE ENVIRONMENT V HERMAN	Missouri, East	994-2266	Dept of Army	CWA	On Appeal	
NEW YORK STATE DEPT. OF ENVIRONMENTAL CONSERVATION ET AL. V. DEPT. OF AIR FORCE	New York, North	89-197	Dept ofAir Force	CWA	Closed	
OSI, INC V UNITED STATES	Alabama, Middle	98-920	Dept of Air Force	RCRA	Closed	
PEOPLE OF THE STATE OF CALIFORNIA V. U.S.	California, East	98-0437	Dept of Air Force	CAA	Closed	
PINE BLUFF FOR SAFE DISPOSAL; CHEMICAL WORKING GROUP, INC. V. ARKANSAS POLLUTION CONTROL & ECOLOGY COMMISSION	Arkansas, East	2000-524-3	Dept of Army	RCRA	On Appeal	
SOUTHWEST CENTER FOR BIOLOGICAL DIVERSITY V. PERRY	Arizona	94-814	Dept of Defense	ESA	Closed	
U.S. V. TENNESSEE AIR POLLUTION CONTROL BOARD	Tennessee, Middle	3-96-0276	Dept of Army	CAA	Closed	
VIEQUES CONSERVATION AND HISTORICAL TRUST V U.S.	Puerto Rico	00-1578	Dept of Navy	CAA, CWA, RCRA, SDWA	Closed	
WATER KEEPER ALLIANCE V DEPARTMENT OF DEFENSE	Puerto Rico	3-00-02295	Dept of Defense	RCRA	Filed	

Environmental Defense Section

CASE NAME	DISTRICT	COURT NO.	AGENCY	STATUTE	STAGE	ATTNY'S FEES
AIRPORT WORKING GROUP OF ORANGE COUNTY, INC. V. U.S. DEPARTMENT OF DEFENSE	California, East	02-1110	Dept of Defense	CAA	Filed	
ALASKA COMMUNITY ACTION ON TOXICS V. THE ARMY	Alaska	02-083	Dept of Army	CWA, RCRA	Filed	
ALLIANCE OF PEACE LOVING PEOPLE OF VIEQUES V U.S.	Puerto Rico	00-1484	Dept of Defense	CWA, RCRA	Closed	
ARTHUR WEST V. SECRETARY OF DEFENSE	Washington, West	98-35681	Dept of Defense	CWA	Closed	
BARRY FARM RESIDENT COUNCIL V. NAVY	District of Columbia	96-1700	Dept of Navy	RCRA	Closed	
BARRY FARM RESIDENT COUNCIL, INC. V. NAVY	District of Columbia	96-1450	Dept of Navy	CWA	Closed	
CHEMICAL WEAPONS WORKING GROUP V. DEPARTMENT OF THE ARMY	Utah	96-4166	Dept of Army	RCRA	Closed	
CITIZENS ORGANIZED FOR RESPONSIBLE ENVIRONMENT V. DEPARTMENT OF DEFENSE	Washington, West	96-5186	Dept of Defense	CWA	Closed	
CITY OF JACKSONVILLE, FLORIDA V. NAVY	Florida, Middle	3-01-368-20	Dept of Navy	CAA	On Appeal	
COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT V. U.S.	Colorado	97-1601	Dept of Defense	RCRA	Closed	
COMMONWEALTH OF MASSACHUSETTS V. DOD	Massachusetts	92-11040	Dept of Army	CWA	Originated	
CONCORD DISPOSAL SERVICE, INC. V. COHEN	California, North	97-0971	Dept of Defense	RCRA	Closed	
CONTRA COSTA WASTE SERVICE V. UNITED STATES	California, North	96-3147	Dept of Navy	RCRA	Closed	
COOSA RIVER BASIN INITIATIVE, INC V WARR	Alabama, Middle	98-2082	Dept of Army	RCRA	Closed	
COUNTY OF CAPE MAY V. U.S.	New Jersey	95-2857	Dept of Navy	RCRA	Closed	
DAVID BOSLEY, ET AL. V. ARMY	Oregon	00-1039	Dept of Army	RCRA	Closed	
DEPARTMENT OF TOXIC SUBSTANCES CONTROL V. U.S.	California, East	97-5016	Dept of Defense	RCRA	Closed	
DERMODY PROPERTIES, INC. V. U.S., ET AL	Nevada	94-494	Dept of Air Force	CWA, RCRA	Closed	
DLA V. COMMONWEALTH OF PENNSYLVANIA	Pennsylvania, East	02-0330	Dept of Defense	CWA	Filed	
ENVIRONMENTAL HEALTH COALITION V. DALTON	California, South	96-947	Dept of Navy	CWA	Closed	
FAMILIES AGAINST NERVE GAS INCINERATION V. ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION	Alabama, Middle	2-000595	Dept of Army	CAA, RCRA	Closed	
FAMILIES CONCERNED ABOUT NERVE GAS INCINERATION V. ARMY	Alabama, North	1-02-02822	Dept of Army	RCRA	Filed	
FORBES/FISHERIES ISLAND CONSERVANCY, INC. V. CORPS OF ENGINEERS	New York, East	95-3474	Dept of Navy	CWA	Closed	
FOREST GUARDIANS V ARMY	New Mexico	00-722	Dept of Army	CWA	Closed	
FORT ORD TOXICS PROJECT, INC V. CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY	California, North	98-16160	Dept of Army	RCRA	Closed	
HISTORIC AIRCRAFT PRESERVATION, INC. V. ONE F4F-4 AIRPLANE, ET AL.	Washington, West	95-795	Dept of Navy	RCRA	Closed	

IN RE: TOOELE COUNTY CHEMICAL AGENT DISPOSAL FACILITY PERMIT APPEAL	Utah	.	Dept of Army	RCRA	Filed	
IRBY V. NAVY	Maryland	00-3151	Dept of Navy	CWA, RCRA	Closed	
JEFFREY SHELTON, JR, ET AL. V. HERCULES INC	Arkansas, East	97-131	Dept of Air Force	RCRA	Closed	
JOHN THOMAS HAGLER V. FLORIDA DEPT. OF ENVIRONMENT V. FLORIDA DEPT. OF ENVIRONMENTAL PROTECTION, ETAL	Florida, North	95-30054	Dept of Navy	CWA	Closed	
LARRY MATLOCK V. DOD	Tennessee, East	4-00-80	Dept of Defense	RCRA	Closed	
MARINA BAY REALTY TRUST V U.S.	Massachusetts	1-00-11623	Dept of Navy	RCRA	Closed	
MISSOURI COALITION FOR THE ENVIRONMENT V HERMAN	Missouri, East	994-2266	Dept of Army	CWA	On Appeal	
MISSOURI COALITION FOR THE ENVIRONMENT V. HERMANN	Missouri, East	964-2279	Dept of Army	CWA	Closed	
MISSOURI COALITION FOR THE ENVIRONMENT V. HERRMAN	Missouri, East		Dept of Army	CWA	Closed	
MISSOURI COALITION FOR THE ENVIRONMENT, ET AL. V. HARRIET BEARD, ET AL.	Missouri, East	954-1339	Dept of Army	CAA	Closed	
MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT FOR THE PEOPLE OF CALIF V. U.S.	California, North	97-20946	Dept of Army	CAA, RCRA	Closed	
MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT V. U.S. DEPARTMENT OF THE ARMY	California, North	99-20485	Dept of Army	CAA, RCRA	Filed	
NATIONAL STEEL CORPORATION, GREAT LAKES DIVISION V. UNITED STATES COAST GUARD	Michigan, East	96-74087	Dept of Defense	CWA	Closed	
NATIONAL WILDLIFE FEDERATION V CALDERA	District of Columbia	1-00-1031	Dept of Army	CWA	Closed	
NEVADA DIVISION OF ENVIRONMENTAL PROTECTION V. UNITED STATES	Nevada	98-34	Dept of Army	CWA, RCRA	Closed	
OSI, INC V UNITED STATES	Alabama, Middle	98-920	Dept of Air Force	RCRA	Closed	
PEOPLE OF THE STATE OF CALIFORNIA V. U.S.	California, East	98-0437	Dept of Air Force	CAA	Closed	
PEOPLE OF THE STATE OF ILLINOIS V. U.S. ARMY	Illinois, North	00-8121	Dept of Army	CWA	Filed	
PINE BLUFF FOR SAFE DISPOSAL; CHEMICAL WORKING GROUP, INC. V. ARKANSAS POLLUTION CONTROL & ECOLOGY COMMISSION	Arkansas, East	2000-524-3	Dept of Army	RCRA	On Appeal	
PUGET SOUND CLEAN AIR AGENCY V. ARMY	Washington, West	3-02-05153	Dept of Army	CAA	Closed	
PUGET SOUND CLEAN AIR AGENCY V. ARMY	Washington, West	01-012138931	Dept of Army	CAA	Filed	
RABUN COUNTY COALITION TO SAVE THE FOREST AND EDMON NICHOLSON V. GEORGE G. MARTIN	Georgia, North	96-2696	Dept of Army	CWA	Closed	
RURAL ALLIANCE FOR MILITARY ACCOUNTABILITY V ARMY	California, East	2-00-804	Dept of Army	RCRA	Closed	$360,000.00
SAN DIEGO BAYKEEPER V. U.S. DEPARTMENTOF DEFENSE	California, South	02-0499	Dept of Navy	CWA	Filed	
SAN FRANCISCO BAYKEEPER, ET AL. V. DEPT. OF THE NAVY, ET AL.	California, North	94-3521	Dept of Navy	CWA	Closed	$113,000.00
SAN FRANCISCO BAYKEEPER INC V. U.S. DEPARTMENT OF THE NAVY	California, North	96-3370	Dept of Navy	CWA, RCRA	Closed	$221,315.70
SAN FRANCISCO BAYKEEPER V. DEPARTMENT OF THE NAVY	California, North	97-3656	Dept of Navy	CWA	Closed	
SAN FRANCISCO BAYKEEPER V. U.S. DEPARTMENT OF NAVY	California, North	95-3033	Dept of Navy	CWA, RCRA	Closed	$79,631.76

SIERRA CLUB, ET AL V. UTAH SOLID AND HAZARDOUS WASTE CONTROL BOARD	Utah		Dept of Army	RCRA	Closed	
STATE OF OHIO V AIR FORCE	Ohio, South	3-99-231	Dept of Air Force	CAA	Closed	
STATE OF TEXAS V. THE DEPARTMENT OF DEFENSE	Texas, South	98-190	Dept of Army	CAA	Closed	
STATE OF WISCONSIN V. OLIN CORPORATION	Wisconsin, West	01-504	Dept of Army	RCRA	Closed	
STATE OF WISCONSIN V. U.S. DEPARTMENT OF ARMY	Wisconsin, West	01-0577	Dept of Army	RCRA	Closed	
THE MARCH COALITION FUND, ET AL. V. UNITED STATES	California, South	97-56080	Dept of Navy	CAA	Closed	
THE PORT OF REDWOOD CITY V. GIBSON ENVIRONMENTAL, INC.	California, North	98-3501	Dept of Army	RCRA	Closed	
THE SOUTHLAND CORPORATION V UNITED STATES OF AMERICA	California, North	99-20096	Dept of Navy	RCRA	Closed	
U.S. V. TENNESSEE AIR POLLUTION CONTROL BOARD	Tennessee, Middle	3-96-0276	Dept of Army	CAA	Closed	
UNITED AMMUNITION CONTAINER, INC V UNITED STATES	Tennessee, West	10-100-1178	Dept of Defense	CWA, RCRA	Closed	
UNITED STATES V. ILLINOIS POLLUTION CONTROL BOARD	Illinois, North	97-7499	Dept of Navy	CWA	Closed	
VIEQUES CONSERVATION AND HISTORICAL TRUST V U.S.	Puerto Rico	00-1578	Dept of Navy	CAA, CWA, RCRA, SDWA	Closed	
WATER KEEPER ALLIANCE V DEPARTMENT OF DEFENSE	Puerto Rico	3-00-02295	Dept of Defense	RCRA	Filed	

Wildlife and Marine Resources Section

CASE NAME	DISTRICT	COURT NO.	AGENCY	STATUTE	STAGE	ATTNY'S FEES
AMERICAN RIVERS, ET AL. V. U.S. ARMY CORPS OF ENGINEERS, ET AL.	District of Columbia	03-241	Dept of Army	ESA	Filed	
ARC ECOLOGY, ET AL. V. UNITED STATES MARINE CORPS	California, North	99-1178	Dept of Navy	ESA	Closed	
B AND B PARTNERSHIP, ET AL. V. UNITED STATES OF AMERICA	Maryland		Dept of Navy	ESA	Closed	
CENTER FOR BIOLOGICAL DIVERSITY V. COHEN	Arizona	99-203	Dept of Army	ESA	Filed	$75,196.50
CENTER FOR BIOLOGICAL DIVERSITY V. DANZIG, ET AL.	District of Columbia	00-3044	Dept of Navy	MBTA	Closed	
CONCERNED CITIZENS OF EAST COLUMBUS, ET AL. V. PETERS	Georgia, Middle		Dept of Army	ESA	Closed	
DEFENDERS OF WILDLIFE V. BABBITT	District of Columbia	99-927 99-0927	Dept of Air Force	ESA	Filed	$237,484.60
DEFENDERS OF WILDLIFE, ET AL. V. SHEILA E. WIDNALL, SECRETARY OF THE AIR FORCE	District of Columbia		Dept of Air Force	ESA	Closed	$32,000.00
GROUND ZERO CENTER FOR NON-VIOLENT ACTION V. UNITED STATE DEPARTMENT OF THE NAVY, ET AL.	Washington, West	01-5339	Dept of Navy	ESA	On Appeal	
HARRY FERGERSTROM V. UNITED STATES DEPARTMENT OF NAVY	Hawaii	98-212	Dept of Navy	ESA	Closed	
HAWAII COUNTY GREEN PARTY v. CLINTON	Hawaii	98-232	Dept of Defense	MMPA	Closed	
HAWAII COUNTY GREEN PARTY, ET AL. V. CLINTON	Hawaii	00-166	Dept of Navy	ESA	Closed	
HUMANE SOCIETY OF THE UNITED STATES and SHIRLEY COBLE V. WILLIAM COHEN, ET AL.	District of Columbia	99-252	Dept of Defense	MBTA	Closed	
IN RE LFA SONAR	District of Columbia		Dept of Defense	ESA, MMPA	Closed	
IN RE NATURAL RESOURCES DEFENSE COUNCIL			Dept of Navy	ESA, MMPA	Closed	
KANOA, INC. DBA BODY GLOVE CRUISES V. CLINTON	Hawaii	98-00250 98-250	Dept of Defense	ESA, MMPA	Closed	
McCOY LAND AND CATTLE COMPANY, ET AL. V. GERMAN AIR FORCE, ET AL.	Texas, West	98-40	Dept of Air Force	ESA	Closed	
NATIONAL WILDLIFE FEDERATION, ET AL. V. U.S. DEPARTMENT OF THE ARMY	District of Columbia	00-1031	Dept of Army	ESA	Closed	
NATURAL RESOURCES DEFENSE COUNCIL V. DEPARTMENT OF THE NAVY	California, South		Dept of Navy	MMPA	Closed	
NATURAL RESOURCES DEFENSE COUNCIL, ET AL. V. EVANS, ET AL.	California, North	02-3805	Dept of Navy	MMPA	Filed	
NATURAL RESOURCES DEFENSE COUNCIL, INC., ET AL. V. UNITED STATES DEPARTMENT OF THE NAVY, ET AL.	California, Central	01-07781	Dept of Navy	ESA	Closed	
NAVY ARTILLERY EXERCISES (FLORIDA)	Florida, North		Dept of Navy	MMPA	Closed	
OCEAN MAMMAL INSTITUTE V. COHEN	Hawaii	98-7-160	Dept of Defense	MMPA	Closed	
RICHARD A. SCOTT V. UNITED STATES OF AMERICA	Alabama, Middle	00-743 00-742	Dept of Army	ESA	Filed	

RURAL ALLIANCE FOR MILITARY ACCOUNTABILITY, ET AL. V. UNITED STATES DEPARTMENT OF THE ARMY	California, East	00-804	Dept of Army	ESA	Closed	
SIERRA CLUB V. CITY OF SAN ANTONIO, ET AL.	Texas, West		Dept of Defense	ESA	Closed	
SOUTHWEST CENTER FOR BIOLOGICAL DIVERSITY V. PERRY	Arizona	94-814	Dept of Defense	ESA	Closed	
THE CETACEAN COMMUNITY V. GEORGE W. BUSH, ET AL.	Hawaii	02-599	Dept of Defense	ESA	Filed	
VIEQUES CONSERVATION AND HISTORICAL TRUST; ET AL. V. WILLIAM J. CLINTON	Puerto Rico	00-1578	Dept of Defense	ESA	Closed	
WATERKEEPER ALLIANCE, ET AL. V. UNITED STATES DEPARTMENT OF DEFENSE, ET AL.	Puerto Rico	00-2295	Dept of Defense	ESA	Filed	

Environmental Defense Section

Alaska Community Action on Toxics v. Army (D. Alaska)

Case No.: 02-083

Status: Ongoing

Summary: The case concerns the Army's Fort Richardson, which is located northeast of Anchorage. Fort Richardson is a 60,000 acre facility that has been used for training for many years, beginning in the 1940s. Plaintiffs filed a complaint on April 12, 2002 and an amended complaint on June 26, 2002. Plaintiffs allege that: (1) a Clean Water Act National Pollution Discharge Elimination System permit is required for certain training exercises; (2) the Army has violated an Alaska anti-pollution statute and therefore violated the Resource Conservation and Recovery Act; and (3) the Army has failed to do an Remedial Investigation/Feasibility Study required by the Comprehensive Environmental Response, Compensation, and Liability Act for the cleanup of unexploded ordinance. The United States filed an answer on July 11, 2002. In November 2002, the parties filed a Joint Request to Stay the litigation to allow the parties to pursue settlement. The stay expired April 4, 2003.

Alliance of Peace Loving People of Vieques v. United States (D.P.R.)

Case No.: 00-1484

Status: Closed

Summary: Plaintiff was a group of local residents who sought to halt the Navy's training at Vieques. The complaint alleged violations of the Clean Water Act, the Resource Conservation and Recovery Act, and the Commonwealth's nuisance laws. Although the complaint was filed with the court, it was never formally served on the United States. The district court dismissed the case in 2001 based on plaintiff's failure to timely serve the complaint. Plaintiff did not take any further action.

Forbes/Fishers Island Conservancy, Inc. v. Corps of Engineers (E.D.N.Y.)

Case No.: 95-3474

Status: Closed

Summary: This case was a citizen action to prevent Thames River dredging for the Seawolf Submarine homeporting project. Plaintiffs filed a complaint on

October 24, 1995 alleging violations of the Clean Water Act and the Ocean Dumping Act. Plaintiffs subsequently filed a motion for preliminary injunction that was denied. The Court eventually dismissed the case on jurisdictional grounds. Plaintiffs appealed, and the parties then settled based on commitments by the Corps of Engineers and EPA to make certain adjustments when issuing Ocean Dumping Act permits for disposal of dredged material in Long Island Sound.

Vieques Conservation and Historic Trust v. Bush (D.P.R.)

Case No.: 00-1578

Status: Closed

Summary: This case concerned Naval training exercises at Vieques. This action was filed in May 2000, by an organization of Vieques residents. The complaint included claims under the Endangered Species Act, Resource Conservation and Recovery Act, Clean Air Act, Clean Water Act, Safe Drinking Water Act, Migratory Bird Treaty Act, and the Ocean Dumping Act, as well as claims related to the 1983 Memorandum of Understanding between Puerto Rico and the Navy, the illegal use of the security zone, the illegal restriction on access to public beaches, and public nuisance.

Between May 2000 and April 2001, plaintiffs filed three separate motions for a temporary restraining order to halt planned training exercises. The court denied each motion and the training proceeded. The United States filed a motion to dismiss the case in July 2000. The case was dismissed in June 2001.

Waterkeeper v. Dept. of Defense (D.P.R.)

Case No.: 3-00-02295

Status: Ongoing

Summary This case concerns Naval training exercises at Vieques. The plaintiffs are two national environmental organizations, Waterkeeper Alliance and Natural Resources Defense Council; two organizations of Vieques residents; and sixteen individual residents of Vieques. The complaint, which was filed in October 2002, alleges that the Navy's training operations violated the civil rights of the residents of Puerto Rico; did not comply with the Endangered Species Act; and created an imminent and substantial endangerment under the Resource Conservation and Recovery Act.

Plaintiffs simultaneously moved for a temporary restraining order and preliminary injunction to halt training exercises scheduled for the following week. The district court denied the motion. Plaintiffs later renewed the motion for a preliminary injunction with respect to the Endangered Species Act claims. The district court again denied the motion. Plaintiffs appealed the district court's decision, and the decision was affirmed by the First Circuit.

The Endangered Species Act claims became moot when the Navy finished its consultation with the Fish and Wildlife Service and the National Marine Fisheries Service and a biological opinion was issued. Plaintiffs did not seek judicial review of the opinion.

The United States filed a motion to dismiss the civil rights claims and some (but not all) of the Resource Conservation and Recovery Act claims. The district court granted the motion for the Resource Conservation and Recovery Act claims and part of the civil rights claims. The civil rights claim was dismissed in part because the statute of limitations had expired for many elements of the claim, such as the decision to build the training facility in Puerto Rico, which was made during the 1940's. The court did not dismiss claims that the Navy's continued use of the facility violated plaintiffs' civil rights. Plaintiffs have not sought discovery or taken any further action at all with respect to the civil rights issues.

The parties filed cross-motions for summary judgment on the Resource Conservation and Recovery Act claim alleging that hazardous waste accumulated at the live impact area is causing an imminent and substantial endangerment to human health or the environment. After receiving the United States' motion, Plaintiffs moved for limited discovery. The motion was granted. The parties are still in the midst of discovery.

Wildlife and Marine Resources Section

Natural Resources Defense Council v. Evans, et al. (N.D. Cal)

Case No.: 02-3805

Status: Ongoing

Summary: This challenge brought by an environmental organization seeks to enjoin the peace-time use of the Navy's Surveillance Towed Array Sensor System Low Frequency Active Sonar (SURTASS LFA). Plaintiff claims that the National Marine Fisheries Service improperly approved operation of SURTASS LFA in violation of the Marine Mammal Protection Act, the Endangered Species Act, and the National Environmental Policy Act. Plaintiff asserts that operation of SURTASS LFA will irreparably injure marine mammals, including whales, dolphins, seals, and other species. On October 31, 2002, the district court enjoined the Navy's use of SURTASS LFA until the parties could agree on a more tailored preliminary injunction. The court recognized the importance of the technology but believed plaintiff's claims were likely to prevail and directed the parties to attempt to agree on restrictions that would further protect the species. The parties were able to do so, and the Navy was able to operate the system within the confines of the more limited preliminary injunction for the one-year duration of the MMPA letter of authorization. Briefing on summary judgment will be complete as of May 22, 2003. Oral argument on the parties' cross-motions for summary judgment is set for June 30, 2003.

The Cetacean Community v. President of the United States, et al. (D. Hawaii)

Case No.: 02-00599

Status: Ongoing

Summary: Plaintiff filed this suit on behalf of whales, dolphins, and porpoises seeking to enjoin the wartime use of SURTASS LFA. The United States filed a motion to dismiss on the grounds that marine mammals are not "persons" entitled to sue under the Endangered Species Act, the President is not an "agency" under the Administrative Procedure Act, and plaintiffs did not satisfy the 60-day notice of intent to sue prerequisite of the Endangered Species Act. The motion was granted by the court.

Center for Biological Diversity v. Pirie (D.D.C.)

Case No.: 00-3044

Status: Merits litigation is completed; attorney's fees litigation ongoing

Summary: Plaintiff is an environmental organization that challenged the Navy's use of an island, Farallon de Medinilla, in the Northern Marianas for live fire training exercises. The Navy utilized the island for various training activities. The island is uninhabited, but various species of migratory birds inhabit the island. Plaintiff claimed that the Navy's exercises resulted in the death of birds, and that the Navy was violating the Migratory Bird Treaty Act's prohibition against killing migratory birds. Plaintiff sought an injunction against the training exercises until the Navy obtained a Migratory Bird Treaty Act permit. The district court held for the plaintiff and enjoined the Navy's training activities for a short period, but the injunction was stayed by the Court of Appeals, pending appeal. During the appeal, Congress enacted legislation that mooted the appeal: on December 2, 2002, President Bush signed the Bob Stump National Defense Authorization Act for Fiscal Year 2003. Section 315 of the Act effectively exempts the type of military training at issue here from the prohibition of the Migratory Bird Treaty Act by providing that the prohibition against taking migratory birds "shall not apply to the incidental taking of a migratory bird by a member of the Armed Forces during a military readiness activity authorized by the Secretary of Defense or the Secretary of the military department concerned." Subsequently, the Court of Appeals dismissed the case on mootness grounds, vacated the district court opinion, and remanded the matter to the district court for resolution of plaintiff's request for attorney's fees and costs.

Natural Resources Defense Council v. Navy (C.D. Cal.)

Case No.: 01-07781

Status: Closed

Summary: Plaintiff is an environmental organization that challenged the Navy's Littoral Warfare Advanced Development (LWAD) Program under the Endangered Species Act, the Marine Mammal Protection Act, the Magnuson Fishery Conservation and Management Act, and the National Environmental Policy Act. LWAD is an office of the Navy that oversees tests of anti-submarine technology, including sonar. Plaintiff asserted that such tests were harming marine mammals but failed to challenge specific tests or projects under LWAD's auspices that allegedly harmed particular species. The United States moved to dismiss on the ground that plaintiff had not challenged a final agency action, as required for judicial review under the Administrative Procedure Act. The court granted the motion to dismiss.

Defenders of Wildlife v. Babbitt (D.D.C.)

Case No.: 99-0927

Status: Ongoing

Summary: Plaintiff is an environmental organization that alleged violation of the Endangered Species Act by numerous federal agencies with respect to activities on or near the Barry Goldwater Air Force Base in southern Arizona that allegedly impacted the endangered Sonoran pronghorn. Claims were made against the Air Force, Marines, Bureau of Land Management, U.S. Border Patrol, and U.S. Fish and Wildlife Service. The plaintiffs claimed that the Fish and Wildlife Service did not adequately consider the impacts of other agencies' activities on the pronghorn when it issued a biological opinion for each single agency. The district court agreed, and remanded most of the challenged opinions, but it did not enjoin any federal agency activities. Recently, plaintiffs brought a motion to enforce the judgment, arguing that the agencies had not complied with the remand instructions and seeking: (1) further remands and (2) to enjoin some of the non-military agencies' activities. The court denied most of the requested relief, but remanded one biological opinion again to the Fish and Wildlife Service. None of the Department of Defense opinions were remanded by the court, but the Department of Defense and the Fish and Wildlife Service decided to revise the Department of Defense biological opinions to address the limited concerns the court voiced on the motion to enforce.

Ground Zero Center for Nonviolent Action v. Navy (W.D. Wash.)

Case No.: 01-5339

Status: Closed

Summary: Plaintiff is an advocacy organization that brought Endangered Species Act and National Environmental Policy Act claims against the Navy relating to the expansion of a submarine facility in Bangor, Washington. The district court granted the United States' motion to dismiss certain claims, which would require revealing classified information such as confirmation that certain weapons were or were not to be housed at the facility. The court granted the United States' motion for summary judgment with respect to the remainder of the claims.

Natural Resources Defense Council v. U.S. Department of the Interior (C.D. Cal.)

Case No.: 01-7028 (related Case No. 01-8412)

Status: Closed

Summary: Plaintiffs are environmental organizations that filed suit against the U.S. Fish and Wildlife Service challenging the Endangered Species Act critical habitat designation for the Coastal California Gnatcatcher. One of the claims asserted by plaintiffs was that the Fish and Wildlife Service had improperly excluded Camp Pendleton from the designation. Because Fish and Wildlife Service concluded that it would not defend the designation on other grounds, including that it believed it was necessary to revise the economic analysis, the United States sought and was granted a voluntary remand of the designation to the Fish and Wildlife Service. Currently, the Fish and Wildlife Serviced is engaged in a rulemaking process to issue a new critical habitat designation for this species.

DISCUSSION D R A F T

RRPI IIa – Short Version

"Section 2019. Range management.

"(a) DEFINITION OF SOLID WASTE. –

"(1) The term 'solid waste' as used in the Solid Waste Disposal Act, as amended (42 U.S.C. 6901 et seq.), does not include military munitions, including unexploded ordnance, and the constituents thereof, that are or have been deposited, incident to their normal and expected use, on an operational range, and remain thereon.

"(2) Paragraph (1) shall not apply to military munitions, including unexploded ordnance, or the constituents thereof, that --

"(A) are recovered, collected, and then disposed of by burial or landfilling; or

"(B) have migrated off an operational range; or

"(C) are deposited off of an operational range; or

"(D) remain on the range once the range ceases to be an operational range.

"(3) Nothing in this section affects the authority of federal, state, interstate, or local regulatory authorities to determine when military munitions, including unexploded ordnance, or the constituents thereof, become hazardous waste for purposes of the Solid Waste Disposal Act, as amended (42 U.S.C. 6901 et seq.), including, but not limited to, sections 7002 and 7003, except for military munitions, including unexploded ordnance, or the constituents thereof, that are excluded from the definition of solid waste by this subsection.

"(b) DEFINITION OF RELEASE. —

"(1) The term 'release' as used in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. §9601 et seq.), does not include the deposit or presence on an operational range of any military munitions, including unexploded ordnance, and the constituents thereof, that are or have been deposited thereon incident to their normal and expected use, and remain thereon.

(2) Paragraph (1) shall not apply to military munitions, including unexploded ordnance, and constituents thereof, that -

"(A) migrate off an operational range; or

"(B) are deposited off of an operational range; or

"(C) remain on the range once the range ceases to be an operational range.

"(3) Notwithstanding the provisions of paragraph (1), the authority of the President under section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. §9606(a)), to take action because there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance includes the authority to take action because of the deposit or presence on an operational range of any military munitions, including unexploded ordnance, or the constituents thereof that are or have been deposited thereon incident to their normal and expected use and remain thereon.

"(c) DEFINITION OF CONSTITUENTS.—For purposes of this section, the term 'constituents' means any materials originating from military munitions, including unexploded ordnance, explosive and non-explosive materials, and emission, degradation, or breakdown products of such munitions.

"(d) CHANGE IN RANGE STATUS.—Nothing in this section affects the legal requirements applicable to military munitions, including unexploded ordnance, and the constituents thereof, that have been deposited on an operational range, once the range ceases to be an operational range.

"(e) Nothing in this section affects the authority of the Department to protect the environment, safety, and health on operational ranges."

Mr. SUAREZ. EPA appreciates the thoughtful suggestions Mr. Benevento proposed in his testimony. Since the April 1, 2003 hearing, EPA and DOD agreed on new proposed legislative language that would address Mr. Benevento's concern regarding the applicability of the proposed exemptions under RCRA and CERCLA: the Agencies jointly agreed on a revised definition of "operational range" that clarifies that the exemptions would apply to active and inactive ranges under the jurisdiction, custody or control of a the military services.

EPA and DOD have pledged to work together to refine the legislative proposals to address concerns raised by the States, communities, and other stakeholders. These concerns include monitoring and reporting of environmental impacts of military readiness activities and protecting ground and surface water—two of the concerns Mr. Benevento raised in his testimony. In addition, EPA and DOD appear to be nearing agreement on the use of land use controls to prevent the migration of contamination at Superfund sites, and we continue to work together through the Munitions Response Committee to address a number of environmental issues related to ordnance and explosives (OE) and unexploded ordnance (UXO).

Finally, EPA continues to believe that proposed changes to the Clean Air Act appropriately addresses two important national priorities—military readiness and the protection of human health and the environment—while holding the States harmless for any nonattainment of ambient air quality standards resulting from military readiness activities.

2. Senator ENSIGN. Mr. Cohen and Mr. Suarez, how does the administration propose to work with States and communities to address concerns related to these proposals?

Mr. COHEN. The Services and DOD are working intensively with all stakeholders to ensure range sustainability and environmental protection. It is an essential military mission to protect the natural resources of the U.S. and to maintain the lands entrusted to us for training purposes. In order to achieve this goal, DOD has partnered with the Nature Conservancy and other land trust and conservation groups, and works closely with the Fish and Wildlife Service and the National Oceanic and Atmospheric Administration, to preserve sensitive habitat throughout the U.S.

DOD is partnering with land trust organizations and State and local governments to find ways to create buffer zones and acquire sensitive habitat for threatened and endangered species adjoining our test and training ranges.

With respect to concerns expressed by some State and local regulators over our RRPI proposals, the Department is engaging in vigorous outreach to a broad range of officials and organizations, including National Association of Attorneys General, Conference of Western Attorneys General, National Conference of State Legislators, Association of State and Territorial Solid Waste Management Officials, Environmental Council of States, International City/County Management Association, National Association of Counties, and the National Governors Association. I personally have met with dozens of State regulatory officials on this issue.

In addition, EPA and DOD have carefully assessed the concerns expressed, and have completely revised our RCRA/CERCLA proposal in an attempt to meet these concerns. We continue to work intensively with State and local officials across the country on these issues.

DOD continues to work with local communities on current cleanup initiatives underway at military sites across the United States. DOD intends to meet its obligations to clean up contamination from past practices and continue our strong pollution prevention and environmental compliance programs. In this fiscal year alone, the environmental budget for DOD will be $4 billion.

Finally, as I noted in my testimony, for areas other than operational ranges that require cleanup, the Department has established a Munitions Response Committee that includes partners from the U.S. Environmental Protection Agency, Federal Land Managers, States, and Tribes. The primary goal of the committee is to define a collaborative decisionmaking process that ensures each party's rights and respective responsibilities are respected. This approach will allow coordination and, where appropriate, integration of the applicable statutory and administrative authorities under Federal and State environmental laws. This approach ensures that action will be taken within an agreed upon approach when operational ranges are closed in the future.

Mr. SUAREZ. EPA values and actively solicits input and advice from our State partners and community members. We continue to work closely with the States through organizations like the Environmental Council of the States (ECOS) and the Association of State and Territorial Solid Waste Management Officials (ASTSWMO).

3. Senator ENSIGN. Mr. Cohen, you testified that the DOD was in the process of preparing some estimates and/or assumptions regarding the air emission impacts of new weapon systems. Could you provide that information?

Mr. COHEN. Although we have made initial efforts preparing estimates, such estimates must be used with great caution. In some cases, aircraft operational data have not yet been fully defined and published—a prerequisite for a reliable estimate. Further, to arrive at estimates, the number and type of operations are generalized as landings and takeoffs (LTOs), whereas basing documents will consider the full range, location, and frequency of operations. Finally, since final basing decisions have not been made with respect to each weapon system, the estimates are difficult to place in meaningful context regarding the significance of any increases or decreases in emissions from newly based weapon systems. In the process of making basing decisions, air impacts are considered in detail in environmental analysis documents.

Emissions Comparison of CH-46E Sea Knight Helicopter and MV-22 Osprey Tilt-Rotor Aircraft

		Emissions in lbs				
Aircraft	Operation	CO	NOX	HC	SO2	PM10
MV-22	LTO	2.45	6.79	0.04	0.32	1.13
	1 Hour Cruise	1.99	53.82	0.04	1.53	6.04
	Subtotal	4.44	60.61	0.08	1.85	7.17
CH-46E	LTO	21.37	1.07	6.81	0.15	1.36
	1 Hour Cruise	22.11	4.41	3.84	0.45	1.99
	Subtotal	43.48	5.48	10.65	0.6	3.35
	Delta (lbs)	-39.04	55.13	-10.57	1.25	3.82

Notes:
Assuming one hour of cruise for CH-46E and MV-22 below 3,000 feet AGL

CH-46E LTO and cruise data from AESO Memorandum Report 9816F
MV-22 vertical takeoff, vertical landing and cruise data from AESO Memorandum Report 9946E. AESO is the Navy's Aircraft Environmental Support Office
Assume: ATC Ops of 50,000/yr* which equates to 25,000 LTO & Cruise per year
* An operation counted by the ATC (Air Traffic Control) tower consists of one landing or one takeoff. An LTO (Landing and Takeoff cycle) includes both a landing and a takeoff.

NOX
MV-22 NOx = (25,000 x 60.61)/(2000 lbs/ton) = 757.63 tons/yr
CH-46E NOx = (25,000 x 5.48)/(2000 lbs/ton) = 68.5 tons/yr
Net increase in NOx (CH-46E replaced by MV-22) = 689.13 tons/yr

CO
MV-22 CO = (25,000 x 4.44)/(2000 lbs/ton) = 55.5 tons/yr
CH-46E CO = (25,000 x 43.48)/(2000 lbs/ton) = 543.5 tons/yr
Net increase in CO (CH-46E replaced by MV-22) = 488 tons/yr

HC
MV-22 HC = (25,000 x 0.08)/(2000 lbs/ton) = 1 tons/yr
CH-46E HC = (25,000 x 10.65)/(2000 lbs/ton) = 133.13 tons/yr
Net increase in HC (CH-46E replaced by MV-22) = 132.13 tons/yr

Emissions Comparison of AV-8B Harrier and F-35 Joint Strike Fighter (STOVL Variant)

		Emissions in lbs				
Aircraft	Operation	CO	NOX	HC	SO2	PM10
JSF (STOVL)	LTO	16.69	65.37	3.49	0.99	10.38
AV-8B	LTO	36.96	10.88	2.29	0.71	15.75
	Delta (lbs)	-20.27	54.49	1.20	0.28	-5.37

Notes:
AV-8B (F402-RR-408 engine) vertical takeoff and landing data from AESO Memorandum Report 9913C. F-35 vertical takeoff and landing data from JSF Office. AESO is the Navy's Aircraft Environmental Support Office.
Assume: ATC Ops of 50,000/yr* which equates to 25000 LTO per year.
* An operation counted by the ATC (Air Traffic Control) tower consists of one landing or one takeoff. An LTO (Landing and Takeoff cycle) includes both a landing and a takeoff.

NOX
JSF(STOVL) NOX = (25,000 x 65.37)/(2000 lbs/ton) = 817.13 tons/yr
AV-8B NOX = (25,000 x 10.88)/(2000 lbs/ton) = 136.00 tons/yr
Net increase in NOX (AV-8B replaced by JSF) = 681.13 tons/yr

CO
JSF(STOVL) CO = (25,000 x 16.69)/(2000 lbs/ton) = 208.63 tons/yr
AV-8B CO = (25,000 x 36.96)/(2000 lbs/ton) = 462 tons/yr
Net decrease in CO (AV-8B replaced by JSF) = 253.37 tons/yr

PM10
JSF(STOVL) PM10 = (25,000 x 10.38)/(2000 lbs/ton) = 129.75 tons/yr
AV-8B PM10 = (25,000 x 15.75)/(2000 lbs/ton) = 196.88 tons/yr
Net decrease in PM10 (AV-8B replaced by JSF) = 67.13 tons/yr

Emissions Comparison of F/A-18C/D and F-35 Joint Strike Fighter (Naval Variant)

		Emissions in lbs				
Aircraft	Operation	CO	NOX	HC	SO2	PM10
JSF(NV)	LTO	18.04	33.10	3.78	0.78	9.88
F/A-18C/D	LTO	141.32	13.49	54.35	0.82	15.98
	Delta (lbs)	-123.28	19.61	-50.57	-0.04	-6.10

Notes:
F/A-18C/D LTO data from AESO Memorandum Report 9815E.
F-35 takeoff and landing w/ break data from JSF Office. AESO is the Navy's Aircraft Environmental Support Office
Assume: ATC Ops of 50,000/yr* which equates to 25,000 LTO per year
* An operation counted by the ATC (Air Traffic Control) tower consists of one landing or one takeoff.
An LTO (Landing and Takeoff cycle) includes both a landing and a takeoff.

NOX
JSF(NV) NOX = (25,000 x 33.10)/(2000 lbs/ton) = 413.75 tons/yr
F/A-18C/D NOX = (25,000 x 13.49)/(2000 lbs/ton) = 168.63 tons/yr
Net increase in NOX (F/A-18C/D replaced by JSF) = 245.12 tons/yr

CO
JSF(NV) CO = (25,000 x 18.04)/(2000 lbs/ton) = 225.5 tons/yr

F/A-18C/D CO = (25,000 x 141.32)/(2000 lbs/ton) = 1766.5 tons/yr
Net decrease in CO (F/A-18C/D replaced by JSF) = 1541 tons/yr
HC
JSF(NV) HC = (25,000 x 3.78)/(2000 lbs/ton) = 47.25 tons/yr
F/A-18C/D HC = (25,000 x 54.35)/(2000 lbs/ton) = 679.38 tons/yr
Net decrease in HC (F/A-18C/D replaced by JSF) = 632.13 tons/yr

PM10
JSF(NV) PM10 = (25,000 x 9.88)/(2000 lbs/ton) = 123.5 tons/yr
F/A-18C/D PM10 = (25,000 x 15.98)/(2000 lbs/ton) = 199.75 tons/yr
Net decrease in PM10 (F/A-18C/D replaced by JSF) = 76.25 tons/yr

Emissions comparison in Lbs/LTO* for F-22 and F-15

		Emissions in lbs			
Aircraft	Operation	CO	NOX	HC	PM10
F-22	LTO	69.18	15.09	9.58	4.77
F-15	LTO	46.77	25.16	9.62	4.52
	Delta (lbs)	22.41	-10.07	-0.04	0.25

Note:
Assume: ATC Operations of 100,000/yr* which equates to 50,000 LTOs/yr
*An operation counted by the ATC tower consists of one landing or one take-off. An LTO includes both a landing and a take-off.

CO
F-22 CO = (50,000x 69.18)/(2000 lbs/ton) = 1729.5 tons/yr
F-15 CO = (50,000x 46.77)/(2000 lbs/ton) = 1169.25 tons/yr
Net Increase in CO (F15 replaced by F22) = 560.25 tons/yr

NOX
F-22 NOX = (50,000x 15.09)/(2000 lbs/ton) = 377.25 tons/yr
F-15 NOX = (50,000x 25.16)/(2000 lbs/ton) = 629 tons/yr
Net decrease in NOX (F15 replaced by F22) = 251.75 tons/year

Emissions Comparison in Lbs/LTO* for C-17 & C-141

		Emissions in lbs			
Aircraft	Operation	CO	NOX	HC	PM10

C-17	LTO	37.84	65.06	3.28	23.27
C-141	LTO	176.09	18.71	151.88	13.85
	Delta (lbs)	-138.25	46.35	-148.60	9.42

Note:
Assume: ATC Operations of 50,000/yr* which equates to 25,000 LTOs/yr
*An operation counted by the ATC tower consists of one landing or one take-off.
An LTO includes both a landing and a take-off.

NOX
C-17 NOX = (25,000x 65.06)/(2000 lbs/ton) = 813.25 tons/yr
C-141 NOX = (25,000x 18.71)/(2000 lbs/ton) = 233.875 tons/yr
Net Increase in NOX (C-17 replaces C-141) = 579.375 tons/yr

CO
C-17 CO = (25,000x 37.84)/(2000 lbs/ton) = 473 tons/yr
C-141 CO = (25,000x 176.09)/(2000 lbs/ton) = 2201.13 tons/yr
Net decrease in CO (C-17 replaces C-141) = 1728.13 tons/yr

HC
C-17 HC = (25,000x 3.28)/(2000 lbs/ton) = 41 tons/yr
C-141 HC = (25,000x 151.88)/(2000 lbs/ton) = 1898.5 tons/yr
Net decrease in HC (C-17 replaces C-141) = 1857.5 tons/yr

Emissions Comparison in Lbs/LTO for C-130J & C-130H

		Emissions in lbs			
Aircraft	Operation	CO	NOX	HC	PM10
C-130J	LTO	5.03	5.36	0.05	1.12
C-130H	LTO	8.84	19.87	3.46	3.37
	Delta (lbs)	-3.81	-14.51	-3.41	-2.25

Note:
Assume: ATC Operations of 50,000/yr* which equates to 25,000 LTOs/yr

*An operation counted by the ATC tower consists of one landing or one take-off. An LTO includes both a landing and a take-off.

CO
C-130J NOX = (25,000x 5.03)/(2000 lbs/ton) = 62.86 tons/yr
C-130H NOX = (25,000x 8.84)/(2000 lbs/ton) = 110.5 tons/yr
Net decrease in NOX (C-130J replaces C-130H) = 47.64 tons/yr

NOX
C-130J CO = (25,000x 5.36)/(2000 lbs/ton) = 67 tons/yr
C-130H CO = (25,000x 19.87)/(2000 lbs/ton) = 248.38 tons/yr
Net decrease in CO (C-130J replaces C-130H) = 181.38 tons/yr

HC
C-130J HC = (25,000x 0.05)/(2000 lbs/ton) = 0.63 tons/yr
C-130H HC = (25,000x 3.46)/(2000 lbs/ton) = 43.25 tons/yr
Net decrease in HC (C-130J replaces C-130H) = 42.62 tons/yr

PM10
C-130J HC = (25,000x 1.12)/(2000 lbs/ton)= 14 tons/yr
C-130H HC = (25,000x 3.37)/(2000 lbs/ton) = 42.13 tons/yr
Net decrease in HC (C-130J replaces C-130H) = 28.13 tons/yr

4. Senator ENSIGN. Mr. Cohen, if estimates are provided, what were the underlying assumptions?

Mr. COHEN. The assumptions to arrive at a comparative net emissions delta between a new weapons system and the system it will replace appear below the comparative emissions table in the previous answer. The LTO operational assumptions provide a generic glimpse of the potential emissions differential. Any actual emissions differential between a new weapons system and the system it will replace will be determined by various site-specific data, involving a calculation that is typically much more complex.

5. Senator ENSIGN. Mr. Cohen and Mr. Suarez, it is my understanding that the administration's proposal for management of munitions on operational ranges is consistent with the EPA's Military Munitions Rule. I believe this proposal also preserves the authority to address imminent and substantial endangerment on the range. Why is it necessary to codify existing regulatory policy?

Mr. COHEN. It has been the uniform policy of the States not to issue RCRA permits for test and training activities on operational ranges, reflecting widespread, longstanding consensus that test and training with munitions on operational ranges is not a waste management activity. This policy is reflected in the 1997 EPA Military Munitions Rule, which has been adopted by a majority of the States. However, litigants are now asserting that notwithstanding EPA's and the States' *regulatory* policy and practice, the more ambiguous *statutory* language allows them to claim that such test and training with munitions is in fact waste management. Our amendment would confirm existing State and Federal policy and conclusively close the door to such litigation.

Mr. SUAREZ. Your understanding is correct in both respects. The proposed legislation would largely codify and confirm EPA regulatory policy, including the Military Munitions Rule. Moreover, EPA would retain authority under CERCLA section 106 to address an imminent and substantial endangerment from munitions on an operational range. As DOD has testified, the purpose of codifying this policy is to protect against litigation the regulatory policy that the use of munitions for testing and training on an operational range is not a waste management activity, and that DOD must address the environmental consequences of such testing and training use involving the discharges of munitions when the range closes, when munitions or their constituents migrate or threaten to migrate off-range, or when munitions or their constituents may present an imminent and substantial endangerment to public health or the environment.

6. Senator ENSIGN. Mr. Cohen and Mr. Suarez, how might communities be assured that human health and the environment will be protected on operational ranges if the RCRA and CERCLA proposals were enacted?

Mr. COHEN. The RRPI initiative expressly preserves the authority of EPA under section 106 of CERCLA to "issu[e] such orders as may be necessary to protect public health and welfare and the environment" whenever it "determines that there may be an imminent and substantial endangerment to the public health, welfare, or the environment because of an actual or threatened release of a hazardous substance from a facility." Such orders are judicially enforceable. Because EPA's sweeping section 106 authority covers not only actual but "threatened release," our proposal would clearly enable EPA to address groundwater contamination before the contamination leaves DOD land—which is also the objective of DOD's existing management policies.

In addition, States and citizens exercising RCRA authority under our RRPI RCRA provision addressing off-range migration could potentially use that authority to enforce on-range measures necessary to redress the migration where appropriate.

Furthermore, the RRPI has no effect whatever on the authorities of EPA or the States to respond to threats under the Safe Drinking Water Act. EPA's continuing authority under the Safe Drinking Water Act to prevent likely contamination clearly empowers the Agency to act before contamination leaves DOD ranges.

Mr. SUAREZ. The bill specifically maintains the ability of States and citizens to take actions against the military in the event that munitions or their constituents migrate off-range and may pose an imminent and substantial endangerment to human health or the environment, if such materials are not addressed under CERCLA. States and citizens also have authority to take action under State law or bring citizen suits under RCRA if munitions pose a threat after a range is closed. They would no longer have imminent hazard authority under RCRA or State hazardous waste laws over environmental contamination caused by explosives, ordnance, munitions, or unexploded ordnance (UXO) on operational ranges used for their intended purpose and which remain on the range.

7. Senator ENSIGN. Mr. Cohen and Mr. Suarez, on January 10, 2003, the Secretary of Defense signed a DOD directive for Sustainment of Ranges and Operating Areas. The directive provides the military departments with policy guidance for test and training range sustainment planning, management, coordination, and outreach. How do such efforts contribute to environmental protection?

Mr. COHEN. The DOD directive, "Sustainment of Ranges and Operating Areas" was developed as part of our overall comprehensive range sustainment strategy. As I noted in my testimony, this directive provides capstone-level guidance to DOD and the Services on overall policy for test and training range sustainment planning, management, coordination, and outreach. As a capstone document, it is intended to serve as a guide in the development or revision of other directives with applicability to range sustainment. Subordinate directives and guidance documents will be developed to execute the policy contained in the DOD directive. Several of the key policies of the directive will contribute directly to environmental protection. First, the directive requires DOD components to identify environmental concerns that are implicated in range and operating area activities. Second, management programs must be developed using a functionally integrated decisionmaking process that includes all relevant staffs, including those specializing in environmental compliance, protection, and restoration. Finally, sustainment programs and management plans developed by the DOD components must provide for multi-tiered (national, regional, and local) coordination and outreach programs that ensure consideration of all stakeholder interests in DOD range-related decisions.

Mr. SUAREZ. I believe that the DOD is in a better position to address the impacts of this directive.

8. Senator ENSIGN. Mr. Cohen and Mr. Suarez, critics of the proposed legislative changes pertaining to management and cleanup of munitions on active ranges complain that such changes would allow the military to shirk responsibilities in cleanup and shift the burden to private industry. Others have stated that the proposals would exempt DOD open burning, open detonation pits, and other chemicals from environmental regulation. Do you agree with this characterization? If not, why?

Mr. COHEN. Both of these concerns do not reflect DOD's intention in this legislation. EPA and DOD have completely redrafted the RCRA and CERCLA proposals to make unambiguously clear that they apply only to munitions test and training on operational ranges, not to munitions waste management activities either on operational ranges or elsewhere, such as open burn/open detonation or landfilling of munitions.

Similarly, although our provision would confirm existing State and Federal policy that munitions test and training on operational ranges are not waste management requiring cleanup, they have no impact on our existing cleanup obligations on closed ranges, or for nonreadiness activities, or for our contractors' activities. Accordingly, it cannot result in shifting of burdens to the public or private industry.

Mr. SUAREZ. No. The proposed legislation, in our view, strikes an appropriate balance between ensuring military readiness and environmental protection. The legislation, if enacted, would preserve essential authorities for EPA to protect human health and the environment. The bill explicitly preserves EPA's Superfund authority under CERCLA § 106 to order an abatement of any imminent and substantial endangerment created by munitions used for their intended purpose on an operational range. For munitions that migrate off-range or munitions not used for their intended purpose—or, indeed, for releases of other hazardous substances, pollutants, and contaminants—EPA retains its full panoply of CERCLA response authorities. The same is true for munitions on closed ranges. Similarly, the bill provides a limited RCRA exemption only for military munitions used for their intended purpose on an operational range. Nevertheless, such munitions will be subject to the full panoply of RCRA authorities, if they are recovered, collected, and then disposed of by burial or landfilling or if they migrate off the operational range and are not addressed by a Superfund response action. The same is true for waste munitions on closed ranges. All other waste handling activities will be subject to the usual RCRA requirements.

9. Senator ENSIGN. Mr. Cohen and Ms. MacDonald, as a result of a recent ruling by the Federal District Court in Arizona, the Fish and Wildlife Service has asserted that the words "special management considerations or protection" should be removed from the administration's proposal under the Endangered Species Act. What is the administration's position?

Mr. COHEN. The Department of Defense and the Department of the Interior have been cooperatively working to develop revised language that will address the Interior Department's concern that retention of the phrase "special management considerations or protections" may generate litigation risks.

Ms. MACDONALD. The suggestion that the committee remove the words "special management considerations or protection" from the legislative proposal was included in my written statement presented to the subcommittee. The statement was cleared throughout the administration, and therefore represents the administration's position.

As noted in my statement, the recent U.S. District Court ruling in Arizona has called into question one of the methods the Fish and Wildlife Service utilizes to exclude military lands with an approved integrated natural resource management plan (INRMP) from a critical habitat designation. The method in question (based on section 3(5)(A) of the ESA) is the exclusion of military lands covered by an INRMP because those lands do not need "special management considerations or protection" due to the fact that this is provided in the INRMP. However, the District Court has ruled, in a case relating to Forest Service lands, that the Fish and Wildlife Service could not exclude lands from critical habitat if those lands needed "special management considerations or protection."

This court ruling could remove the option of excluding those lands under section 3(5)(A). Because the ruling was based on the "may need special management considerations or protection" provisions of the act, using that term in subsequent statutory language could well confuse the issue.

Therefore, removing the language referring to "special management considerations or protection" would avoid a possible adverse linkage between the administration's proposal and the court's ruling. This language is not needed to accomplish the objective of the proposal.

10. Senator ENSIGN. Mr. Cohen and Dr. Lent, Dr. Lent testified that some notice and comment language was inadvertently omitted from the administration's proposal on Marine Mammal Protection Act. What is the administration's position?

Mr. COHEN. It is correct that provisions requiring notice in the Federal Register and an opportunity for public comment were inadvertently left out of the RRPI provision dealing with the Marine Mammal Protection Act. The DOD supports such notice and comment opportunities for DOD incidental take requests.

Dr. LENT. The statement in question refers to the National Defense Authorization Act (NDAA) for Fiscal Year 2004, not the administration's Marine Mammal Protection Act (MMPA) reauthorization bill. The provisions that this question refers to are not in the administration's MMPA bill.

Proposed section 101(A)(b)(2) of the NDAA excluded a requirement, currently contained in the MMPA, for the Secretary of Commerce to provide public notice and opportunity for comment on requested incidental take authorizations by the DOD.

NOAA Fisheries believes in the importance of public review and participation. These amendments in the NDAA would require regulations to be promulgated for taking marine mammals incidental to certain activities and thus would follow the notice and comment procedures for rulemaking under the Administrative Procedure Act. Furthermore, these provisions would not prohibit NOAA Fisheries from announcing the proposed rule in media other than the Federal Register.

[Whereupon, at 12:27 p.m., the subcommittee adjourned.]

DEPARTMENT OF DEFENSE AUTHORIZATION FOR APPROPRIATIONS FOR FISCAL YEAR 2004

WEDNESDAY, APRIL 9, 2003

U.S. SENATE,
SUBCOMMITTEE ON READINESS
AND MANAGEMENT SUPPORT,
COMMITTEE ON ARMED SERVICES,
Washington, DC.

READINESS OF THE MILITARY SERVICES TO CONDUCT CURRENT OPERATIONS AND EXECUTE CONTINGENCY PLANS

The subcommittee met, pursuant to notice, at 2:33 p.m. in room SR–222, Russell Senate Office Building, Senator John Ensign (chairman of the subcommittee) presiding.

Committee members present: Senators Ensign and Akaka.

Majority staff members present: William C. Greenwalt, professional staff member; Gregory T. Kiley, professional staff member; and Joseph T. Sixeas, professional staff member.

Minority staff member present: Maren R. Leed, professional staff member.

Staff assistants present: Andrew W. Florell and Sara R. Mareno.

Committee members' assistants present: John A. Bonsell, assistant to Senator Inhofe; Arch Galloway II, assistant to Senator Sessions; D'Arcy Grisier, assistant to Senator Ensign; Clyde A. Taylor IV, assistant to Senator Chambliss; Davelyn Noelani Kalipi, assistant to Senator Akaka; William K. Sutey, assistant to Senator Bill Nelson; Andrew Shapiro, assistant to Senator Clinton; and Terri Glaze and Andy York, assistants to Senator Pryor.

OPENING STATEMENT OF SENATOR JOHN ENSIGN, CHAIRMAN

Senator ENSIGN. Good afternoon. I would like to welcome both of our panels today and our ranking member on the subcommittee, Senator Akaka. This is the fifth hearing that we have held in this subcommittee and it will be the last one before the markup. I think we have had a great set of hearings and been very productive. We have learned a lot and I am looking forward to today's testimony to learn a lot more for the markup.

We are in critical times right now and, instead of reading my opening statement, I am just going to summarize a few things and submit the rest of it for the record and, without objection, any

opening statements will be part of the record, as well as all of your full statements will be made part of the record.

I just want to share a few observations. First of all, I have not been able to tear myself away from the television today, even more than most days. The events that are unfolding before us are just absolutely spectacular. I think of the bravery and the celebrations that are going on today in celebration of that bravery that has brought freedom to the Iraqi people.

But I also harken back to the sacrifices by those who have either been injured or who have given the ultimate and paid the ultimate price for that freedom, and we certainly owe them a debt of gratitude as far as the Nation is concerned.

But I want to tell you members of the armed services and those who represent the armed services today how as a Nation, how proud we are of the job that you are doing. I think that you have shown the rest of the world what the United States is about, not only in the effectiveness of the way that you fought, but in the way that the military conducted itself in trying to minimize civilian casualties, in trying to do the targeting.

I think the one story that was unfolded on television, I cannot remember his rank, whether it was captain or colonel. We talked about this yesterday, General, about going up before that mosque. We had just had the suicide bomber the day before and that young soldier asked his people to take a knee in the face of what could have been a very dangerous situation, and yet he calmly handled it and backed down what could have blown up, would have looked very bad on international television.

It just could have really been a very negative point during the war and instead, because of the way that you put them through training, the kind of training that they had, I think ended up being a situation that we all looked in awe of, and I certainly did.

I also think back to the story that we heard with the marines who had the opportunity to talk on the telephone and each one of them was offered, and they turned down that opportunity so that the first phone call could go to the parents of the marine who was killed in action, just to see how they were doing. The journalist said, at the end of that, where do you find such people?

On Monday, I went down to Parris Island and had a great privilege there, as well as I know it would be the same at each one of our training bases, just to see some of the recruits. That is where we get those kind of people. It is amazing to see what you put them through, that they are voluntarily signing up to put themselves through that.

Then every time I have heard either a family member or an active duty, actually the person themselves in uniform, when they talk about it, they want to be there. They know what they are up against. They know the dangers, and yet they say they are doing what they love. Not that they love killing people, but they love the idea that we are liberating a country and protecting our own citizens at the same time.

So I just wanted to start with that opening. I am looking forward to your testimony. We have some serious business to conduct today, but in the light of the events that are unfolding before us, there

is a great deal of celebration ahead of us. I cannot wait to welcome a lot of those troops when they come home.

Senator Akaka.

[The prepared statement of Senator Ensign follows:]

PREPARED STATEMENT BY SENATOR JOHN ENSIGN

Good afternoon. The Subcommittee on Readiness and Management Support is meeting today to review several issues related to the current and future readiness of our Armed Forces. We have a lot of ground to cover this afternoon. I don't know that we'll be nearly as successful in covering our ground here as our young men and women in uniform have been in spearheading over Iraqi ground on the drive to Baghdad these last couple of weeks, but we will endeavor to do our best.

This is the fifth hearing that Senator Akaka and I will have conducted with the Readiness Subcommittee in review of the President's fiscal year 2004 budget request for the Department of Defense. Over the last 6 weeks, I think that he and I have developed a solid, well-documented record of the critical challenges facing the readiness of the military Services today. Senator Akaka and I, and the other members of this subcommittee, have enjoyed positive, thoughtful, candid discussions with our many witnesses to date. I am confident that our discussion with the witnesses today will further add to this important record.

I want to take a moment to thank Senator Akaka for his continuing commitment to the work of this subcommittee. In my opinion, Senator Akaka's insight and perspective have been instrumental, not only in helping shape these absolutely necessary hearings, but also in developing thought-provoking dialogue with our witnesses. My understanding of the many challenges facing the readiness of our Services today has certainly benefited from Senator Akaka's contributions. Again, thank you, Senator Akaka.

Let me first begin by welcoming our witnesses. Senator Akaka and I have asked you to meet with us today because each of you are focal points—in the Office of the Secretary of Defense (OSD), on the Joint Staff, and for your services—for military readiness. The civilian and military leadership in the Defense Department and, in fact, other federal departments and agencies look to you for your analysis of what operations and contingencies our soldiers, sailors, airmen, and marines are prepared to do—and how they will accomplish those tasks. Your understanding of the readiness of the Services must be second-to-none.

Having had the privilege of visiting with several of you earlier and also having read all of your prepared testimonies, I am convinced that this is the case. Without objection, your prepared statements will be made part of the record and we look forward to your personal presentations here today.

Before proceeding, I have to note that this hearing is being conducted at the unclassified level. I believe that it is important that the American public be fully aware of how well their military is prepared—prepared not only to conduct current military operations, but also for future challenges. There is much that can be discussed in an open setting and I believe that it is important that we do so. I do, however, appreciate the fact there are certain security sensitivities that we must recognize. I would ask each of you to discern whether an answer to a particular question might more appropriately be submitted for the record.

Like most Americans, I am fascinated—and inspired—by the success with which coalition forces swept across sea, air, and land to Baghdad. I read one column last week that paralleled Operation Iraqi Freedom with the Pacific island-hoping campaign devised by General MacArthur and Admiral Nimitz in World War II. There is no question in my mind that the brilliant strategy behind Operation Iraqi Freedom, like that of MacArthur and Nimitz, was well-thought, that our Armed Forces were ready for the mission, and that this operation is being conducted successfully. I know that challenges remain, but, as the commander in chief observed last week, "The vise is closing"—Hussein's regime of tyranny is coming to an end.

On Monday, I had the privilege of visiting one of the foundries for one component of the vise—the Marine Corps Recruit Depot at Parris Island. What a truly amazing place—and I have to believe that this is representative of the recruit training sites for each of the Services. Young men and women with purpose, with focus, with commitment—eager to commit themselves to something larger, to defend the Nation, the Constitution, and our American way-of-life. It is our duty to ensure that those recruits have the training, the equipment, and the leadership critical for their success in future operations. Readiness truly begins there.

What was also compelling for me at Parris Island was the sense of camaraderie that flourishes among the recruits. When I saw this, I couldn't help but recall an

account forwarded to me by email last week that described an experience of an embedded reporter with the First Battalion-First Marines during their drive up the Euphrates Valley. The reporter offered to allow a few of the marines with whom he had been traveling—none of whom had spoken to their loved ones for weeks—to use his video phone to call home. One by one, each of the marines offered 'a call' asked that 'their call' be made by someone else—by a fellow marine who's wife was pregnant, for example—or not to call their loved ones, but instead to call the family of a marine who would not be coming home, a marine who had made the ultimate sacrifice in defense of our Nation. The reporter, rightfully humbled by these generous offers, had to ask, "Where do they get young men like this?" I would suggest the reporter might want to file his next story from Parris Island, or Fort Jackson, or Great Lakes, or Lackland.

Our witnesses today will testify in two panels. Dr. Paul Mayberry, the Deputy Under Secretary of Defense for Readiness, and Lieutenant General Norton Schwartz, the Director of Operations on the Joint Staff, will comprise the first panel. On the second panel are the directors of operations for each of the service chiefs: Lieutenant General Richard Cody, United States Army; Vice Admiral Kevin Green, United States Navy; Lieutenant General Emil Bedard, United States Marine Corps; and Major General Randall Schmidt, United States Air Force.

Before we proceed with the testimonies of the witnesses on the first panel, the chair now welcomes any opening remarks from the ranking member.

STATEMENT OF SENATOR DANIEL K. AKAKA

Senator AKAKA. Thank you very much, Mr. Chairman.

Before I welcome our witnesses today, I just want to say, Mr. Chairman, thank you for arranging this hearing and I want to thank your staff as well as mine for the work that they have done.

I want to let all of you know how much we appreciate what you and the brave men and women who are putting their lives on the line for America are doing. You are all in our thoughts and in our prayers and you and your soldiers, sailors, airmen, and marines all have our sincere gratitude. We are truly proud of what men and women are doing for our country in the military.

I want to welcome back Dr. Mayberry and General Bedard in particular, who both testified on these same issues last March. Welcome also to our other witnesses as well. We hope that you will also be willing to come back in the future to share your thoughts and expertise with the Readiness Subcommittee.

While I expect that most of what we will be discussing this afternoon will address current operations and its effect on readiness, our first panel will also address other important key issues. While our forces are engaged all over the globe, DOD continues to move forward on improving both joint training and readiness assessment. I applaud these efforts, particularly in light of pressing distractions, and I am looking forward to hearing more about DOD's ongoing initiatives.

I also welcome the opportunity to get more deeply into specific readiness issues. During our hearing last year, our witnesses universally stated that, while our forces were ready for the demands of the global war on terrorism, they were strained, and if the pace of operations remained high, readiness problems could emerge. A little over a year later, our global war on terrorism (GWOT) demands have not diminished and the addition of a major conflict is absorbing a huge percentage of our military capability.

While I have every confidence in our U.S. Armed Forces and their ability to excel at whatever we might ask of them, I am worried about what comes next. It seems to me that as current demands on our forces rise, meeting them means we have to tap re-

sources we would otherwise use to sustain these forces and our need to reconstitute those forces also increases. General Hagee, the Commander of the Marine Corps, testified before another subcommittee last week that he was more concerned about reconstitution than he was about the current fight, which in my mind is a pretty significant statement.

At the same time that operational demands are higher than they have ever been, we are considering a budget request that seems disconnected in many senses from our current reality. Because DOD does not budget for contingencies and because of the long budgeting cycle, there is little or no reflection of the strains we can already anticipate in the fiscal year 2004 budget request.

As we consider that request, therefore, it seems to me that we should do our best to ensure that what moves forward out of this committee and for the rest of the authorization process is as strong as it can be in support of the readiness of our forces.

Hopefully, our discussions today will shed some light on how we can best accomplish this goal. Again, I want to say that we are proud of what you are doing, we are proud of our troops, and I thank God for the kind of support we are able to give our troops, to give all of you, and I look forward and welcome all of you to this hearing, Mr. Chairman.

Senator ENSIGN. Thank you, Senator.

Our witnesses today will testify in two panels. Dr. Paul Mayberry, the Deputy Under Secretary of Defense for Readiness; and Lieutenant General Norton Schwartz, the Director of Operations on the Joint Staff, will comprise the first panel. On the second panel are the Directors of Operations for each of the service chiefs: Lieutenant General Richard Cody, United States Army; Vice Admiral Kevin Green, United States Navy; Lieutenant General Buck Bedard, United States Marine Corps; and Major General Randall Schmidt, United States Air Force.

I call on Dr. Mayberry to start and I look forward to your testimony.

STATEMENT OF DR. PAUL W. MAYBERRY, DEPUTY UNDER SECRETARY OF DEFENSE FOR READINESS

Dr. MAYBERRY. Thank you very much, Mr. Chairman, Senator Akaka. It is a privilege to be here this afternoon to address you on the military readiness of the Department of Defense. With me this afternoon is the Director of Operations for the Joint Staff, Lieutenant General Norton Schwartz of the Air Force. It certainly is an honor to work with such a professional as he.

Today we are a Nation at war. As you said, sir, on an hourly basis we can observe and witness the results of your past support and investments in the people, in the equipment, and also in the realistic training of our Armed Forces. Our forces remain strong, agile, and ready to meet the threats facing this Nation, whether that is from the sands of Iraq or to the mountains of Afghanistan.

The uniformed men and women of this Nation, reinforced by our Department's civilian staff, stand ready for missions assigned to them by our Commander in Chief. We appreciate your commitment and your oversight of the resources entrusted to our Department.

I would like to address briefly three important readiness issues in my statement today before going forward to answer your questions: first, the readiness of our military forces to conduct current operations, as well as the contingency plans, and also the adequacy of our budget request to be able to continue that high state of readiness; second, to speak about the Department's effort to develop a joint national training capability; and finally, our plans for addressing shortfalls in current readiness reporting by developing a defense readiness reporting system.

I do not know a better measure, as both of you have spoken to, of our current force readiness than the performance that we see daily on the battlefield. What our forces have accomplished in Operation Iraqi Freedom truly is remarkable. Our air crews have flown thousands of sorties, striking leadership and Republican Guard targets both at day and certainly at night. Our ground forces have raced across more than 200 miles worth of Iraqi territory, through enemy fire and hostile terrain, to now occupy the capital city of Baghdad.

Working with our coalition forces, which are an extremely important part of this operation, we have established the foundation for considerable humanitarian aid and medical care that can be provided to the Iraqi people. We have accomplished all of these goals with minimal U.S. military and Iraqi civilian casualties.

Even as current operations are ongoing, our active Army divisions still maintain at high readiness levels and Air Force mission capable rates have improved over the last 7 months. Naval forces continue to meet readiness goals for both deployed and non-deployed segments of the force and the Marine Corps reports that they are ready to meet the demands of both current and potential operations.

You have asked about the adequacy of the fiscal year 2003 budget and the fiscal year 2004 budget request in keeping our forces ready. First I want to assure you that maintaining the readiness of our Armed Forces is the highest priority in the Department of Defense. Even as efforts continue in Iraq, we are working to ensure that our forces can be reconstituted and ready for other missions. Much of this work lies ahead of us, but the fiscal year 2003 supplemental budget request will provide the critical funding needed to start the reconstitution effort.

Although we do not know exactly when the war in Iraq will end, we have proposed a supplemental budget of $63 billion to cover the most critical needs of the Department. These supplemental funds will go towards reimbursing the Services and the defense agencies for the costs associated with preparation for the war as well as covering the costs attributed to the military operations in Iraq, as well as the global war on terrorism.

We have also worked very carefully to craft the President's 2004 budget. This proposal allows us to continue to wage an aggressive global campaign against terrorism while supporting transformation of our Nation's military capabilities. It provides for unparalleled training and equipment for our forces and troops and funds the intelligence programs that are really necessary to enhance both our country's and military intelligence needs.

The proposal also enhances the quality of life for our military personnel and their families. Finally, the budget proposal advances transformational efforts to ensure that our forces remain agile and effective.

Secretary Rumsfeld has noted that in the 21st century that we will fight wars jointly. Yet our forces are still too often trained and prepared for war as individual Services. That needs to change. We plan to make the Joint National Training Capability that instrument of change. We can no longer simply deconflict our unique service warfighting skills, but rather must integrate them into a single, focused joint capability.

I am pleased to report that the Department and its senior leadership, not just within the Office of the Secretary of Defense, but also with the leadership of the Services and Joint Forces Command, are committed to the concept of the Joint National Training Capability. Secretary Rumsfeld has stated that, "Among the more important transformational investments that we propose is our request for funds to establish a Joint National Training Capability." It is our plan to establish this initial capability by October of next year under the direction of Joint Forces Command.

The success of our training and readiness depends in no small part to our continued access to high quality and realistic training space. As I am sure you are aware, the Department is working hard on a number of fronts to counteract the effects of encroachment on readiness. In fact, you had a hearing on this just a week ago.

Several legislative initiatives, changes, and clarifications, part of our Readiness and Range Preservation Initiative, have been submitted for congressional consideration in this year's defense authorization bill. The sustainment of our ranges and operating areas for training and testing purposes is a critical issue, not only for near-term readiness but also for our transformed forces of the future.

Finally, let me discuss the status of our ongoing efforts to enhance the Department's readiness assessment and reporting system. I would like to highlight that one of the most essential elements of our reporting process is the active involvement of senior DOD leadership in resolving these readiness issues. The Department's Senior Readiness Oversight Council, which is chaired by the Deputy Secretary of Defense, meets routinely to review and discuss the most pressing readiness issues. Recently, the Council met to focus on issues related to chemical and biological defense preparedness of our Armed Forces.

We are also improving the tools and the systems that we use to report and assess readiness and are implementing a new capabilities-based approach. This system, called the Defense Readiness Reporting System, or DRRS, will provide timely and accurate information on the readiness of our forces as well as the supporting infrastructure for use in a deliberate planning process as well as responding to emerging crises.

The Defense Readiness Reporting System will transform our readiness assessment by focusing on unit current capabilities to execute mission-essential tasks in support of combatant commanders' war plans. These tools will provide visibility not only into the readiness of assigned and allocated forces, but also into the ability

of supporting commands, agencies, and other services to execute their respective war plan responsibilities.

The core element of this system will allow the Department to maintain almost a near-real-time visibility on all global status of resources and training system inputs, as well as to expand to include other critical information that is not presently captured in the system, such as ammunition, supplies, and infrastructure.

Given the uncertainties in the strategic environment that we currently face, we need this flexibility and adaptive readiness reporting system to reduce the likelihood that the Department may be surprised by unforeseen readiness challenges in the early stages of crisis planning. Our plan is to field an initial spiral of these readiness tools for use next year, with full operational capabilities 3 years after that.

In conclusion, I want to emphasize that our forces, our total force, our active and Reserve components, are ready to meet the challenges facing our Nation today. We continue to robustly fund the readiness of our forces as well as transform to meet future challenges. We are improving the ways that we measure our readiness and also transforming our training to meet new military strategy.

We appreciate this subcommittee's continued support of our Armed Forces and of the programs that ensure that they remain the best manned, the best equipped, and the best trained forces in the world. I thank you, each of you, for your continuing support of America's most precious treasure, that is our men and women in uniform. Sir, I appreciate your comments and the passion that you spoke with earlier.

I look forward to addressing your questions that you may have. Thank you very much.

[The prepared statement of Dr. Mayberry follows:]

PREPARED STATEMENT BY DR. PAUL W. MAYBERRY

Good afternoon Chairman Ensign, Senator Akaka, and distinguished members of this subcommittee. On behalf of the Under Secretary of Defense for Personnel and Readiness, Dr. David S. C. Chu, I am privileged to speak before this subcommittee on the state of military readiness in the Department of Defense. With me today is the Director of Operations for the Joint Staff, Lieutenant General Norton Schwartz of the United States Air Force.

Let me begin by saying that your Armed Forces remain strong, agile, and ready to meet any threat facing this Nation. With the most precise, most versatile, and best-led forces on earth, our Armed Forces are prepared to decisively win. From the sands of Iraq to the mountains of Afghanistan, the uniformed men and women of this Nation, reinforced by the Department's civilian staff, stand ready for the missions assigned to them by our commander in chief. This readiness would not be possible without the continued support of this committee for our critical defense needs.

For this testimony, you asked about the readiness of our military forces to conduct current operations and contingency plans. I do not know of a better measure of force readiness than performance on the battlefield. What our forces have accomplished in Operation Iraqi Freedom is quite remarkable: our aircrews have flown thousands of sorties, striking leadership and Republican Guard targets day and night; our ground forces have raced across more than 200 miles of Iraqi territory—through enemy fire and inhospitable terrain—to reach a point just south of Baghdad in less than a week; we and our coalition partners have secured Iraq's southern oil fields, preventing an environmental disaster; we have launched devastating attacks on terrorist targets and have prevented an Iraqi advance on the Kurds in the north; and we have greatly diminished Iraq's ability to threaten neighboring countries from the western region. We have established the foundation so that considerable humanitarian aid and medical care can be provided to the Iraqi people. Furthermore, we

have accomplished all this with minimal U.S. military and Iraqi civilian casualties. We have proven ourselves ready in this operation, and I can assure you we are ready if called to do much more.

Even with the current operations, our active Army divisions still maintain high readiness levels, and Air Force aircraft mission capable rates have improved over the past 7 months. Navy forces continue to meet readiness goals for both the deployed and non-deployed segments of the force, and the Marine Corps reports they are ready to meet the demands of current and potential operations.

Our strategic mobility triad of airlift, sealift, and pre-positioned materiel provides us the capability to swiftly move forces around the world. Such mobility maintains the U.S. as the only nation who can routinely move units and materiel globally with confidence and speed.

Our materiel readiness has improved substantially due to the tremendous support of Congress. One example is munitions, where past supplemental measures have allowed combatant commanders to increase stockpiles of key all-weather and advanced precision-guided munitions. In short, we are ready for both current and future contingency operations.

You have also asked about the adequacy of our fiscal year 2003 budget and fiscal year 2004 budget request in keeping our forces ready. First, I want to assure you that maintaining the readiness of our Armed Forces is the highest priority of the Department of Defense. We have the best-trained, best-equipped, and most effective military force in the world, and we intend to keep them that way.

Even as our mission in Iraq continues, we are working to ensure that our forces can be reconstituted and ready for other missions. Much of this work lies ahead of us, but the fiscal year 2003 supplemental budget request will provide critical funding to start the reconstitution effort. Although we do not know exactly when the war in Iraq will end and how much funding will be needed, we have proposed a supplemental budget of $63 billion to cover the most critical needs of the Department of Defense. These supplemental funds will go toward reimbursing the Services and Defense agencies for costs associated with preparing for war as well as covering the costs attributed to military operations in Iraq and the global war on terrorism.

The supplemental funding includes:

- At least $53.4 billion for military operations in Iraq. This amount would cover the costs associated with: the mobilization to Active Duty of Reserve and National Guard personnel to support military operations on a full-time basis, including pay, travel, per diem, and health care; personnel necessary to maintain critical manning at authorized levels and special pays, such as Imminent Danger Pay, Family Separation Allowance, and Foreign Duty Pay; support for active duty military personnel; and, operations, such as incremental flying hours, ship steaming days, ground operations, special airlift missions, increased associated ship and aircraft maintenance, associated logistics support, fuel purchases, base support, and reconstruction. These funds also will reimburse accounts used for projects completed or underway that were necessary to prepare for military action in Iraq.
- Up to $3.7 billion for munitions replenishment. These funds could be used to replace precision munitions, ammunition, and other conventional munitions, expended during military operations in Iraq and in the global war on terrorism, to pre-conflict levels.
- At least $1.7 billion for classified activities. These funds would cover the costs associated with classified activities undertaken in Iraq and in the global war on terrorism.
- Up to $1.1 billion for equipment procurement and research and development. These funds would be used to develop, procure, and upgrade systems necessary to prosecute the global war on terrorism, including operations in Iraq. These systems include command, control, communications, computer and intelligence equipment, chemical and biological detection and decontamination gear, targeting devices, and spare and repair parts.

We have also worked to carefully craft the President's fiscal year 2004 budget. This budget proposal allows us to continue to wage an aggressive and global war on terrorism while supporting transformation of our Nation's military capabilities. It provides for unparalleled training and equipment for the troops, and funds the intelligence programs necessary to protect the country and support military needs. The budget proposal enhances the quality of life for military personnel and their families, and incorporates innovative management practices that increase efficiency. Finally, the budget proposal advances our transformation efforts to ensure our forces remain agile and effective.

The President's fiscal year 2004 budget assures military readiness by increasing key defense programs, and increase in the defense top line of $15.3 billion over fiscal year 2003 levels. The budget requests over $98 billion for military personnel, including a range of pay increases from 2.0 to 6.3 percent, targeted by rank and years of service. It improves military housing and puts the Department on track to eliminate 163,000 inadequate housing units by 2007—years sooner than previously planned. The request also lowers the average out-of-pocket housing costs for those living off-base from over 7.5 percent to 3.5 percent in 2004—putting us on track to eliminate all out-of-pocket housing costs for the average person in uniform by 2005. The budget also includes nearly $27 billion to cover the most realistic cost estimates of military healthcare.

The fiscal year 2004 budget will improve the training of our forces, and requests $133 billion for the operations and maintenance accounts. This includes substantial funding for our unit training, equipment maintenance, and operations. The Department has also requested resources in the fiscal year 2004 budget to address other pressing readiness issues, such as our ability to protect our forces against chemical, biological, and missile attacks. Finally, the budget request will improve the maintenance and sustainment of equipment, facilities, and the availability of spare parts and engines.

You had also asked that I specifically address the Joint National Training Capability and the Defense Readiness Reporting System. Let me first start with the Joint National Training Capability, commonly referred to as the JNTC, and later discuss the Department's readiness reporting system.

JOINT TRAINING

In recent testimony to this Congress on the progress of the Department of Defense transformation efforts, Secretary Rumsfeld stated that "transforming is about more than developing new strategies and structures—it is about changing culture, about encouraging new ways of thinking so that we can develop new ways of fighting and provide our Armed Forces the tools they need to defend our way of life." The path to this cultural change will be through a transformation of DOD training that includes establishing a Joint National Training Capability.

Our ability to successfully defend our Nation's interests relies heavily upon a military capable of adapting to rapidly changing situations, ill-defined threats, and a growing need to operate across a broad mission spectrum. The military departments have garnered combat successes over the years by superbly preparing our soldiers, sailors, airmen, and marines, giving the United States a training superiority over potential adversaries. We intend to maintain that critical edge by continuing to move our training methods and capabilities beyond those of the Cold War. We will no longer simply deconflict or synchronize unique Service warfighting instruments, but rather integrate them into a single, fused joint capability. Each of our four Military Services has achieved an extraordinary integration of the various elements of their forces to create unprecedented combat power. Now, we need to go beyond and achieve this same integration of force elements across the Services to create a truly joint force—a force that is capable of dominant combat power whenever called upon. In addition, this joint capability will extend beyond today's meaning of "jointness", beyond the Services and into full integration of intergovernmental, interagency, and coalition elements to build a force that is ready and capable of winning any complex 21st century conflict. Secretary Rumsfeld has stated that, "in the 21st century, we will fight wars jointly. Yet our forces still too often train and prepare for war as individual Services. That needs to change." We plan to make the Joint National Training Capability, as part of the overall T2 initiative, that instrument of change.

Transformed training is a key enabler to transforming this fighting force. We are committed to meeting joint mission requirements of the combatant commanders across the joint strategic, operational, and tactical levels. As we have witnessed on the ground and in the skies over Afghanistan during Operation Enduring Freedom, it is not easy to plan complex combat operations or execute joint tactical tasks, such as joint close air support, when the Services have not had opportunities to train to accomplish joint tasks to a joint standard. We are finding that although the core functions of the Services are conducted superbly, there are weaknesses among the gaps and seams between the Services, the joint force command structure and the Service component elements in the theater. Today in Operation Iraqi Freedom our forces and headquarters are distributed throughout Southwest Asia, at many disparate locations, and operate over great distances. This coalition force is conducting unified action in a distributed manner yet their preparatory joint training was lacking what a Joint National Training Capability would provide. U.S. forces are operating under British Command for the first time since World War II. Our forces are

filling gaps in humanitarian aid missions. We should not encounter, learn, or practice a joint task nor conduct joint and combined operations for the first time in combat.

I am pleased to report that the Department and its senior leadership, not just within the Office of the Secretary of Defense but the leadership, military and civilian, of all the Services and the U.S. Joint Forces Command, are committed to transforming training in order to meet emerging 21st century needs. Secretary Rumsfeld has stated that, "among the more important transformational investments we propose is our request for funds to establish a new Joint National Training Capability." The Secretary's planning and programming guidance establishes training transformation as the highest priority, second only to fighting the global war on terrorism. Overarching guidance, direction, roles, responsibilities, and resources have been aligned within the Defense Planning Guidance, Unified Command Plan, the DOD Strategic Plan for Transforming Training, and a Training Transformation Implementation Plan now in development. A key readiness component that will carry our transformation efforts forward is the establishment of an initial Joint National Training Capability by October 2004 under the direction of U.S. Joint Forces Command.

Although JNTC will emphasize the use of simulations and stimulators, realistic, live training remains the key to transforming the way units operate. The success of our training readiness will also depend in no small part on continued access to high-quality, realistic training space. As I am sure you are aware, the Department is working hard on a number of fronts to counteract the effects of encroachment on readiness. Several legislative changes and clarifications, part of our Readiness and Ranges Preservation Initiative, have been submitted for congressional consideration in this year's proposed Defense Authorization bill. The sustainment of our ranges and operating areas for training purposes is a critical issue, not only for the individual Services as they prepare their forces for combat in the near term, but also for our transformed forces who will fight jointly on the battlefields of tomorrow.

The last training transformation occurred in the 1970s with the establishment of major Service training centers or range complexes. The Joint National Training Capability comprises the "second" transformation and will be the cornerstone for building on previous transformational pillars that made the major Service training centers and range complexes so successful. We will use realistic combat training according to joint doctrine, professional opposing forces, a means of determining ground truth, and a process for identifying, measuring, reporting jointness, and then correcting joint weaknesses and exporting joint lessons learned. The U.S. Joint Forces Command is working with the Military Services to achieve this realistic, network-centric, distributed global combat joint training and mission rehearsal capability that builds on and incorporates all of the major ranges and training centers of the Military Services. The Secretary has charged me to rapidly implement the JNTC. The Commander, U.S. Joint Forces Command, in accordance with Section 924 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003, is also preparing a report to the Secretary on the establishment of a "Joint National Training Complex and Joint Opposing Forces." The Secretary will forward the report to Congress with his and the Chairman of the Joint Chiefs of Staff's comments.

Although we are ready to lean forward in our efforts to make this capability a reality in the near term, our plans for JNTC events in May and June of this year have been impacted by current real world operations. However, we still plan to conduct simulated technology linking events throughout the summer and fall in order to better prepare and test stand up procedures and processes so that, when our deployed forces return to the training environment, we will have a joint training environment that they can successfully plug into quickly.

As Secretary Rumsfeld has said, "We are working hard to push joint operational concepts throughout the Department, so we train and prepare for war the way we will fight it—jointly. We are taking steps to better measure and track performance." We need and welcome your support and involvement in our continuing transformational efforts.

READINESS REPORTING

Let me now discuss the status of our ongoing efforts to enhance the Department's readiness assessment and reporting system. I would first like to highlight that one of the most essential elements of our readiness reporting system is the active involvement of the senior DOD leaders in resolving readiness issues. We have that involvement and commitment. The Department's Senior Readiness Oversight Council, which is chaired by the Deputy Secretary of Defense, meets routinely to review and discuss the most pressing readiness issues. Recently, the Council met to focus

on actions addressing preparedness issues related to chemical and biological defense capabilities of our Armed Forces for operations in Southwest Asia. The review highlighted several areas where chemical and biological defense capabilities could be enhanced. These areas include biological early warning and point detection; medical surveillance and protection; fixed site collective protection; and decontamination systems. As a result of the council's meeting, actions were taken to enhance the preparedness of our military for operations in Iraq.

We are also improving the tools and systems we use to report and assess readiness, and are implementing a new "capabilities-based" readiness reporting system. This system, called the Defense Readiness Reporting System (DRRS), will provide timely and accurate information on the readiness of our forces and supporting infrastructure for use in deliberate planning, responding to emerging crises, and decisionmaking during hostilities.

DRRS will transform our readiness assessment by focusing on a unit's current capability to execute mission essential tasks in support of the combatant commander's war plans. For the first time, the readiness reporting system will provide commanders—at all levels leading to the Secretary—specific information on the current readiness of units within the Department to meet mission essential tasks for the war plans. Not only will the combatant commanders be able to immediately assess the readiness of assigned and allocated forces, but they will also be able to assess the ability of the supporting commands, agencies, and the other Services in executing the war plan.

The core elements of the system will allow the Department to maintain almost near real time visibility on all current global status of resources and training system resource inputs and will be expanded to include additional critical information such as ammunition, supplies, and infrastructure. This expanded view of readiness will allow leadership to quickly answer the primary question, "ready for what?" Given the uncertainties in the strategic environment, we need this flexible and adaptive readiness reporting system to reduce the likelihood of the Department being surprised by unforeseen readiness challenges in the early stages of crisis planning.

We believe that this improved reporting and assessment can be achieved by using existing personnel, training, and logistics databases. By incorporating information from existing transactional databases, we can reduce or even eliminate workload and errors associated with manual, multiple inputs of data. This will further aid our goals of reducing the reporting burden and responding more quickly to requests for readiness information.

Our plan is to field the initial spiral of tools for use in fiscal year 2004, with the full operational capability achieved by fiscal year 2007.

In conclusion, I want to emphasize that our forces—our total forces—are ready to meet the challenges facing this Nation. We continue to robustly fund the readiness of forces and transform to meet future challenges. We are improving the ways we measure our readiness and transforming our training to meet the new strategy. We appreciate this committee's continued support of our Armed Forces, and of the programs that ensure they remain the best-manned, equipped, and trained forces in the world. I thank the honorable members for your continuing support of America's treasure—her men and women in uniform. This concludes my statement. I look forward to discussion and any questions you may have.

Senator ENSIGN. Thank you.

General Schwartz.

STATEMENT OF LT. GEN. NORTON A. SCHWARTZ, USAF, DIRECTOR FOR OPERATIONS, THE JOINT STAFF

General SCHWARTZ. Mr. Chairman, it is an honor to join Secretary Mayberry here before your subcommittee today. With your permission, I would like to make some brief remarks and then submit a more comprehensive statement for the record.

Mr. Chairman, Senator Akaka, it is a delight to provide comments on the readiness of the military Services to conduct current operations and execute contingency plans. I must first acknowledge and thank Congress for its sustained and very significant support to the men and women in our Armed Forces. Your efforts were critical to arresting and reversing the declining readiness trends that we experienced in the late 1990s. These improvements are mani-

festing themselves today in remarkable fashion, not only on the battlefield in Iraq, but also worldwide.

While we conduct decisive combat operations in Operation Iraqi Freedom, a significant portion of our forces remain deployed worldwide, serving our Nation's vital interests in numerous, differing roles. Our men and women of the Armed Forces continue to enhance homeland security, prosecute the global war on terrorism, keep the peace in the Balkans, deter adversaries on the Korean Peninsula, and conduct a host of other smaller-scale but nonetheless important operations.

In every instance, our forces have performed superbly, validating the capability, flexibility, and readiness of our force. Maintaining this level of effort obviously presents challenges. We face challenges in several areas, including the traditional issues voiced by our Services and those joint issues voiced by the combatant commanders.

While our ability to generate major forces such as divisions, air expeditionary wings, and carrier battle groups to support other combat operations is quite robust, force enablers, such as sea and air lift, intelligence, surveillance, and reconnaissance capability, battle management, and munitions, will continue to require close management and prioritization. As a result, we must clearly formulate and implement our strategic priorities and make informed, deliberate decisions regarding the future disposition of our force.

Prosecuting a major combat operation impacts the readiness of the overall force and a period of reconstitution following combat operations in Iraq will be necessary. The Joint Staff, in conjunction with the Services and the combatant commanders and the Office of the Secretary of Defense, have developed a framework for joint force reconstitution. However, until we have entered the post-conflict phase of operations in Iraq we will not be able to determine specific Service reconstitution time lines, combatant commander requirements for force availability, or the costs associated with reconstitution.

Regardless of the specifics of the joint force reconstitution plan, a key element and perhaps the key element will be the timely approval of supporting resources. The fiscal year 2003 budget and the fiscal year 2004 President's budget support our normal readiness requirements. It is clear that as we expend Service readiness executing Operation Iraqi Freedom and other global operations the fiscal year 2003 budget alone will not fully support all of our readiness requirements.

Our Services simply cannot absorb the cost of Operation Iraqi Freedom, the global war on terrorism, and other ongoing operations without a supplemental. Therefore, timely approval of supplemental funding is absolutely crucial to the continued preparedness of our joint force.

In closing, sir, I would like to emphasize that our previous wartime experiences have proven that readiness is a fragile commodity. When expended in combat operations, it is important to reestablish readiness levels or they can quickly erode further. Congress' support over the past year has made a dramatic and positive difference in the readiness of our joint force and our ability collectively to meet the call.

Post-Operation Iraqi Freedom readiness will require your continuing support so that we may rapidly reconstitute preparedness to meet the demands of the global war on terrorism and mitigate potential risk to the overall defense strategy.

Again, sir, I am grateful for having the opportunity to represent those wonderful soldiers, sailors, airmen, marines, and coastguardsmen you mentioned earlier, who truly represent the product of your work in Operation Iraqi Freedom and in the global war on terrorism, and I too look forward to your questions. Thank you.

[The prepared statement of General Schwartz follows:]

PREPARED STATEMENT BY LT. GEN. NORTON A. SCHWARTZ, USAF

Members of the Senate Armed Services Committee, Readiness and Management Support Subcommittee, I am pleased to provide this written statement on the readiness of the military Services to conduct current operations and execute contingency plans.

I must first acknowledge and thank Congress for its sustained and significant support to the men and women of our Armed Forces. Your efforts were critical to arresting and reversing the declining readiness trends we experienced in the late 1990s. Quality of life initiatives, housing improvements, and pay increases demonstrate your continued commitment to our dedicated soldiers, sailors, airmen, and marines. Our improved warfighting readiness is also reflected in good recruiting and retention rates, improved equipment mission capable rates, and enhancements across a wide range of warfighting capabilities including logistics, intelligence/surveillance/reconnaissance (ISR), munitions (particularly precision munitions), and command and control.

These improvements are manifesting themselves today in remarkable fashion on the battlefields of Iraq. While we conduct decisive combat operations in Operation Iraqi Freedom (OIF), our other forces remain deployed worldwide, serving our Nation's vital interests in numerous areas in many differing roles. For instance, our forces continue to enhance homeland security, prosecute the global war on terrorism (GWOT) to include highly effective and ongoing Enduring Freedom operations in Afghanistan, Horn of Africa, and the Philippines; keep the peace in the Balkans, deter adversaries on the Korean peninsula, and conduct a host of other smaller-scale but important endeavors. In every instance, our forces have performed well, validating the capability, flexibility, and readiness of our force.

Our readiness to prosecute a major combat operation is evident and demonstrated every day in Iraq. Our forces are highly trained, professional, motivated, and smart. Our equipment—ships, aircraft, ground forces, and command and control capabilities are ready and second to none. Our military leaders' ability to integrate and synchronize the effects of these capabilities to achieve our national objectives is well exercised. We stand prepared to meet the full demands of OIF and to continue to fulfill our global commitments in the war on terror.

Maintaining this level of effort obviously presents challenges. We face challenges in several areas, including traditional readiness issues voiced by the Services, and joint readiness issues voiced by the combatant commanders. While our ability to generate major forces such as divisions, air expeditionary wings, and carrier battle groups to support another combat operation is robust, force enablers such as air and sea lift, ISR, battle management, and munitions will require close management and prioritization. As a result, we must clearly formulate and implement our strategic priorities and make informed, deliberate decisions regarding the future disposition of our forces.

The nature of conflict precludes setting a precise date for cessation of OIF hostilities. However, it is certain that prosecuting a major combat operation impacts the readiness of the overall force, and a period of reconstitution following combat operations in Iraq will be necessary. For now, the breadth, depth, and duration of any reconstitution plan following OIF are not clear. The Joint Staff, in conjunction with the Services and combatant commanders, has developed a framework for Joint Force reconstitution that will provide a foundation for the accomplishment of Service and USSOCOM reconstitution goals. However, until we have entered the post-conflict phase of operations in Iraq, determining specific Service reconstitution timelines and combatant commander requirements for forces availability is informed speculation at best.

Additionally, to meet the demands of OIF, Reserve component forces have assumed, understandably, a significant role. To reconstitute the force while meeting

existing force presence requirements, a continued reliance on the Reserve component may be necessary for the foreseeable future. What is certain, though, is that we can't reconstitute the total joint force at the expense of not satisfying our global military demands. I assure you, we will determine the best way to accomplish this with the least risk to the execution of the overall defense strategy.

Regardless of the specifics of a joint force reconstitution plan, a key element . . . perhaps the key element . . . will be the timely approval of supporting resources. The fiscal year 2003 budget and fiscal year 2004 request support our readiness requirements and unquestionably enabled the impressive performance we've witnessed thus far. Over the last several years, operations and maintenance funding has been increased to curb declining readiness trends, and the fiscal year 2004 budget ensures our forward deployed and "first to fight" forces continue to be ready to conduct their combat missions. It is clear that as we expend Service readiness executing OIF and other global operations, the fiscal year 2003 budget alone will not fully support our readiness requirements. Our Services simply can't absorb the cost of OIF, the global war on terrorism, and other ongoing operations without a supplemental. The negative impact on force readiness, troop morale, and ongoing transformation efforts would be manifested across all Services. Therefore, timely approval of supplemental funding is absolutely crucial to the continued preparedness of the joint force.

Briefly, I'd like to provide you with my assessment of two readiness initiatives . . . the Joint National Training Capability (JNTC) program and the Defense Readiness Reporting System (DRRS). First—the JNTC program holds great promise as a means to create a true joint training venue. It will provide a much-needed construct to enhance and standardize joint training and exercise events across all Services and combatant commands. Ultimately, the JNTC program will enable us to better exercise and measure the performance of the joint force, and further enhance the joint readiness that is so evident in our forces deployed throughout the world.

Second—Secretary Mayberry and his team in the OSD/Personnel and Readiness office are leading the Defense Readiness Reporting System effort, with support from the Joint Staff. I have been briefed on several aspects of DRRS, and I think it has great potential. Elements of the DRRS concept call for streamlined readiness data input/gathering, rapid assessment of multiple scenarios, identification of noncommitted forces, and their readiness for conducting additional missions.

In closing, I would like to emphasize that our wartime experiences have proven that readiness is a fragile commodity. When expended in combat operations, it is important to re-establish readiness levels or they can quickly erode further. Congress' support over the past years has made a dramatic, positive impact on the readiness of the joint force, and our ability to 'meet the call'. Post-OIF readiness will require your continuing support so that we rapidly reconstitute preparedness to meet the demands of the global war on terrorism and mitigate potential risk to the overall defense strategy. Again, I am grateful for having the opportunity to testify today on behalf of the 270,000 soldiers, sailors, airmen, and marines who represent the product of your work in Operation Iraqi Freedom. I look forward to your questions.

Senator ENSIGN. We thank both of you.

I will start with Dr. Mayberry. The Department's timeline for implementation of the Joint National Training Capability was established before Operation Iraqi Freedom. We talked a little bit about this in my office yesterday, but for the record, what are the immediate and long-term implications for the Joint National Training Capability given the ongoing operations?

Dr. MAYBERRY. Certainly. The basic premise for the Joint National Training Capability is one that we fight as a joint team and therefore we must train within a joint context. Let there be no question, the Services are world-class trainers, but they tend to focus on their respective core competencies and therefore there are some gaps and seams between the Services, and this area of joint training between the gaps and seams at a tactical and an operational level is truly where the Joint National Training Capability is intended to go.

Under the leadership of Joint Forces Command and the involvement of the Services and OSD and the Joint Staff, the Joint Na-

tional Training Capability is truly a forcing function to correct this gaps and seams issue. The Department has really committed a tremendous amount of resources to the effort. It is a top priority. The amount—approximately $1.3 billion over the fiscal year 2003 to 2009 time period.

As you mentioned, as a result of current real world operations, we had had plans within the May time frame to bring together the western range complex that would be in conjunction with the National Training Center at Fort Irwin, Nellis Air Force Base, and the forces flying out of there, Twentynine Palms for the Marine Forces, and San Diego's naval and maritime components participating in a virtual sense. Those have since been pushed back.

We always knew in the developmental process here that 2003 was going to be a tough year because we are going to seek most of the funding for this in the omnibus reprogramming request. I do not know the timing for that omnibus request, but certainly would appreciate your support for this specific item of the Joint National Training Capability.

Senator ENSIGN. Okay, very good.

General Schwartz, the Joint Staff Mobility Requirements Study for Fiscal Year 2005 identified about a 20 percent shortfall in strategic airlift. This analysis, however, measured the planned airlift force structure in 2005 against the previous national military strategy, the two major theater war scenario.

With the new capabilities-based strategy and with the ongoing global war on terrorism and Operations Enduring Freedom and Iraqi Freedom, do you believe that the current procurement plans for airlift and their operational readiness rates are sufficient to address the requirements of military planners for airlift?

General SCHWARTZ. Sir, it seems to me there are a number of aspects to that question and it is not just the military capability to transport our forces. First of all, one of the strong suits of the American Armed Forces and this Nation is the ability to project forces. That is true both in the air and on the sea. We have both Government-owned and commercial capabilities in both areas that continue to need attention.

But in order to deliver the shooters to the fight in such a way, in a compelling way that gets them there with the right equipment at the right time to perform the missions that are required, requires the kind of lift which you have supported in recent years, both fast sealift, for example, mobility for the amphibious forces, and the airlift that is reflected in the C–17 program.

Our Service counterparts will be able to better address the specifics, but in general, sir, we are using that capability to its maximum extent as we speak, and the recommendations would be to continue the procurement of those assets to their objective states which the Services specify.

Senator ENSIGN. Dr. Mayberry, one of the concerns regarding the process the Department has undertaken to develop the Defense Readiness Reporting System is whether a plan exists to pull this concept together. Does the Department have a plan? How much funding has the Department obligated for fiscal year 2003 for the Defense Readiness Reporting System and how much is requested in the President's budget request for the system?

For the record, can you provide the status of the Readiness Reporting System's implementation and the summary of the implementation approach to the committee?

Dr. MAYBERRY. Certainly. Considerable improvements have been made to readiness reporting in the last few years, but we have a ways to go. The congressionally-mandated review that came out a year or so ago noted several specific deficiencies, and the most fundamental of this was really the transition to measure readiness against a new military strategy.

That most basic shift in the underlying principles against which we are to assess readiness is analogous to shifting from steam propulsion to nuclear power, and we have yet to fully harness the capabilities of the new concept. That is where we are at today.

The Defense Readiness Reporting System is going to be an ongoing iterative process, a spiral development process, using state-of-the-art technologies to developing a near real-time comprehensive system capable of rapid assessments against multiple scenarios. Each one of those particular components or functions of this new Defense Readiness Reporting System will take some time.

But our focus is on putting tools in the hands of the users as soon as possible. We really need to have the feedback, as opposed to trying to create the objective end state from the very beginning and succeed in failure. There is already a lot of efforts going on by each of the individual Services, and to capitalize on those efforts and to move this project forward.

You asked specifically about funding in the fiscal year 2003 time period. We are looking in the range of $8 million to $9 million for this current year, and as we go forward and build upon the spiral development process for the tools that will assist us, not only in readiness assessment, but near-term data collection and integration, the effort would increase to approximately $20 million on an annual basis after that.

I believe that the President's budget has about $90 million over the FYDP for this particular developmental effort.

I appreciate and the Department knows that there is a lot of work ahead, but I certainly am pleased with the efforts and the progress that we have made to date. We do have plans in place. I believe the GAO study said that there were not specific plans. That was correct at that particular point in time. We have put together milestones, objectives, this particular funding profile that I mentioned, as well as expectations and responsibilities.

This has all been encapsulated as well in the first ever published DOD directive on readiness. It really lays out the responsibilities between the Services, the Joint Staff, the combatant commanders, and OSD.

Senator ENSIGN. When you talk about the spiral development of this process, my concept of spiral development is within a certain timeframe you are trying to be about 80 percent perfected and then from there you make your other improvements as you deploy and test. What is the timeline to get to that 80 percent and then go from there?

Dr. MAYBERRY. Certainly. The initial effort here in the near term is to build upon what we already do well. That is, that we have over 10,000 units reporting in terms of readiness within the sys-

tem. The problem is we are missing some specific information. Joint organizations do not necessarily report. Many of the defense agencies have yet to participate.

So we have some low-hanging fruit that will get us along that path that we need to make. The Services have predictive readiness models that they are improving upon, strategic readiness systems that they are building. The issue is how do we bring common data. I think all of us need to get at the data issue. We lag in terms of much of the information there.

One of the essential components that is going to take some time within the Defense Readiness Reporting System is the notion of being able to report against mission-essential tasks. Previous readiness reports ratings have been against the two major theater wars. As we transition to the combatant commanders' mission-essential tasks, what is our ability to perform to standard in each of those tasks is going to be truly a fundamental shift here, and I suspect that that is going to be the long pole as we work to refine the conditions and standards to those mission-essential tasks and to measure, to assess readiness against those.

Senator ENSIGN. My time has expired. Just one quick comment before I turn it over to Senator Akaka. I would imagine that the current conflict and how it is being waged may give you a little bit of a model how to measure some things when you are going forward and give you a lot of ideas on what can be effective measures.

Senator Akaka.

Senator AKAKA. Thank you.

General Schwartz, can you please give a brief description of how the Joint Staff used readiness data in its decisionmaking process for planning and executing Operation Iraqi Freedom and what information from Global Status of Resources and Training System (GSORTS) was useful, and what readiness information would you have liked to have had, to have known, but did not?

General SCHWARTZ. Certainly, sir. The way the process worked is that General Franks requested forces to use in his war plan and that request for forces came to Washington, and we in the Pentagon with our Service counterparts then looked at the menu of potential units that could provide the capability that General Franks requested.

In that process, in addition to assessing whether this particular unit could accomplish the mission assigned, there was also an assessment of whether it was sufficiently ready to deploy to go forward into theater. That is where the readiness assessment mechanism played in that whole process of developing the force structure which is now operating in the battlefield in Iraq as we speak.

It is important to note that there are a couple aspects that were looked at. Certainly, overall training was assessed. The training metric, if you will, and likewise the equipment metric were very important in assessing whether the units were truly prepared to go to do the mission in support of General Franks in Operation Iraqi Freedom.

Now, in terms, sir, of the things that perhaps we did not have, we are very good at the moment at measuring things we understand. We can measure boxes on the shelf, we can measure how many personnel are trained to a certain level, and so on. The thing

that we are not so good at, as Dr. Mayberry referred to earlier, is this sense of really understanding what the capability of all of those individual metrics produce.

It is our hope that the new reporting system would enable the application of information technology, of modern information technology, to give us better insight into those kinds of capabilities.

Senator AKAKA. Thank you.

Dr. Mayberry, there has obviously been a lot of concern over the past few years about protecting DOD's training ranges and making sure that they remain viable into the future. Our subcommittee and other committees in the Senate have been looking hard at some of DOD's legislative proposals to help address this issue.

But I wanted to ask you about it from a slightly different perspective. As I understand it, DOD's testing ranges are operated largely independently of training ranges for some very legitimate reasons. Most of the testing ranges also operate on a revolving fund basis, which requires them to recover some, if not all, of their direct operating costs. On the other hand, training ranges are funded through direct appropriations by the Services, which will now be further enhanced with funds to build up their joint capabilities.

One of the implications of this arrangement is that test range managers, even if they have the space available, cannot afford to support very much training because they cannot earn enough money from training exercises. My question is, is DOD looking at a more comprehensive system of managing testing and training ranges together along with a funding structure that would optimize the use of scarce resources? If not, can you explain why a more coordinated approach is not a good idea?

Dr. MAYBERRY. Sir, you have hit on a very important issue, why are there barriers in the past? It comes down to the issue that you specifically mentioned, basically the funding requirements. The capabilities within many of our testing ranges are the exact types of capabilities that we need to bring to bear in terms of our Joint National Training Capability—threat emitters, instrumentation—maybe not necessarily to the level of detail or fidelity required within a testing scenario, but there are a tremendous amount of assets in the testing area that could be brought to bear in terms of the training areas.

Also, as we think about future transformed platforms and capabilities of each of the Services' weapons systems, many of those are going to expand beyond the limits, literally, the real estate, of what our current training ranges are. So we are going to have to specifically address the cross-functional use of training and testing at ranges in a more positive sense.

The Deputy Secretary created the Range Sustainment Group, of which I am one of the co-chairs—it also includes the Deputy Under Secretary of Defense for Installations and Environment, and it also includes the Director of Operational Test and Evaluation—to get at this exact issue of how can we make better cross-functional use of our capabilities.

One of the tough issues that we are going to have to face, and I will be candid, we do not have a strategy in place specifically at this time to address the funding structure piece of this. But within the context of our Joint National Training Capability, we are hope-

ful that we will have funding streams to be able to allow us to build upon what the Navy is doing now in terms of their training resource strategy in the use of Eglin Air Force Base, for example, for training purposes; and that the issue of who funds joint we will seek to, at least in the near term, try to address within the context of our Joint National Training Capability.

Senator AKAKA. Thank you.

My time has expired, Mr. Chairman.

Senator ENSIGN. General Schwartz, earlier this month, the Washington Post printed an article that highlighted the role of commercial contractors in support of current military operations. The article noted that a number of commercial firms have employees, in one case as many as a thousand, in Southwest Asia. General, in the context of the development of an operational plan such as for Operation Iraqi Freedom or for Operation Allied Force, how is the requirement for contract support, if any, identified and developed, and are the risks of relying on contractors captured in the operational planning process?

To what extent do military planners develop alternatives to the use of private contractors to mitigate any risks associated with relying solely on commercial firms?

General SCHWARTZ. Sir, one thing it is important to note, that the planning was sufficiently detailed to ensure that the commercial contractors were as well-equipped and in many cases inoculated for the conditions that they might experience in the theater of operations as were their uniformed counterparts.

So the truth of the matter is, sir, they are part of the team, and in many cases they are indispensable. They have skill sets and experience and so on that their uniformed counterparts do not share.

The short answer is that that is carefully considered. They are part of the warfighting team. In many cases, some of these individuals are former military members and they definitely are an asset and one that we should not diminish the importance of, one that truly contributes to the war fight in a very significant way.

Senator ENSIGN. Actually, this was just handed to me. An American pilot was killed today when his single-engine plane crashed while spraying drug crops in southern Colombia. The pilot was the fifth United States Government contractor killed in Colombia in 2 months.

What are the rules of engagement that apply to the use of the contractors? Are they combatants and can they become POWs?

General SCHWARTZ. Sir, in fact that happened a few days ago, and that was an aircraft in the southwest corner of Colombia near the Ecuadorean border. This particular individual was a Dyncorp Corporation contractor and he was on contract to the State Department, not to the Department of Defense.

So the question about whether these people are prisoners of war, in this particular instance, of course, the individual was killed in the crash. But they are certainly detainees and by direction we consider them in the same category as other detained Americans. That certainly is the case of the two folks that were taken by the Revolutionary Armed Forces of Colombia (FARC) some months ago.

Bottom line is that they are part of the family as contractors and we treat them as such.

Senator ENSIGN. Thank you.

Senator Akaka, do you have anything else?

Senator AKAKA. Dr. Mayberry, your prepared testimony stated that the fiscal year 2003 supplemental bill will—and I am quoting, "provide critical funding to start the reconstitution effort." Yet, as I understand it a very small portion of the supplemental request is dedicated to reconstituting the force, and I also understand that this is mostly for munitions.

What reconstitution activities are we referring to here and, given that there are no funds for reconstitution in the fiscal year 2004 budget request, will we need a fiscal year 2004 supplemental to help pay—how will we pay the additional bills in this area? Do you have even a ballpark estimate of how much it might require?

Dr. MAYBERRY. The issue of reconstitution is a very complex task and it requires that we really balance many factors. Presently there are many unknowns here, but I think that there are a variety of considerations that the Department is going to have to address in terms of the reconstitution issue, although these are guiding principles as opposed to specifics.

I think first and foremost we need to take care of our military service members, allowing them and their families time to decompress. This is true for not only the active component, but for the Reserve component as well.

I think that we need to return our training pipelines back to their normal production levels. That will not be an easy process as many of those instructors and equipments were part of the support for Operation Iraqi Freedom. That is the portion that I am getting at in terms of that statement within my written testimony, is that there are assets now, particularly in terms of the training pipelines, that have gone forward.

I think we are also going to have to regenerate our aging fleet that has had substantial program maintenance actions delayed. Finally, I think we are going to have to rebuild our logistics backbone, everything from the spare parts issues to precision guided munitions.

So this is going to be a very complex task, and at the same time the rest of the world goes on. So there are going to be post-war operations in Iraq in terms of reconstruction. There are also going to be the continuing global war on terror. We are going to have to be attentive to issues on the Korean Peninsula, and we also have to continue our operations in other theaters.

So although there are a lot of uncertainties here, I believe that we are beginning a process, the Services, the Joint Staff, and OSD, of thinking through what those reconstitution requirements are going to be, and I would say that these four principles are the guiding guidelines as to how those analyses will go forward, but there are still quite a few unknowns.

Senator AKAKA. Dr. Mayberry, in your written testimony you stated that there are weaknesses among the gaps and seams between the Services, the joint force command structure, and the service component elements in the theater. Can you give us some specific examples of those weaknesses and how they have made themselves manifest in current operations?

Dr. MAYBERRY. Certainly. Let me just, before I get into that, reiterate that the Services are true world-class trainers, as illustrated in terms of their performance levels on a daily basis now in Iraq, in Afghanistan, and in many of the forward-deployed operations that are ongoing.

But there are specific joint issues that the Joint National Training Capability must address. Joint close air support, for example; this is a joint tactical task that is trained at the National Training Center and Nellis in the context of air warrior exercises. But the issue here is bringing together, making sure that the appropriate joint context and the planning that goes into the conduct of that tremendously complex task is fully brought to bear.

We have a combined arms operations center at Nellis. How does that participate? How do we train those staffs within the context of these complementary exercises? How do we get at instrumentation on the ground against which air forces would fly against? How do we solve very complex problems of close air support impacting the ground battle, yet still being able to maintain the training objectives for both the air and ground forces, yet being able to coordinate the joint component of this?

These are all very complex issues that we seek to bring together and to use the Joint National Training Capability also as a vehicle for transformation, because there are many areas that we do not have standing joint doctrine or techniques, tactics, and procedures developed in. Joint urban operations is a good example there. How are we going to address the complexities of time-sensitive targeting, the interfacing of maneuver units, of bringing together combined arms in a very close urban situation while trying to limit collateral damage?

It is these types of gaps and seams issues, as well as evolving joint capabilities, that I think will need to be addressed by such a concept as the Joint National Training Capability.

Senator AKAKA. Mr. Chairman, I want to thank Dr. Mayberry and General Schwartz for their responses. Thank you very much.

Senator ENSIGN. I also want to thank you and I know you all have a lot to be doing these days. We also want to try to get the Deputy Chiefs up here and the Deputy Commandant and get their testimony and get them on their way as well. So thank you both very much. I would call the next panel to the table.

General SCHWARTZ. Thank you, Mr. Chairman.

Dr. MAYBERRY. Thank you, Mr. Chairman, Senator Akaka. I appreciate it. [Pause.]

Senator ENSIGN. Just while they are getting all situated, I know you probably cannot sit down without name tags in front of you, so just to tell you which order we will go in, Lieutenant General Cody, you will start off, followed by Vice Admiral Green, Lieutenant General Bedard, and Major General Schmidt, in that order. General Cody.

STATEMENT OF LT. GEN. RICHARD A. CODY, USA, DEPUTY CHIEF OF STAFF, G–3, DEPARTMENT OF THE ARMY

General CODY. Thank you, Mr. Chairman. I would ask that my formal statement be entered into the record and I just have a few opening comments I would like to make, with your permission.

Senator ENSIGN. Just as a reminder, if you want to summarize, your entire statements will be entered and made part of the record.

General CODY. Thank you. Mr. Chairman, Senator Akaka, good afternoon. Thanks for the opportunity to address your questions relating to the readiness of our United States Army. I am pleased to be here with my counterparts from the Navy, Air Force, and Marines. Just as we sit before you here today as a joint team, our soldiers, sailors, airmen, and marines are serving side by side around the world in defense of freedom and our way of life.

The ongoing efforts in Operation Iraqi Freedom are an excellent example of the jointness that the founders of the Goldwater-Nichols Act had envisioned. The Army, Navy, Air Force, and Marines, along with our coalition partners, are fighting in a seamless effort to bring the brutal Iraqi regime to a close.

Twelve years ago when I was an Apache battalion commander during Operation Desert Storm, our joint team fought in a battle space deconflicted by time, space, and distance. Today we are truly joint. The superb rescue last week of Private First Class Jessica Lynch reflects the gains that we have made in joint interoperability as Army, Navy, Special Operations Forces, Rangers, and Marines all brought that young lady home to safety.

Our Army is strong, it is trained, and it is ready. We have a nonnegotiable contract with the American people to fight and win our Nation's wars. As of today, we have over 284,000 soldiers, including 148,000 soldiers from the Reserve components, deployed across the homeland and in 120 different countries around the world. Our soldiers are serving proudly and are executing their assigned tasks with the vigor and enthusiasm we have come to expect from these great young Americans.

As some of you know, I have two sons on active duty in the Army as pilots. My son Clint is today flying Apaches with the 101st Airborne Division inside Iraq. I am proud of him and what he is doing. But I am also proud of his great leaders and the superb young troops he is serving with, who enlisted to serve their Nation in our global war on terrorism.

We are a Nation at war, we are an Army at war, and, although these are difficult times, let there be no doubt that our Armed Forces are trained and ready and they will prevail.

I look forward to the session and answering whatever questions you may have.

[The prepared statement of General Cody follows:]

PREPARED STATEMENT BY LT. GEN. RICHARD A. CODY, USA

Mr. Chairman, and distinguished members of the subcommittee, I thank you for this opportunity to report on the readiness of the United States Army and our ability to provide for our Nation's security today, and in the future.

I would like to begin by thanking this subcommittee, and Congress as a whole, for your tremendous support of Defense issues in the fiscal year 2003 budget. At the time of its submission, this budget sent a strong signal to the men and women serving around the world in our Armed Forces, and provided the resources to sustain Army readiness under ordinary circumstances. We are living in extraordinary times. The war in Iraq and the ongoing global war on terrorism create additional requirements. To pay these bills we have had to spend money initially intended for the third and fourth quarters. Therefore, rapid passage of the 2003 supplemental currently under review is critical to the continued readiness of our forces.

The fiscal year 2004 budget reinforces the positive message of support to our soldiers and provides adequate funding for Army readiness in a peacetime environ-

ment. The Army chose to manage risk in the modernization of its Legacy Force and the associated mid-term warfighting readiness. This risk takes the form of more selective modernization and recapitalization efforts for the Legacy Force, while still retaining sufficient efforts to ensure essential readiness requirements. The immediate readiness impacts of this strategy are minimal. The Army's primary metric for resourcing future years' readiness is ground and air operating tempo (OPTEMPO). For fiscal year 2004, ground and air OPTEMPO accounts are funded to sustain Army readiness. I greatly appreciate your support of our critical Defense needs at a time when our Nation is facing so many challenges. Your leadership does not go unnoticed and is deeply appreciated by our soldiers and their families.

We have the most powerful Army in the world . . . resourced with outstanding equipment and enhanced with cutting edge technologies. But equipment, organizations, and precision-guided munitions don't fight and win wars . . . our people do. Our most valuable resource—the single thing that makes our Army the best in the world—is the men and women who serve in our ranks. The greatest moments in the Army's history have always revolved around our people—and it will remain that way in the future. Soldiers are the centerpiece of our formations and the engine behind our numerous accomplishments. Our soldiers are professionals in every respect of the word . . . intelligent, disciplined, highly trained, and extremely motivated. By far, this is the best Army I've seen in my 31 years of service.

Let me put into perspective what this Army is doing in comparison to the Army I joined in 1972. In the 40 years preceding the end of the Cold War, the Army was involved in 10 significant deployments on the spectrum of conflict. During this same period, the Army went from 64 Active and Reserve divisions in 1950, to 40 divisions in 1968, and to 28 divisions by 1989. Over the past 14 years—from 1989 to present—our Army has been deployed 56 times while simultaneously reducing force structure from 28 Active and Reserve divisions to our current strength of 18 divisions.

As of today, we have 270,650 soldiers deployed in 120 different countries—either forward stationed, forward deployed, or defending the homeland here in the United States. The Army, which consists of Active and Reserve component soldiers, and Department of the Army civilians, is involved in a wide variety of tasks at home and abroad covering nearly the entire spectrum of conflict in support of our National Security and Defense Strategies. We are decisively engaged with our joint and coalition partners in removing a brutal regime in Iraq; fighting the war on terrorism in Afghanistan, Yemen, Djibouti and the Philippines; deterring aggression in Korea; guarding detainees at Guantanamo Bay; engaged across Europe; keeping the peace in the Sinai, Bosnia, and Kosovo; helping to secure the homeland and bases overseas; and training our friends and allies around the world in places like Colombia, Honduras, and the Republic of Georgia. In the homeland, we are engaged in missions in every State across the Nation, from providing air defense for the National Capital Region to assisting in the Columbia recovery mission.

None of this would be possible without the outstanding performance of our Reserve component soldiers. We currently have Reserve and National Guard soldiers mobilized in support of every mission that our Army is conducting. From the sands of Iraq, to here in the homeland, our Reserve component soldiers are absolutely indispensable to the execution of our assigned missions. Immediately following the attacks of September 11, our National Guard soldiers joined first responders across the Nation to provide critically needed support. In the days and months following the attacks they filled the vast majority of airport and sensitive site security, as well as the security requirements at the Olympics in Salt Lake City. In 2000 they responded when our Nation called during one of the worst wild fire seasons on record. Today, they are conducting the multinational force and observers (MFO) mission in the Sinai, the SFOR mission in Bosnia, and will soon be taking over the KFOR mission in Kosovo. Our Reserve components are carrying the flag in Iraq, Afghanistan, Guantanamo Bay, and indeed, in every location you find an Army presence. But, as well as our Reserve components have performed, their service comes with a significant cost. Some of our National Guard soldiers are on their second deployment since September 11. Our steady-state mobilization, from September 11 until the recent build-up for Iraq, was nearly 41,000 soldiers. As of today, we have 150,071 Reserve component soldiers mobilized in support of ongoing operations.

We are thankful for the support Congress has provided to build the readiness of the Army. In every case, our soldiers have performed magnificently and their equipment, in many cases, exceeded our expectations. During Operation Anaconda in Afghanistan, our helicopters operated at altitudes and with weights we previously didn't think were possible. In Iraq, our tanks, infantry fighting vehicles, and aircraft are living up to their reputations as being the best in the world. But the extreme conditions and continued use will require us to undertake a significant effort to re-

constitute our formations. We will be repairing our damaged and broken equipment, replacing material that has been destroyed, replenishing our stores of ammunition and spare parts, and refurbishing our pre-positioned stocks. This will be a costly and time-consuming process, and we are hard at work assessing our current and future requirements. With your support, we will get our force back to pre-war condition as rapidly as possible and prepare for the next fight, whenever and wherever it may occur.

The Army must train the way it intends to fight, because our soldiers will certainly fight the way that they have trained. This is why the subject of encroachment is so important to the Army. The Army has endeavored to take care of the 16.5 million acres America has entrusted to us. But America also entrusts us with an even more precious resource—her sons and daughters. We are committed to providing our soldiers with the most realistic training possible. Recent trends limiting our access to quality training conditions give us cause for great concern. As the Army continues to improve our weapons systems and transforms our organizations, the combat training footprint will be greater than that currently required to train existing units. We appreciate the legislation Congress has already passed in this area, particularly in the National Defense Authorization Act for Fiscal Year 2003, but there is still more work to be done. The legislative proposals within the Defense Department's Fiscal Year 2004 Readiness and Range Preservation Initiative will be a major step toward establishing the legislative clarification we require to conduct flexible, realistic training, while simultaneously protecting the environment.

While executing these numerous missions and planning for future contingencies, the Army is also simultaneously transforming itself to meet future challenges. There will not be an operational pause that allows us to transform while out of contact, and we cannot afford to wait. These demanding commitments mean we must nurture a balance between current and near-term readiness and our transformation objectives. The Army has accepted reasonable operational risk in the mid-term in order to fund our transformation to the Objective Force. To mitigate risk we structured transformation to occur along three mutually supporting axes for change. On the first axis, we preserved the readiness of our Legacy Force—the force that's fighting our battles around the world today. Over the past year we have significantly increased our investment in Army Special Operations Forces (SOF) including the accelerated fielding of several key pieces of communications, mobility and intelligence support equipment. The Army has also resourced significant increases in SOF manpower and we are aggressively working to expand our Special Operations Aviation capability. To avoid unacceptable risk, we are closely monitoring the current operational situation as we support the combatant commanders in the global war against terrorism, conduct homeland defense, and prosecute the long-term effort to defeat transnational threats. We developed and implemented the Strategic Readiness System (SRS) as a comprehensive strategic management and readiness system. SRS also provides a predictive tool with which to monitor the Army and to provided senior leadership a decisionmaking tool to make appropriate adjustments to preserve current readiness. On the second axis, we are bridging the operational gap we discovered about 10 years ago—the gap between our heavy and light forces—with Stryker Brigade Combat Teams. We fully expect our first Stryker Brigade to be certified and part of the operational force by the 4th quarter of this year. On the third axis, we are developing a capabilities-based and strategically responsive Objective Force optimized for the emerging and future strategic environment. The Objective Force will consist of modular, scalable, and flexible organizations that will be more lethal, more agile, and more rapidly deployable than our current formations. We are committed in the transformation effort to become a more joint, strategically responsive, and full-spectrum dominant force to support the combatant commanders' warfighting needs.

As we transform we are also in the process of reviewing our Reserve component force structure in the form of the Army Guard Restructuring Initiative. This concept restructures the Army Guard to meet emerging requirements in line with the "1–4–2–1" Defense Strategy's force-sizing construct. It will convert existing combat structure to new designs that better support combatant commanders, including Northern Command. Conversion to these new organizations, combined with efforts already under way as part of the Army National Guard Division Redesign Study, will result in a decrease in the current number of tracked vehicles in Army Guard combat divisions and brigades. The end-state will be organizations enhanced with systems that provide commanders with more versatile capabilities over current divisional brigades to meet the Nation's requirements.

With the soldier as our centerpiece, we are well aware that our leaders must be grown from the ground up. The second lieutenants entering active duty this year will be our colonels commanding Objective Force units of action in 2025. Given to-

day's complex operational environment, and the infusion of new technologies at increasingly lower levels of command, our leader development process has never been more important. Over the past 2 years, we have undergone a series of reviews, beginning in June 2000, with the Army Training and Leader Development Panel. The purpose of this panel was to review, assess, and provide recommendations for the development of 21st century leaders for a transforming Army. We followed this initial panel, which focused on the officer corps, with a series of studies to look at our warrant officers, noncommissioned officers, and our civilian workforce. We then developed implementation plans to address the panel's recommendations. We are in various stages of refinement in each of these categories, but I am confident that the end-state will ensure our Army continues to be the best-trained and best-led military force in the world.

Another initiative to ensure the future success of our men and women serving in uniform is the Joint National Training Capability. Although we've successfully integrated our sister Services at the Army's existing combat training centers, the Joint National Training Capability will take this concept to new heights. This new capability builds on the Army (and other Services') training successes and adds a coherent joint focus for the way ahead on joint and Service-interoperability training. It is focused on four pillars: realistic combat training, an adaptive and credible opposing force, common ground truth, and high quality feedback. Our Army Title 10 training remains a vital prerequisite to the important joint and Service-interoperability training issues that this capability will address. The Office of the Secretary of Defense has programmed approximately $1.34 billion over the fiscal years 2003–2009 for the development of the Joint National Training Center Capability.

For 227 years our Army has stood in defense of freedom and our way of life. We have a non-negotiable contract with the people of the United States to fight and win our Nation's wars. Whatever the mission—whether defending the homeland, prosecuting the global war on terrorism, or fighting a conventional war to destroy weapons of mass destruction—your Army is ready. In peace and in war, the soldiers of the United States Army will continue to serve our Nation with the professionalism, tremendous courage, and indomitable spirit that we have all come to expect. I am blessed to be an American, I am proud to be the father of two soldiers serving on active duty today, and I'm honored to have the opportunity to work together with the men and women in our United States Army.

Senator ENSIGN. Thank you.

Admiral Green.

STATEMENT OF VICE ADM. KEVIN P. GREEN, USN, DEPUTY CHIEF OF NAVAL OPERATIONS FOR PLANS, POLICY, AND OPERATIONS

Admiral GREEN. Good afternoon and thank you, Mr. Chairman, Senator Akaka. It is truly an honor and a pleasure for me to be here with you this afternoon. I am pleased to report that our Navy is performing superbly in Operation Iraqi Freedom and in our other commitments and operations around the world.

As we meet here this afternoon, 64 percent of our 302 ships are under way. The majority of them are forward deployed. Seven aircraft carrier battle groups and 9 of our 12 amphibious ready groups are forward deployed to such areas as the Mediterranean, the Arabian Gulf, and the western Pacific. This level of effort is a remarkable testament to the superb amount of work and leadership and wise counsel that has been done, particularly by this committee.

Your steadfast support of the $6 billion readiness improvement over the past 2 years made the Chief of Naval Operations' culture of readiness vision a reality and has produced the most ready naval force in our history. These investments were vital to sustaining the war on terrorism, assuring friends and allies, and leading the Nation's global response to crisis.

Today one of the biggest challenges in sustaining this level of readiness following the completion of our current mission in Iraq

will be facing the readiness that we are required to sustain in the future. We look forward to working with you to meet this challenge.

Mr. Chairman, I have provided my written statement which I would like to have entered in the record and I stand ready and pleased to answer your questions. Again, thank you very much.

[The prepared statement of Admiral Green follows:]

PREPARED STATEMENT BY VICE ADM. KEVIN P. GREEN, USN

INTRODUCTION

Chairman Ensign, Senator Akaka, and distinguished members of this subcommittee, I appreciate the opportunity to be with you today. It is an honor to report to you on the operational status and readiness of this great Navy during these exceedingly challenging times, as we are engaged in OIF, while continuing to prosecute the global war on terrorism (GWOT). Your generous support has been instrumental in our efforts to improve the combat readiness of our Navy. The results are evident in the strong forward deployed posture and readiness for combat of our people and units.

I'll begin my statement today by briefly reviewing the past year, including our support of Operation Enduring Freedom and homeland defense. Next, I'll address our operations today and how we got here, focusing on the sailors, training, maintenance, platforms, and munitions which are the key enablers of our current high forward deployed state of readiness. I will then discuss the challenges we face in maintaining this readiness level and in reconstituting the fleet once the war in Iraq comes to a close. Finally, I will outline how we will leverage technology and business practices within the Chief of Naval Operations' Sea Power 21 vision to position the Navy for future readiness.

THIS TIME LAST YEAR . . .

At this time last year, 103 Navy ships and 48,000 sailors were deployed around the world supporting the global war on terrorism and other operational commitments. We were in the process of scaling back the Navy's participation as a joint and coalition partner in the campaign in Afghanistan. The Navy had surged to support the overall military effort, and the persistence, precision, and operational flexibility of our naval forces provided major contributions to the campaign. Three carrier battle groups, supported by Air Force tanker crews, provided continuous 24-hour tactical aircraft presence over 700 miles inland. Two amphibious ready groups fully supported marines deployed deep into Afghanistan and Pakistan. Navy Special Forces (SEALs) provided key elements of the special operations effort on the ground while an aircraft carrier employed on short notice as an innovative afloat forward staging base (AFSB) hosted Army Special Forces units. Specially configured P–3 aircraft flew extensive missions overland providing direct reconnaissance support for forces on the ground. The Navy also participated in a host of operations intended to interdict terrorists and contraband material moving over the oceans. Meanwhile, our naval coastal patrol craft teamed with the Coast Guard for port security in support of homeland defense.

Nearly every ship in the Navy has deployed over the past year in support of combat operations, some twice. U.S.S. *Carl Vinson,* which was on station for the opening salvos in Afghanistan, deployed again last month. Nine of 12 Navy aircraft carriers deployed at some point in the past year, and all but one has participated in forward deployed operations since 11 September 2001.

WHERE WE ARE TODAY . . .

The Navy is underway on an even larger scale today, supporting Operation Iraqi Freedom, executing other missions in the global war on terrorism, and maintaining our Nation's commitments to our allies. One year ago, in support of Operation Enduring Freedom, the Navy was called upon to provide a moderate surge force; today we are surging near maximum capacity. Indeed, 210 of our 305 ships—representing 69 percent of our force—are underway, including 7 of 12 carrier battle groups, 9 of 12 amphibious ready groups, and 25 of 54 attack submarines. The Navy and Marine Corps alone have nearly 600 aircraft forward deployed in support of operations against Iraq and other potential contingencies. SEALs, construction battalions, explosive ordnance disposal teams, port operations support units, maritime patrol squadrons, medical teams, and naval coastal warfare units also are overseas—all

are performing magnificently in combat or in support of other theaters of operation. Maritime prepositioning ships and ships of an amphibious task force offloaded equipment in support of marines in Kuwait, and 135 ships under the control of the Military Sealift Command are transporting forces to the theater. We have deployed U.S.N.S. *Comfort,* a hospital ship with a 1,000 bed capacity, and three field hospitals as well as our High Speed Vessel (HSV), which serves as a test bed for the Littoral Combat Ship. One of our command ships, U.S.S. *Mount Whitney,* is deployed as the flagship for Commander, Joint Task Force Horn of Africa. In all, nearly 77,000 Navy men and women are deployed today worldwide, 50,000 of whom are devoted to Operation Iraqi Freedom.

Over the past weeks, our sailors have performed superbly in Operation Iraqi Freedom. By any measure, today's Navy is the most capable force we have ever put to sea, maintaining a persistent and capable forward presence, and we've demonstrated our ability to surge significant combat power quickly, wherever required, using the largest maneuver space on the planet. Moreover, in an era of growing anti-access threats—whether political or threat-based—the inherent ability of naval forces to project offensive and defensive power in an unconstrained manner from the sovereign sea base is growing in importance. As we confront and defeat the threat posed by the current Iraqi regime and continue the worldwide fight against terrorist organizations, we do not neglect our other global responsibilities. In the western pacific, the U.S.S. *Carl Vinson* Battle Group is deployed in support of the Pacific theater commander, and the ESSEX Amphibious Ready Group, permanently forward based in Japan, is conducting routine operations and exercises in this important area of the world.

We are trained and ready on arrival, able to climb into the ring with the enemy and project power in ways we could only imagine a few years ago. Thanks to the support of this committee, we are presently experiencing the highest state of overall readiness I've ever witnessed in my 32 years of naval service.

HOW WE GOT HERE . . .

Realizing several years ago that we needed to balance, more effectively, current readiness against the requirement to recapitalize our fleet, we invested an additional $6 billion in readiness accounts from fiscal year 2002 to fiscal year 2004, including the Flying Hour Program, Ship Depot Maintenance, Ship Operations, and Sustainment, Restoration, and Modernization. We made some tough budget choices to fix critical personnel and readiness issues. With this committee's support, we made these investments in a timely and fortuitous manner, and are now reaping the resultant personnel, material, and training benefits in the success of our ongoing operations.

We continue to make difficult, but prudent, choices in the fiscal year 2004 budget. For instance, you will notice a decline in ship depot maintenance funding. Despite the reduction, our budget achieves the CNO's readiness goals: funding 96.2 percent of validated requirements—the same as fiscal year 2003. This is a function of the return on the readiness investment made over the past two budgets and the supplemental funding that allowed us to reduce the maintenance backlog, improve business practices and maintenance processes, and accelerate the retirement of older, maintenance-intensive ships.

Beginning with the personnel side of readiness, the Navy is retaining sailors at the highest rates in decades. During fiscal year 2001 and fiscal year 2002, first term reenlistments averaged over 67 percent. In a phenomenal increase, our deploying battle group manning, measured at the 6 month point prior to the start of a deployment, has improved from 91 percent in fiscal year 2000 to 99 percent for the last five battle groups. Pay raises and enhancements to special pays (especially career sea pay) enacted over the past 2 years are yielding impressive results. Moreover, our efforts to reduce out-of-pocket housing expenses, authorization for our sailors to participate in the Thrift Savings Plan, improvements in medical care, and retirement reforms approved by Congress are among the significant factors that have helped us retain the sailors we need today. On the recruiting front, we have now met our accession planning goals for 4 straight years and for 19 straight months. Our Delayed Entry Program posture (which measures the percentage of the year's recruiting goal that is already accommodated at the beginning of the year) was 54 percent for fiscal year 2003, near the highest level ever. We are encouraged by the fact that we have garnered higher quality recruits than in previous years, with over 92 percent of the fiscal year 2002 recruits being high school graduates.

Anti-Terrorism/Force Protection (AT/FP) personnel requirements continue to stress our ashore and afloat manpower planning. As much of our surge capability in the AT/FP mission area resides in the Reserve component, this essential element

of our total force has been fulfilling a crucial role in the global war on terrorism. Additionally, for the first time since the Korean War, we have activated a Reserve carrier based fighter-attack squadron, which presently is flying F/A–18A aircraft deployed aboard U.S.S. *Theodore Roosevelt* in the Eastern Mediterranean. It was necessary to activate this squadron to deconflict the transition timeline for one of our active F/A–18E/F Super Hornet squadrons that would have been required to deploy early in support of then possible operations in Iraq. We are very pleased with the responsiveness and performance of VFA–201 in this important role.

More than 87,800 Naval reservists make up nearly 23 percent of the Navy's total force. With a total of over 11,000 reservists recalled to active duty today, the effective integration of Reserve elements into active components is indispensable to readiness and management of our personnel tempo in the global war on terrorism. We face three challenges with this Reserve activation. First, several of our key Reserve capabilities, such as Inshore Boat Squadrons providing worldwide port security, soon will be close to the 2-year involuntary activation limit. We are examining ways to migrate some of this important capability to our Active Force while expanding Reserve capability in this area. Second, with over 3,600 medical personnel deployed aboard U.S.N.S. *Comfort,* in fleet hospitals, and to other forward locations above our normal posture, we are maintaining continuity of medical care for CONUS-based forces, their dependents, and retirees by combining selected medical reservist backfills with an outsourcing strategy. Finally, we continually revalidate the billets filled by Reserves with an eye toward demobilizing those who are not essential to the war effort in order to achieve optimum manning efficiency. However, the cost to mobilize reservists to active duty is an unplanned resource challenge.

Two years ago, the Navy reported to you significant concerns with the material aspect of our current readiness. As one of the CNO's top five priorities, Navy current readiness received significant attention within our budget submissions. With focused effort, careful planning and congressional resource support, we have made tremendous gains in aviation material readiness, ship material readiness, and preferred munitions.

In aviation material readiness, 1 year ago there were 44 bare firewalls in the EA–6B Prowler fleet—a critical support aircraft that we place in the category of "low density-high demand" assets. Today there are zero bare Prowler firewalls, although we now need to purchase new outer wing panels for a number of these aircraft to ensure their continued viability until replaced by the EA–18G. I also report to you that we have made significant progress in reducing aircraft cannibalization, the practice of taking parts from one aircraft to make another operational. Despite the increased operational tempo (OPTEMPO) associated with executing the global war on terrorism, we've continued to make progress in this area, reducing cannibalization by an additional 5 percent.

The Navy also has made significant progress in shifting our weapon system logistics support strategy from one of buying parts and managing inventory to one of buying performance and managing results. The vehicles to accomplish this transition are performance based logistics (PBL) contracts. These contracts are usually long term in nature and both empower and incentivize the provider to improve product support while reducing the total cost of ownership. The primary goal of the PBL approach is to enhance warfighter logistics support via improved supply availability, decreased cycle time, increased reliability and reduced obsolescence. The PBL methodology is structured to accomplish these goals by capitalizing on industry best practices and reengineering logistics support to perform more like a commercial system.

Currently, the Navy has approximately 25 percent of its active inventory managed under a PBL agreement. This approach has achieved unparalleled success across both aviation and ship programs and is equally effective when applied to a single item of supply or an entire weapons platform. A sampling of PBL successes may be found in the following examples.

- F/A–18 E/F: The F/A–18 E/F Integrated Readiness Support Teaming (FIRST) contract encompasses support for the entire aircraft. Supply availability is 85 percent versus 62 percent for F/A–18C/D aircraft. Projected savings are $52 million over 5 years.
- Close-In Weapon System (CIWS): This contract is achieving 89 percent supply availability versus a previous performance level of 60 percent. Projected savings are $5 million over 5 years.
- Aviation Tires: This innovative 5-year contract has virtually taken the Navy out of the business of buying and warehousing tires in support of 17 different aircraft. Supply availability is 98 percent versus a previous performance level of 81 percent, with projected savings of $46 million over 15 years.

• AEGIS Weapons System: This contract is achieving 95 percent availability versus a previous performance level of 85 percent. Projected cost savings is $6 million over 4 years.

Early retirement of some aircraft models enabled the Navy to avoid costly maintenance requirements and reinvest those savings across other readiness accounts. For example, the F/A–18E/F Super Hornet—the first three squadrons of which are deployed today to the Arabian Gulf—operates at one third the cost of the aging and maintenance-intensive F–14s it is replacing. Moreover, the Super Hornet provides significant readiness improvements while simultaneously providing a 40 percent increase in combat radius and greater payload capability than the F/A–18C/D.

The addition of precision-guided munitions (PGM) capability to every strike aircraft means we now measure air wing capability in targets per sortie instead of sorties per target. Accordingly, early attention to the Navy's preferred munitions requirements was another key enabler of today's readiness gains. At the onset of Operation Enduring Freedom, the Navy and Marine Corps did not possess the desired inventory of PGMs. This inventory was further depleted by operations in Afghanistan. However, our increased investment in the PGM industrial base and procurements continues to move us in the right direction. Laser guided bomb (LGB) production is currently at the maximum rate, and Joint Direct Attack Munition (JDAM) production is forecast to reach the maximum rate by August 2003. In anticipation of combat operations in Iraq, the Navy initiated cross leveling of LGB and JDAM inventories with the Air Force to mitigate the delay in production ramp-up and to replenish the Navy's JDAM inventory shortfalls. Maximum procurement of PGMs continues to be a high priority for the CNO and Navy Fleet Commanders.

We have made similar gains in ship material readiness. Supplemental funding; cost avoidance through the accelerated retirement of older, high maintenance frigates and destroyers; the expanded use of multi-ship/multi-option, maintenance contracts with private industry; and innovative scheduling enabled us to reduce deferred ship maintenance by 45 percent (from $356 million in fiscal year 2001 to $197 million in fiscal year 2002). Meanwhile, the consolidated shipyard activity in Pearl Harbor continues to demonstrate the flexibility and effectiveness of integrating depot and intermediate ship maintenance under a mission funding financial system. Mission funding enabled Pearl Harbor Naval Shipyard and Intermediate Maintenance Facility to begin immediately repairing damage resulting from U.S.S. *Denver* and U.S.S. *Greeneville* collisions and to provide recent unscheduled drydock repairs on U.S.S. *Paul Hamilton* and U.S.S. *Reuben James*. Based on this success, our fiscal year 2004 budget includes the transition of Puget Sound Naval Shipyard from a Navy Working Capital Fund activity to a mission funded activity.

Recognizing that naval forces at sea are less vulnerable than ground forces to chemical, biological, or radiological (CBR) attack, one of our concerns as we prepared for a possible contingency in Iraq was the adequacy of our sailors' protection against such attack. We determined that our current quantity of equipment was adequate for rotational force operations but not for large surge force operations. Considering the volume of forces identified for this campaign, we fundamentally changed scheduled deployment priorities due to the requirement to surge such a large force structure outside of the normal deployment cycle. The Commander, Fleet Forces Command (CFFC) validated and requested additional emergent funding to improve chemical, biological, radiological, and nuclear defense (CBRND) readiness for the increased force requirements. The CFFC study concluded that afloat forces possessed the requisite gear but that expeditionary forces most vulnerable to CBR attack needed additional equipment and training. We expedited procuring additional CBRND equipment stocks and accelerated a "pilot" Naval Sea Systems Command CBRND Readiness Improvement Program (RIP) to improve ashore forces' readiness and training. We also fielded an interim presumptive and confirmatory biological warfare threat identification capability. These actions resulted in a significant improvement in CBRND capabilities for the fleet.

In total, the Navy has expended over $160 million to improve its ability to fight and win in a CBR contaminated battle space. Today, all of our forward deployed sailors, including those who are or could be based ashore, are equipped with adequate supplies of the most appropriate CBRND equipment available. Meanwhile, we are committed to an aggressive anthrax and smallpox vaccination program, which is proceeding apace. To the maximum extent possible, we will look to deter and avoid direct CBRN threats to our forces. Finally, we maintain efforts to field additional capability, and continue to analyze our prospects for sustained operations in a CBRND environment and our ability to reconstitute for additional future tasking.

Training readiness is another success story. We continue to place greater emphasis on use of simulation and other means of finding efficiencies that can be captured and diverted into other readiness accounts. Inherent in our employment shift to a

rotational force that is surge-capable, we have found innovative ways to achieve an acceptable level of surge readiness earlier in a battle group's deployment cycle. Adjustments to key training and scheduling events during the inter-deployment training cycle are resulting in ships and squadrons being capable of accelerating to a deployable status sooner. This has been manifested during the current crisis in that the last three carrier battle groups we sent forward were all deployed early at acceptable levels of readiness.

SUSTAINING THE SURGE . . . AND RESTORING READINESS POST-CRISIS

While we have invested wisely in order to gain the highest available readiness, today's surge has put a significant strain on every Navy resource. Our military forces are deployed far beyond normal peacetime Global Naval Force Presence Posture (GNFPP) training and deployment cycles. It is likely that the *Abraham Lincoln* Battle Group and the NASSAU Amphibious Ready Group will have been deployed for over 9 months, upon their return from the Arabian Gulf. Such deployments bear significant, unprogrammed costs in fuel and parts that we will need to recover if we are to continue to operate at this tempo. Moreover, once we complete our mission in Operation Iraqi Freedom, we will need to reconstitute our forces quickly in order to sustain the readiness required to continue the global war on terrorism. Returning to and stabilizing a rotational, forward deployed/surge capable naval force will require careful analysis and balancing of ship maintenance schedules, deployment durations (including some battle group deployments in excess of our 6 month goal), aircraft modification and transition schedules, resupply of parts inventories, and possible relaxation of overseas commitments. At the same time, our most precious asset—our sailors and their families—will need time to recover from the personal cost of these long deployments.

Innovative planning already is underway to maximize on-station time of our ships while mitigating the impact of longer deployment schedules on our sailors. One such effort, the Navy's Sea Swap initiative, is experimenting with exchanging forward deployed crews, the first of which occurred aboard U.S.S. *Fletcher* in the Western Australian port of Fremantle. We will continue this initiative with another crew change this summer and we intend to examine other pilot programs in optimal manning, rotational crewing, and assignment incentive pay designed to make more optimum use of our capital assets.

Current operations have severely disrupted planned maintenance schedules for our ships and aircraft. Schedule "churn" challenges a maintenance infrastructure sized and culturally inclined to support peacetime sustained operations instead of a large, post-surge ship and aircraft workload. This, in turn, results in greater cost for the same amount of maintenance performed. Accordingly, we are focusing on the maintenance strategies and processes we will use to restore our ships and aircraft to deployment-ready status. We are already working hard to reorganize priorities and resolve competing maintenance requirements in order to return to a full readiness posture capable of surging in support of future joint operations. Finally, we are examining ways of incorporating the lessons learned from this surge into a new approach to maintenance that will be more capable of handling future surge operations.

Replacing units which have been deployed for many months will likely require the same type of shortened training cycles we have been using for our surging units. This is sustainable in the near term, but we will need to work toward more normal training cycles in order to retain our critical warfighting skills in all areas (especially those which might not be required during the conflict with Iraq, such as antisubmarine warfare).

Despite increases in production, the conflict with Iraq has reduced the Naval PGM inventory, including the Tomahawk Land Attack Missile (TLAM). Consequently, and depending on the duration of the conflict, it will be necessary to continue PGM production at maximum capacity.

CHALLENGES AND TRANSFORMATIONAL INITIATIVES

The Navy is committed to extending our culture of readiness into the future, to include support for an operational concept that will maintain a substantial portion of the fleet in a readiness condition that would permit a rapid surge of significant combat power to augment the normal rotational force posture maintained under the Global Naval Force Presence Policy. This construct also includes the ability to reconstitute rapidly following a contingency.

To date, the Navy has conducted significant analysis and has established a ready surge force construct of six carrier battle groups (soon to be transitioned to carrier strike groups, or CSGs, in line with the CNO's Sea Power 21 vision) and six am-

phibious ready groups (soon to be transitioned to expeditionary strike groups, or ESGs). We are currently defining our surge requirement across the full spectrum of Navy combat power and reshaping our readiness processes, including the inter-deployment training cycle, to institutionalize this surge capability. We also will seek to do a better job of balancing our resources to support this re-alignment. Elements of the CNO's Sea Power 21 vision will complement these initiatives while enhancing the key enablers of people and processes.

One of the biggest challenges we face as a surge capable rotational force is in maintenance workload predictability and stability. Implementing this new surge concept will require innovative approaches to maintaining our ships and aircraft. In fiscal year 2004, we will integrate Puget Sound Naval Shipyard and the Pacific Northwest Intermediate Maintenance Facility. Converting these activities to mission funding is a vital part of this integration and will deliver increased responsiveness to the warfighter and more efficient use of resources. Mission funding provides the flexibility to match workforce to the highest priority work requirements without delays or administrative funding constraints. It will allow for the most effective use of all maintenance resources in the region, unconstrained by organizational boundaries, and will eliminate redundant overhead functions. In short, mission funding is essential to provide fleet commanders with the inherent flexibility to execute their highest priority requirements in this surge environment, where ship maintenance availabilities and operational schedules will be flexing to support the GWOT, Southwest Asia, and future contingencies.

Ensuring that an increasing number of deployed ships sustain high readiness is critical and not easily attainable given the restrictions on the use of overseas depot facilities. Acquisition restrictions forced us to send U.S. shipyard workers overseas to do routine maintenance work on U.S.S. *Fletcher,* our Sea Swap experiment test ship. This is not good stewardship of taxpayer dollars. We need a common sense approach to afford better, more cost-effective maintenance support to our forward deployed forces.

Public/private partnerships are a key enabler to improve our maintenance capability. For example, our naval aviation depots (NADEPs) are world-class organizations, replete with examples of novel approaches to the aircraft maintenance business. The NADEPs currently are executing 15 public/private agreements valued at over $182 million. These partnerships are primarily long-term contracting initiatives or memoranda of agreement that establish a joint venture between private industry and the public yards. Often this involves one party providing technical expertise and direct labor, with the other providing the actual facilities or support equipments required to execute the work. There are approximately 16 additional agreements in the approval and negotiation phases valued at over $492 million for the base period of their contracts. With the agreements that are in place, we have seen the most common inhibitors to maintenance depot production (material, carcass, and engineering constraints) become exceptions rather than the rule. By removing the barriers that inhibit government/industry teaming, we can encourage greater use of these partnerships as a primary means of improving depot support. Congress' support for "Centers of Industrial and Technical Excellence" has been a very positive development in this regard.

The Secretary of Defense has cited public/private partnerships as a key initiative under the Future Logistics Enterprise, which is intended to transform logistics support to the warfighter in the areas of supply, maintenance, and transportation. In addition, the CNO has cited public/private partnerships as one of the key facets of Sea Enterprise, the sweeping initiative to capture efficiencies in order to recapitalize the Navy. Along with the NADEP examples mentioned above, other partnerships include aircraft carrier and submarine maintenance work and resource sharing, propeller repair facilities, and SSGN design and conversion.

Enterprise Resource Planning (ERP) is a critical part of any discussion about modernizing our organizations and improving their efficiency. Navy ERP is comprised of four distinct efforts covering program management, financial management, regional maintenance, and supply management. ERP is the tool which enables a significant reduction of costly legacy systems; it facilitates an economic, standardization of business and administrative processes, and will provide much greater resource and cost visibility to decisionmakers at all organizational levels. We must sustain our ERP investment and implementation to continue to harvest efficiencies that can be redirected to warfighting priorities.

The high quality of training we provide to our sailors is largely unseen by the public and often taken for granted, yet it is an essential element of their impressive combat readiness. Accordingly, you will note a significant investment in training within the President's budget. The Navy has trained its last battle group at Vieques Island, Puerto Rico and will cease operations there next month. The loss of this val-

uable asset will be offset by upgrades in certain range capabilities, cooperative use of other service ranges and integration of new technologies such as virtual at sea training (VAST), which together will provide fleet training superior to that currently being conducted by deploying battle groups. The developing Joint National Training Capability (JNTC) has tremendous potential in terms of expanding the interoperability and technological facets of our training syllabus. The JNTC concept, as envisioned, will provide a global, integrated network of live-fire training ranges and a linked network of simulation capabilities focused on better preparing U.S. forces from all Services for joint operations.

We intend to use the Training Resource Strategy (TRS) as a key resourcing framework to support continued transformation of fleet training. Beginning in the Atlantic Fleet, TRS will move us to a 21st century training environment. These transformational training initiatives were needed to replace a legacy training regimen that did not fully train to the increasingly joint, interoperable, and geographically dispersed nature of today's combat operations. With this initiative, our Navy is aligning its training methodology to flex naval forces in shifting operational and tactical training environments through a mix of live and virtual training environments.

Battle groups soon will be able to conduct combat exercises in port with netted combat system trainers that enable crews and staffs to train under tactically stressful scenarios prior to at-sea training events. Our carrier air wings will use simulation more effectively and will conduct long and short-range strike missions against a variety of challenging fixed and mobile targets. These initiatives, together with new range instrumentation being developed cooperatively with the Air Force, also position Navy ranges to support fully the developing Joint National Training Capability. This program will be expanded in future years to support the Pacific Fleet and will serve as the vehicle for continued transformation of fleet training in the Navy.

The new DOD Readiness Reporting System (DRRS) concepts will further augment joint training initiatives. In particular, Navy is currently developing an enhanced reporting system to fulfill all of the mandated requirements set forth for the Services. With prototype completion expected this year, this system will link Navy reporting metrics to joint mission essential tasks (JMETs), provide near real-time reporting, roll-up readiness assessments, and provide drill-down assessment capability.

No readiness challenge is greater than that of encroachment on our training ranges. We rely on full use of our ranges; facilities and advanced technology to ensure our forces have a decisive advantage in combat. Unfortunately, training areas that were originally located in isolated areas are today surrounded by recreational facilities and urban and suburban sprawl. Increasing regulation, permitting processes, and litigation have cumulatively diminished the Department of the Navy's ability to effectively train our personnel and test our weapon systems. We actively seek to be good stewards of the environment, and the record shows we have been successful in this area. However, we also are asking for the legislative relief we need in the form of the Readiness and Range Preservation Initiative in order to bring the twin requirements of national security and environmental conservation into better balance.

We believe it is important that our facilities sustainment, restoration, and modernization (FSRM) program remains robust enough to maintain our shore facilities and infrastructure. While our fiscal year 2004 military construction and sustainment program reflects difficult but necessary trade-offs between shore infrastructure and fleet recapitalization, the majority of the SRM trends are very good. Sustainment funding has increased from 84 percent to 93 percent of the requirement in fiscal year 2004. Our fiscal year 2004 budget request puts us on a course to achieve the DOD goal of a 67 year recapitalization rate by fiscal year 2008. (Note: DOD goal is fiscal year 2007, but the budget reflects fiscal year 2008). In pursuing that goal we will explore innovative solutions to provide safe, efficient installations for our service members, including design-build improvements, more efficient facilities, and Base Realignment and Closure (BRAC) land sales via the General Services Administration (GSA) Internet.

CONCLUSION

Again, I would like to thank the members of this subcommittee for all you have done for our Navy. The first war of the 21st century promises to be a challenging struggle. Over the past year, the United States Navy has excelled in a very dynamic and dangerous environment in support of this vital effort because we are well trained and equipped to go in harm's way. Every day, your volunteer sailors are

dedicated to providing flexible, forward deployed, combat ready power on a moment's notice anywhere in the world to ensure the safety and vital interests of the American people. We are this way because of the tremendous support we have received from the American people and from Congress—support we must be able to count on if we are to remain prepared to conduct the global war on terrorism and respond to any other contingencies that arise in this dangerous world.

Budgets always present difficult choices, and this budget is no exception. I believe the President's 2004 budget request firmly supports the priorities needed to allow the Navy to continue delivering precise, persistent, and responsive combat capability at sea. It builds upon previous submissions and will help continue to translate the Navy's vision into tomorrow's warships, aircraft, weapons, information networks, and, ultimately, sailors. On behalf of our sailors and their families who proudly serve our Nation, I thank you for your continued commitment to the readiness of the finest Navy in the world.

Senator ENSIGN. Thank you.

General Bedard.

STATEMENT OF LT. GEN. EMIL R. BEDARD, USMC, DEPUTY COMMANDANT FOR PLANS, POLICY, AND OPERATIONS

General BEDARD. Mr. Chairman, Senator Akaka, it is an honor for me to be here to represent your Marine Corps today. I would like to thank you very much and certainly this subcommittee's strong support for the issues and programs that are of such vital importance to the readiness of the Marine Corps and to all our Services.

Today some 70 percent of the Marine Corps' operational forces are forward deployed and the Marine Corps' operations throughout this past year have highlighted the versatility in deployment of our expeditionary forces and its contribution to the joint force.

This year has been filled with challenges in terms of operational requirements, participation in the global war on terrorism, Operation Enduring Freedom, and Operation Iraqi Freedom, all of which I believe attest to the training, the readiness, and the capability of not only the Marine Corps, but of our forces.

I do believe that we have some definite challenges ahead for all of us. In my mind I see these challenges in terms of those close at hand, such as conflict resolution and subsequent reconstitution of the force. On the horizon, we need to stay the course relative to modernization and transformation.

I want to thank you for your assistance in the ongoing effort with respect to the supplemental. It will be critical to rapidly rebuilding the force capability. We must ensure maximum future readiness with minimum degradation. The global war on terrorism and other potential adversaries cannot be given a time out.

We are doing what we were trained to do and we are ready to support our Nation through whatever challenges may lie ahead worldwide. We remain the only sea-based rotational, truly expeditionary combined arms force, ready to answer the call, as part of the highly integrated joint force.

I thank you again for your continued support for the Corps, our marines, and their families, as well as for the soldiers, sailors, and airmen, and my colleagues who sit with me today. I look forward to your questions. Thank you.

[The prepared statement of General Bedard follows:]

PREPARED STATEMENT BY LT. GEN. EMIL R. BEDARD, USMC

INTRODUCTION

Chairman Ensign, Senator Akaka, and distinguished members of the subcommittee, it is my privilege to report on the state of readiness of America's Marine Corps.

I am deeply honored to report on the readiness of your Marine Corps at a time when the heroic sacrifices of our men and women actively engaged in combating terrorism are being broadcast nightly into every household across America. The Marine Corps' first priority is, and will continue to be, readiness. Our sequence of priorities is "Mission First, Marines Always". Our service in Afghanistan, Iraq, and many other places attests to the state of our readiness better than mere words alone.

OPERATIONS

As recent events have proven, the world remains uncertain and dangerous. Our Nation is a superpower with national interests that extend well beyond our geographic borders. We are participants in a global economy that has brought peace, prosperity, and stability to remote parts of the world, while improving the quality of lives of millions worldwide. Whenever or wherever our national interests were threatened, the Marine Corps has distinguished itself as a certain force in an uncertain world. Being ready when the Nation is least prepared requires focus, dedication, and flexibility. Our national interests face threats ranging from conventional forces to rogue para-militiary organizations masquerading as civilians using unconventional weaponry and bent on self-destruction. Being ready across the full range of conflict requires organizational scalability. In each instance, we must be able to provide a measured response, to surgically eliminate the threat with minimal collateral damage, while protecting our national interests and goodwill, on a battlefield not of our choosing. Providing a full range of capabilities to the combatant commander has tremendous utility in today's world. I know that the distinguished members of this committee understand the value of ready forces, as you have always demonstrated your understanding through the strong support you've provided.

The Marine Corps maintains a global, expeditionary perspective, and we posture our forces accordingly. Marine Forces serve as a strategic deterrent, as an instrument of diplomacy, and as a demonstration of our national resolve to protect freedom wherever it is threatened and if required, the Marine Corps can rapidly commit combat forces to resolve the conflict. We are a transformational force that is affordable, scalable, sustainable, and prepared to respond across the spectrum of operations, from humanitarian assistance and disaster relief to major conflict. As you have seen in Iraq and elsewhere, your marines are trained and prepared to be first on the scene, first to help, first to fight, first to serve, and to serve as an enabler and nucleus for the follow-on joint forces. Our Marine Air Ground Tasks Forces (MAGTF) with their organic logistics and versatility may be task organized as the ideal model of how effective, efficient, well integrated joint operations will execute.

In the global war on terrorism, we are exploiting the capabilities and talents of our most sophisticated state-of-the-art weapon—a United States Marine. When the President called, our marines proved themselves to be well trained, adequately equipped, and up to any challenge. Our equipment, though aging, is well maintained and is accomplishing the task at hand. Marine Corps doctrine of maneuvering from the sea to objectives deep inland has proven itself to be extraordinarily effective. As we speak today, the Nation's premier Expeditionary Force in Readiness is deployed across the globe in support of Operations Enduring Freedom (OEF), Noble Eagle (ONE), and Iraqi Freedom (OIF).

The Marine Corps has deployed more than 60,000 marines in support of Iraqi Freedom. Our Navy-Marine Corps team deployed and massed two of our forward deployed Marine Expeditionary Units, Special Operations Capable (MEU (SOC)) in the Central Command area of responsibility, to establish a presence, and provide a capability to protect our sea passageways and ports of arrival at our intended staging areas. MEU (SOC)s are routinely forward deployed and positioned for global coverage to establish goodwill, maintain a national presence, preserve order, and protect our national interests abroad. Their forward presence protects our homeland from threats well outside our borders. The MEU (SOC)s provided a strategic reserve for Central Command, during the arrival and subsequent off-load of two squadrons of our Maritime Prepositioning Force (MPF) in Kuwait. We rapidly offloaded two squadrons of our MPF—11 ships within 18 days. The equipment coming off Maritime Prepositioning Ships Squadrons 1 and 2 had equipment readiness ratings of 98 percent and 99 percent respectively. MPF equipment is modern and 100 percent compatible with our Active Force. Once offloaded, it is immediately available for integration into a Marine Expeditionary Brigade (MEB) force consisting of approxi-

mately 15,000 marines and sailors. The success of our preparation for combat operations in Iraq was made possible because of the readiness of our MPF program as their collective efforts served as a foundation for a Marine Expeditionary Force (MEF). The MEF's efforts were augmented by two amphibious task forces, which sailed from the east and west coasts of the United States. Upon arrival the East Coast Amphibious Task Force (2d MEB) executed various combat missions. The West Coast Amphibious Task Force was composited with the First Marine Expeditionary Force and augmented with follow-on forces arriving by strategic lift.

Our successes in these global operations and exercises have not been achieved alone. We have worked closely alongside the Navy, our sister Services, and Federal agencies to realize the true potential of joint, interoperable forces in the new environment of 21st century warfare. The superior operational and personnel readiness levels we have been able to maintain directly reflect the strong, sustained support of Congress in last year's National Defense Authorization and Appropriations Acts. In fiscal year 2004, we seek your continued support for the President's budget so we can consolidate the gains made to date, improve those areas where shortfalls remain, and continue transforming the way the Navy-Marine Corps team will fight in the 21st century.

MARINE CORPS OF THE 21ST CENTURY

The Marine Corps is grateful for the congressional support in recent budgets; support that has been essential in improving our readiness, while enabling your Marine Corps to fight the global war on terrorism. As we continue to execute missions in the defense of our Nation, we are also ready for other missions the President may direct. The fiscal year 2004 budget funds our most pressing near term readiness requirements and continues the progress toward addressing future readiness.

We have partially funded our efforts to support the global war on terrorism by leveraging our modernization efforts and placing some of them at risk. This experience has validated many of our doctrinal precepts and mandated a review of our current and future procurement programs. We have provided supporting documentation to support the President's request for supplement funding to cover the costs associated with the ongoing global war on terrorism. The Marine Corps' future readiness is less certain with significant elements of risk. I would like to share some of my concerns as they relate to readiness indicators and to provide a glimpse of how we foresee the reconstitution and regeneration of our forces once the current war is over.

PERSONNEL—TAKING CARE OF OUR MARINES AND THEIR FAMILIES

The Marine Corps believes the deadliest weapon on the battlefield is a well-trained, well-led, and motivated U.S. marine. "Every marine a rifleman" remains more than an institutional belief. We remain committed to "equipping the marine" not manning the equipment. Achieving and maintaining our current level of readiness is accomplished through extensive maintenance of our legacy equipment and on the backs of the dedicated marines who maintain them.

The greatest contributor to our continued success is the motivation and desire of our young marines to be the very best in the world. We have 214,600 marines today, 175,000 in the Active Forces and 39,600 in the Selected Marine Corps Reserve. With your help, we have made significant progress in taking care of these young men and women and their families. Increases in military pay and benefits, especially basic allowance for housing increases, improvements in health care, and improvements in on-base housing are key enhancements you have made reality.

While we recruit marines, we retain families. The young men and women we don't retain in our Corps return to society as solid American citizens. Our marines care for their families with the same level of commitment as they serve our Corps. Medical care for sick children, good schools, and a chance to save for a child's college education are as vital to ensuring our marines' readiness as ensuring there is adequate ammunition. A focused marine gets the most from his or her training, and knowing that their family is well taken care of allows a marine to focus.

Reserve Integration

It is important to note that the Marine Corps operates as a total force, including elements of both Active and Reserve components. We depend on the readiness of our total force. Our Reserve component is organized on the same lines as our Active Force; we have not transferred a horizontal capability from the active to the Reserve Forces. Our posture as forward deployed, forces in readiness does not allow us to have combat support or combat service support functions primarily in the Reserve structure. Accordingly, we strive to ensure our Reserve Forces are as well trained

and as ready as our Active Force. We integrate the Marine Corps Reserve Forces into ongoing exercises and training. Two combined arms exercises per year are conducted entirely by Reserve Forces. In support of the global war on terrorism and current operations, we have activated more than 20,000 Reserve Marines in units and as staff augmentees. I would personally like to express my gratitude and appreciation to the employers, families, business owners, companies, and government offices at all levels who have made it possible for our Reserve Marines to train and to mobilize in support of our efforts against terrorism.

Safety

We are committed to preserving our most precious asset—the individual marine. We do this by ensuring a safe command climate and working environment remains a critical concern for every operation. The work settings and the missions our marines complete are inherently dangerous. Effective command climates continually mitigate those dangers through planning, leadership, and education. Our safety programs are integral to force protection and operational readiness. Leadership, operational risk management, and programming in safety awareness and standards are vital to providing marines and their families with a meaningful quality of life and service. Our leadership at all levels is deeply concerned and actively working to improve readiness and save our most precious assets—marines and equipment.

TRAINING—ENSURING SUCCESS ON THE BATTLEFIELD

The key to the Marine Corps' success is no secret, it's our marines and their level of readiness and training. They are fit, smart, well trained and motivated. They are devoted to their training, their country, and their Corps.

Ensuring these marines' skills are honed to a razor's edge is an enduring mission of the Marine Corps. We train hard at every opportunity, trying to achieve as much combat training as possible at home station in order to be efficient with our time and money. Marine units train in their core competencies at their home stations. Time spent in transit to distant training areas is lost training time. A lost training minute is never regained. With our forward deployed posture, there is no time, nor are there training areas, to retrain and refresh marines prior to committing them to either contingency or combat operations. They leave their home stations ready, and we seek to ensure they maintain that readiness during their forward deployments through an aggressive exercise schedule. These exercises, conducted while forward deployed, hone coalition team building and enhance interoperability with our allied partners.

There are few things regarding battle of which I'm certain, but I know that combat is chaotic and confusing. This has never been clearer to Americans than right now. I'm also confident that the weapons systems and equipment you provide are the best and most lethal in the history of warfare. It is essential that we conduct rigorous, realistic training to ensure the safety of our marines and ensure we can impose our will on our enemies. Rigorous training demands we place our marines, as closely as possible, under the same stresses, chaos, and confusion we envision they will face in combat.

Rigorous, realistic training can be accomplished in a variety of ways, but the best method we've found replicates the way we fight, and combines live fire and maneuver. We accomplish this service combat training most effectively at the MAGTF Training Center at Twenty-nine Palms, California. Ongoing initiatives will expand the role of the Combat Training Center and transform it into a "Center of Excellence" that will focus the training efforts across our operating forces. The Combat Training Center facilitates and supports the development of new concepts and capabilities, thereby reinforcing our combat effectiveness, enhancing joint interoperability, and supporting DOD transformation efforts.

The future role of the Combat Training Center will grow beyond its current emphasis on battalion-level integrated live fire, combined arms training to support expanded training opportunities for all elements (ground, air, combat service support, and command) of Marine Air-Ground Task Forces up to and including a Marine Expeditionary Brigade. This will include enabling multi-site, distributed training evolutions that tie together units from various bases; and investing in technology that simultaneously links live, virtual, and constructive training. We must retain the areas where we train, particularly those where we train in combined arms in conjunction with our sister Service teammates. If we can't retain the areas we currently use, we must replace them with like or better facilities.

Realistic, challenging joint exercises are equally important to ensure Marine Forces are fully capable of contributing to integrated joint operations. As a combined arms force of both ground and air forces, and with our close relationship to the U.S. Navy, the Marine Corps fully appreciates the synergy inherent in the joint force

concept and is an active participant in these challenging exercise programs. Providing well-trained, Service unique capabilities is the foundation for providing forces for joint warfighting and is our Nation's truly asymmetric advantage.

One of the most important things we can provide our forward deployed Navy-Marine Corps teams is confidence in their ability to employ all weapons systems at their disposal. Confidence that the forward air controller is going to coordinate an effective and safe mission, that the ground forces will suppress enemy air defenses and direct the trajectories of their projectiles in directions which do not hazard the aircraft and that the strike aircraft will hit the target. We can learn the elements of this training in parts, and in multiple sites, but separate training only works on the skills and techniques in piecemeal fashion, and does not necessarily engender the critical level of integration essential for combat readiness. It is absolutely critical that the Navy and Marine Corps maintain areas where they can combine naval gunfire, artillery, air and ground maneuver forces simultaneously which is the topic of my next point.

Training at Eglin Air Force Base

With cessation of training at Vieques, Puerto Rico, the established training ranges, quality of training support, and proximity to the ocean available at Eglin Air Force Base, Florida can provide Naval Expeditionary Forces with an alternative training capability. Eglin's capabilities, location, and tenant commands provide the opportunity to facilitate joint training between Air Force, Navy, Marine Corps, Army, and Special Operations Forces. Development of an expeditionary force training capability at Eglin can support the Secretary of Defense's vision and direction for training transformation and the development of a Joint National Training Capability. This type of training area will be critical to naval expeditionary combat-readiness.

The Marine Corps proposes to execute two 10-day training exercises with a Marine Expeditionary Unit at Eglin each year. These exercises include a variety of scenarios such as amphibious landings, raids, mechanized operations, helicopter operations, and live fire and maneuver exercises. No final decision on training activities can be made until an environmental assessment currently underway is completed. The Navy and Marine Corps are actively working to develop and sustain cooperative relationships with the local community and the State of Florida to support our training at Eglin AFB.

The Marine Corps strongly supports the development of a Joint National Training Capability that exercises the horizontal and vertical elements of the joint force. The Marine Corps also strongly believes that this capability can, and should, be developed in a manner that minimizes increases in OPTEMPO, preserves Service-training opportunities, and improves both Service and joint training areas, ranges, and facilities. The regional approach presented offers the best and most viable option in terms of training opportunities, training value, and maximization of the training audience while minimizing the impact on OPTEMPO and preserving and enhancing Service training.

Development of a live-virtual-constructive Joint National Training Center strongly supports the Marine Corps training vision centered on development of a live-virtual-constructive training environment at all major Marine Corps bases and ranges. This training environment will integrate live training (enhanced by a range instrumentation system) with the full range of existing and emerging Marine Corps virtual capabilities into a virtual/constructive command and control training system called CACCTUS.

Encroachment is a serious threat to the operational readiness of the Corps as it impacts our ability to train. Urban and residential areas now surround many Marine installations that were originally remotely located. The Marine Corps is proactively engaged with Federal, State, and local agencies and governments, as well as nongovernmental organizations, to provide win-win solutions to encroachment pressures. Unimpeded access to our installations and ranges is critical to the Marine Corps remaining America's "Force in Readiness."

Our Nation has crafted a strong environmental code of conduct structured on a wide range of Federal, State, and local laws and regulations. Vague or inflexible environmental requirements, however, can present significant challenges for marines training to perform their missions. The Marine Corps supports ongoing efforts to seek clarity and flexibility in environmental laws, so that we may more effectively balance our training requirements with our long-term environmental stewardship responsibilities. The impact of encroachment on the Corps' ability to fully utilize its installations are varied and require constant vigilance and attention to ensure that operational readiness is not diminished.

Additionally, we support the development of the Department of Defense Readiness Reporting System (DRRS). Our efforts to implement our own training and requirement manuals with performance standards throughout the Corps will support the DRRS concept. The Marine Corps continually strives to increase the accuracy of our readiness reporting. We readily endorse the concepts and programs that support readiness. The Marine Corps is working with the Department of Defense to develop a system that would automate our reporting requirements, reducing the burden of administrative reporting, while reflecting an accurate portrayal of the status of available resources.

CONCEPTS AND PROGRAMS THAT SUPPORT READINESS

The amount of wear and tear we are putting on our aging equipment, and the manpower required to maintain them is tied directly to readiness. Thanks to your efforts, the fiscal year 2004 budget allows the Marine Corps to adequately fund our top priority ground and aviation programs vital to future readiness. Our plan will allow us to make more robust investments in transformation and modernization of equipment. However, until this new equipment is fielded, we will continue to maintain the readiness of our legacy systems. We will continue to take maximum advantage of service life extension programs (SLEPs) that enable us to improve the reliability and availability of our legacy systems, as we will be forced to continue to invest increasing levels of resources—manpower and dollars—in the maintenance of our aging equipment. The fiscal year 2004 budget request will, with your help, allow us to invest in modernization of expeditionary capabilities, equipping the marine, warfighting, tactical mobilitiy, fires, and command and control such as:

Expeditionary Capabilities

The Marine Expeditionary Brigade (MEB) is the Nation's premier, medium weight, combat credible, sustainable, forcible entry capability. No combat force in the world, either on-call today or envisioned for the future, has the ability to prevail in an anti-access environment with a forcible entry and then conduct high tempo full spectrum operations in support of U.S. national policy better than a MEB. The Marine Corps maintains a 6.0 MEB lift requirement; 3.0 MEB amphibious lift, and 3.0 MEB-Maritime Pre-positioned Force.

Seabasing

Seabasing is the concept of how we will use the sea as maneuver space. Seabasing includes the command and control capability, maneuver from and through, combat support from, as well as combat service support from afloat to support operations to defeat the enemy ashore. The seabase is the platforms and connectivity that support the seabasing concept. Seabasing provides a sustainable global projection of American power from the high seas. Seabasing offers the potential for secure, sovereign, and mobile assembly areas and sanctuaries for key elements of the joint force, allowing our forces to most effectively utilize the international domain of the sea as maneuver space. Fully networked, forward-deployed Naval Forces and platforms that are integrated into our seabasing capability will provide naval power projection for Joint Force Commanders. Seabasing will enable a broad range of joint campaign operations. Sea-based operations incorporate, integrate, protect, and sustain all aspects of naval power projection, from space to the ocean floor, from blue water to the littorals and inland—without dependence on land bases within the joint operating area. Seabasing will provide enhanced capabilities to the Naval Force, such as rapid force closure, phased arrival and assembly at sea, selective offload of equipment tailored for individual missions, and force reconstitution for follow-on employment. The traditional naval qualities of persistence and sustainment—enhanced by advanced force-wide networks—underpin the staying power and flexibility of the sea base. Naval platforms can stay on-station, where they are needed, for extended periods of time. The at-sea maneuverability of the seabase, coupled with advanced underway replenishment technologies and techniques, will ensure force readiness over time.

Amphibious Shipping

Our amphibious lift requirement has been consistently validated at 3.0 MEB assault echelons. In terms of today's capabilities, that equates to approximately 45 amphibious ships. We understand the fiscal realities we operate within, and have thus adapted to a fiscally constrained amphibious lift capability of 2.5 MEB assault echelon equivalents. We will be able to achieve our 2.5 MEB lift requirement with an all-Active Force upon delivery of the 12th LPD–17 amphibious ship in 2014. Ultimately, we envision the amphibious fleet consisting of 12 LHDs/LHAs or their replacements, 12 LSDs, and 12 LPD–17s in the 2014 time frame. While currently

short of the 3.0 MEB AE goal, this is a force that will provide us, at some risk, the necessary capability to project power in an anti-access environment in the near- and mid-term.

We are also concerned with replacing the LHA–1 Tarawa class ships. They will begin to reach the end of their 35-year service life in 2011, and considering the time to design and build a replacement ship, we need to begin the process now. The Marine Corps supports a modified LHD–8 ("Plug Plus") ship design in fiscal year 2007 to replace existing LHA class ships. We will through analysis of alternatives and ongoing studies, evaluate the adequacy of the R&D and SCN funding for the development of ships for the LHA follow-on replacements. The overall age of the amphibious fleet is also a concern as it is 25 percent older than the average of all other Navy ships.

Expeditionary Strike Groups

The Marine Corps and Navy are engaged in a series of experiments that will explore the Expeditionary Strike Group concept. This concept will combine the existing capabilities of surface action groups, submarines, and maritime patrol aircraft with those of Amphibious Ready Groups and Marine Expeditionary Units (Special Operations Capable), to provide greater combat capabilities to combatant commanders. These experiments will provide critical information to support the future implementation of the concept and highlight any needed changes in service doctrine, organization, training, and personnel.

Maritime Prepositioning Force (MPF)

Our 3.0 MPF–MEB is loaded aboard leased commercial shipping that is strategically positioned in ports around the world. Prepositioning minimizes the requirement for strategic lift and saves thousands of sorties of strategic lift during the most time sensitive portion of the force deployment. The Department of the Navy has programmed a buy out of the 13 leased vessels by the end of fiscal year 2006 before their leases expire in fiscal years 2009, 2010, and 2011.

Maritime Prepositioning Force (Future) (MPF (F))

When it becomes operational, the MPF (F) role will expand beyond that of today, and will provide a true seabasing capability. It is envisioned that MPF (F) will provide four new capabilities currently unavailable: (1) Phased at-sea arrival and assembly of units; (2) Selective offload of equipment and cargo; (3) Long-term, seabased sustainment of forces; and (4) At-sea reconstitution and redeployment of the force. The naval services are exploring several new technology areas during the development of Maritime Pre-positioning Force (Future). Currently, the Maritime Prepositioning Force (Future) Program is conducting an analysis of alternatives to support an acquisition decision by the Office of the Secretary of Defense and the program of record is funding one ship in fiscal year 2008 and two in fiscal year 2009.

Blount Island Acquisition

We are committed to undertake the wisest possible course to conserve our real property and, when necessary, to acquire any additional property that is mission critical. The Blount Island facility in Jacksonville, Florida is a national asset that must be acquired to ensure its availability for long-term use. Blount Island's peacetime mission of supporting the Maritime Prepositioning Force is vitally important, while its wartime capability of supporting large-scale logistics sustainment from the continental United States gives it strategic significance. The facility will play a vital role in the National Military Strategy as the site for maintenance operations of the Maritime Prepositioning Force for years to come. The Marine Corps began the acquisition of Blount Island with Phase 1, funded in fiscal year 2000 and fiscal year 2001 to acquire interests in approximately 311 acres of land for the primary purpose of ensuring public safety on parcels adjacent to the leased central management operational area. Phase 2, planned for fiscal year 2004, involves acquisition of the central maintenance operational area consisting of over 1,000 acres. The Phase 1 purchase remains ongoing.

Warfighting—Skill Enhancements

Mine Countermeasures

The proliferation of cheap but effective mines employable in critical waters, beaches, ports, roads, and other key areas precludes us from simply detecting and avoiding them. We have significant capability gaps in shallow water, the surf zone, on the beach, and inland. Navy-Marine Corps programs such as the far-term Assault Breaching System, the Joint Direct Attack Munition (JDAM) Assault Breaching System, the Assault Breacher Vehicle, the Advanced Mine Detector, and the Coastal Battlefield Reconnaissance and Analysis Sensor System are addressing significant

aspects of the capability gap. Continued support is required to close the gaps in our mine countermeasures capability.

Chemical, Biological Defense (CBD)

In regards to our current CBD capabilities, our marines are trained, ready, and equipped to operate in a chemically or biologically contaminated environment. We have sufficient stocks to give three Joint Service Lightweight Integrated Suit Technology (JSLIST) equivalent suits and gas mask canisters to the marines who need them. Our forces are augmented by 14 specially equipped "Fox" vehicles, which are able to detect chemicals in the atmosphere or in the ground. When required, our forces can prevail in a contaminated combat environment. However, mass decontamination of men and equipment remains a significant challenge for our marines and the joint force. It will also be critical to reconstitute our CBD capabilities after hostilities cease in OIF.

Increased Tactical Mobility

The ability to engage the enemy and maneuver with greater speed, range, and depth of battlespace.

MV–22 Osprey—Our Top Aviation Priority

The MV–22 Osprey remains the Marine Corps' number one aviation acquisition priority. While fulfilling the critical Marine Corps medium lift requirement, the MV–22's increased range, speed, payload, and survivability will generate truly transformational tactical and operational capabilities. With the Osprey, Marine Forces operating from the sea will be able to extend their range of maneuver providing an element of strategic surprise while providing a sustainable forcible-entry capability. Ospreys will replace our aging fleets of CH–46E Sea Knight and CH–53D Sea Stallion helicopters—both aircraft have an average age of in excess of 30 years.

Internally Transportable Vehicle (ITV)

A vehicle being developed jointly with US SOCOM, that can be air lifted inside a CH–53 helicopter and MV–22 aircraft. This vehicle will be a high-mobility weapons platform that supports a variety of operations, especially light-strike raids. The secondary purpose of this vehicle is to provide reconnaissance units equal or greater mobility than the maneuver elements they support, thereby enhancing their mission performance and survivability. The speed, agility, and mobility of the ITV will allow the MAGTF commanders to maximize the versatility and range offered by the MV–22 and CH–53 by deploying ground units equipped with light-strike vehicles armed with a heavy or medium machine gun.

Advanced Amphibious Assault Vehicle (AAAV)

In addition to the previously mentioned MV–22, the AAAV is the Marine Corps' only acquisition category 1D program. AAAV will combine never before realized high-speed land and deep water maneuver, day/night fighting capabilities, and active and passive countermeasures including advanced armor and nuclear-biological-chemical protection and a remarkably lethal 30mm turreted gun. The AAAV will exploit the sea as a maneuver plane and seamlessly maneuver from the sea at 25+ knot speeds and ashore to the objective at 45 mph. This vehicle will provide us with the speed, agility, and firepower and combat force protection needed for the next century, and operationally complements the capabilities of the MV–22.

KC–130J

The KC–130J will bring increased capability and mission flexibility to the planning table with its satellite communications system, survivability enhancements, night systems, enhanced rapid ground refueling, and improved aircraft systems. The KC–130J has 21 percent increased speed and 35 percent increased range over current versions of the KC–130. The KC–130J will replace our aging fleet of KC–130Fs, Rs and Ts.

Fires

Supporting the marine on the ground with combat power, when he needs it most. It is all about timing, priorities, and effects on the enemy.

The Marine Corps places great emphasis on the power of close air support (CAS). CAS is more than mere air strikes conducted in close proximity to ground forces. It is an integral part of our combined arms capability. CAS provides the MAGTF commander the ability to maneuver and respond quickly to targets of opportunity, vice mere air strikes conducted in close proximity to ground forces. Because of our familiarity with close air support, we also understand what it cannot do. Surface based, indirect fires, whether from the land or the sea, are irreplaceable when forces are joined in close combat, particularly in the early phases of a seabased operation.

Nothing else is as responsive to the Commander's needs, or as reliable. They are not weather or facility dependent. They are a key component in continuing to extend the reach and lethality of our ground forces. These new ground based systems, and the seabased fires under development by the Navy in combination with STOVL JSF and the upgraded Cobra and Huey helicopter provide the Marine Corps a complete family of integrated sea, air, and land based fires.

Joint Strike Fighter (JSF)

The Joint Strike Fighter is the next-generation strikefighter for the Marine Corps, Air Force, and Navy and will replace the Marine Corps' AV–8B and F/A–18A/C/Ds. The JSF family of aircraft will include a short takeoff and vertical landing (STOVL) variant, a conventional take-off and landing (CTOL) variant, and an aircraft carrier-capable variant. Commonality between the variants will reduce both development and life cycle costs and will result in significant savings when compared to the development of three separate aircraft. The Marine Corps requires that its STOVL variant be able to operate from large-deck amphibious ships, austere sites, and forward operating bases. The STOVL Joint Strike Fighter version will be able to operate from three to five times as many airfields around the world than our existing conventional take-off and landing aircraft. Moreover, because the STOVL variant can operate from both conventional carriers and amphibious assault ship decks, it doubles the number of platforms available for seabased operations. The advantages of a stealthy STOVL strike fighter—capable of taking off from an expeditionary base on land or at sea, flying at supersonic cruise, accomplishing its mission with advanced sensors and weapons, and then returning to its expeditionary site—are dramatic. The STOVL Joint Strike Fighter will provide the reliability, survivability, and lethality that marines will need in the years ahead, and transform the very foundations of naval tactical air power for the 21st century.

High Mobility Artillery Rocket System (HIMARS)

High on our priority list is the capability to marry precision maneuver with precision fires. We require ground based fire support which is lethal, mobile, and with long range. HIMARS fills this need. The HIMARS will provide ground-based, responsive, general support and general support reinforcing indirect fires that accurately engage targets at long range, with high volumes of lethal fire, under all weather conditions and throughout all phases of combat operations ashore. It will fire both precision and area munitions and has a maximum range of 60 kilometers. The Ground Weapon Locating Radar will be introduced into the fleet to protect our forces from our adversaries' counter-battery fires. The Ground Weapon Locating Radar can be used in conjunction with the HIMARS and the Lightweight 155mm howitzer.

Lightweight 155mm (LW 155)

LW 155 towed howitzer is required to replace the M–198 howitzer that is at the end of its service life. This is a joint USMC/U.S. Army system that will meet or exceed all the requirements of the current M198 system while reducing the weight from 16,000 to 9,500 pounds. The maximum range using unassisted projectiles is 15 miles and 18 miles using assisted projectiles.

Naval Surface Fire Support

Expeditionary maneuver warfare places unprecedented requirements for long-range, accurate, timely fires in support of the maneuver force. Systems such as the Extended Range Guided Munition (ERGM) will ensure the continuous availability of surface based fires firing during an expeditionary operation. ERGM is a guided projectile fired from cruisers and destroyers out to a maximum range of 63 nautical miles. Development of land attack missile technologies will provide supersonic surface-to-surface missiles that will have a range far in excess of naval guns. Combined, the systems will provide a highly responsive, accurate, all-weather means of attacking critical targets and providing support to deployed marines beyond the range of naval guns.

The Marine Corps strongly supports the development and fielding of DD(X), armed with two 155mm advanced gun systems and an advanced land attack missile, to fully meet our naval surface fire support requirements. Our ability to wage expeditionary warfare will remain at considerable risk for want of suitable sea-based fire support until DD(X) joins the fleet in strength.

Reestablishment of Air-Naval Gunfire Liaison Companies

We have validated the requirement to reestablish our Air-Naval Gunfire Liaison Companies (ANGLICO). These companies will provide our commanders a liaison capability with foreign area expertise to plan, coordinate, and employ terminal control

of fires in support of joint, combined, and coalition forces. ANGLICO will be reestablished with a company on each coast, and a separate company (-) in Okinawa. The companies on the East and West coasts will have a habitual relationship with the Reserves. Full operational capability is expected by late summer 2004.

Marine Corps—U.S. Special Operations Command (USSOCOM) Initiatives

Today, more than a hundred marines are filling Special Forces billets around the world. In addition to providing the current Chief of Staff to USSOCOM, the Marine Corps provides support to and ensures interoperability with Special Forces through the actions of the SOCOM-Marine Corps Board. One of the initiatives is a marine detachment to conduct special reconnaissance, direct action, coalition support, foreign internal defense, and other special operations missions. They will report to USSOCOM during October 2003, and deploy in the spring of 2004 as augmentation to a Naval Special Warfare Squadron.

Equipping the Marine

New rifle

We are seeking to upgrade our service rifle to better ensure "Every Marine a Rifleman" remains more than an institutional belief. The Modular Weapon System (MWS) consists of the M16A4 service rifle—a newer version of the M16A2 now in service—modified with a military standard 1913 rail adapter system. The rail adapter system and modified hand guards allow for the mounting of various accessories such as a modified M203 grenade launching system, high-intensity flashlights, night-vision devices, scopes, and infra-red laser target designators. We will also purchase a quantity of M4 carbines for personnel who require a lighter, more compact weapon. Use of the MWS will result in a significant improvement in the ability to mount various accessories and will improve the accuracy, target detection, day and night engagement capability, and maintainability of the M16 family of rifles. The M16A4 is in production and we will take delivery of its first weapons in fiscal year 2003. The M4 is undergoing final reliability and endurance tests and will be fielded in selected units in the first quarter of fiscal year 2004.

Marine Corps Combat Utilities and Combat boot

The Marine Corps has recently introduced a new and improved combat utility uniform made of a durable permanent press fabric with a permanent press crease. The combat utilities have a camouflage pattern that is more effective either wet or dry. The Marine Corps issues them in both woodland and desert patterns for readiness. The Marine Corps has also fielded a new Marine Corps combat boot that is designed to be low maintenance and worn with the new combat utilities. Our initial issue stocks must be continually re-vitalized to sustain our new recruits and officers. The new uniforms have been very well received in the fleet and are extremely popular. The demand for both the new utilities and boot has kept supply stocks lower than expected and ultimately not widely available throughout the fleet.

Improved Load Bearing Equipment (ILBE)

The Marine Corps is testing and evaluating commercially available packs to replace its current service pack. The new pack will be designated the improved load bearing equipment (ILBE) pack. Rugged field testing is being conducted in garrison and in actual combat field conditions. Packs will be evaluated against the current field pack the Modular Lightweight Load Carry Equipment (MOLLE) II, down to the fire team level. Final selection is projected for mid-fiscal year 2003 and full rate production to commence in fiscal year 2004.

Command and Control

Exploiting the capabilities offered by long-range aircraft, long-range fires, and operating from a seabase with full connectivity to our joint and coalition partners poses enormous command and control challenges.

Common Aviation Command and Control System (CAC2S)

The CAC2S modernizes our legacy mix of aviation C2 systems, enabling MAGTFs to seamlessly integrate aviation with ground combat operations. CAC2S will condense the applications of six separate aviation combat element (command and control) systems into one combined and coordinated operational system. It will provide a common hardware platform, with similar software, and equipment.

Unit Operations Center (UOC)

The UOC improves command and control coordination for the elements of the MAGTF. The UOC is comprised of Combat Centers and Combat Operation Centers (CoCs), providing a centralized facility to host command and control functionality.

The UOC will create an integrated package with expeditionary shelters, power sourcing, cabling, software integration, local area networking, and processing systems and is scalable to support command echelons for battalion level or above.

Interoperability

Interoperability is the key to improving naval expeditionary command and control effectiveness, especially as we integrate battlespace sensors in our future manned and unmanned aerial, space, sea surface and subsurface, and ground vehicles. The command, control, communication, and computer (C4) end-to-end interoperability of the global information grid will enhance our ability to conduct joint, combined, multi-department, and multi-agency operations through the use of technology, standards, architectures, and tools. These transformational C4 initiatives, in concert with the fielding of a Deployable Joint Command and Control (DJC2) capability, will vastly improve our joint force interoperability.

Reconstitution and Regeneration

The Marine Corps will be faced with many competing requirements as Operation Iraqi Freedom de-escalates and a transitional form of government is installed. These competing priorities are expected to include Reserve Forces returning to demobilize, redeployment of forces required to assume a forward presence mission, ongoing global war on terrorism requirements, preparation for follow-on missions, and returning the Marine Corps to its pre-conflict state of readiness, while transforming the Marine Corps into a greater force than we have today. Our pre-positioned stocks must be cleaned and preserved after extensive use in order to be ready for the next mission. The critical aspect is our ability to fund all that will be required. It is anticipated that our deployment tempo could remain at higher levels than those experienced before the global war on terrorism began, for sometime to come after the hostilities in Iraq have long since ceased.

CONCLUSION

Your marines stand ready to be the "First To Fight." We will continue to be so with whatever is on hand—with older well-maintained equipment or the newest equipment. However, our equipment while well-maintained, is old and aging fast due to the higher usage rates caused by the ongoing war. We are able to defeat our enemies in Afghanistan and Iraq because we were ready when called. Answering the call remains our focus, and our number one mission. We need your help in maintaining our old gear, modernizing where we can, and taking care of our marines and their families.

What you saw in Afghanistan and see in Iraq is just the beginning of what America and the world will see from a fully modernized and transformed Marine Corps. Our marines are ready, our doctrine works, and with the new equipment ready to come on line, you're going to get a Marine Corps that's leaner, more lethal, and even more ready just like you've expected for 227 years. Only then, it will come with a thousand mile reach. We know that we're really just beginning the hard work of the global war on terrorism; the tough targets are in our windshield, not our rear-view mirror. We need your help to be ready for the tough fights ahead. We believe we have proven worthy of your support and ask that you continue to support your Marine Corps as you always have. Thank you for giving me the opportunity to address readiness—an issue critical to marines and our Nation.

Senator ENSIGN. General Schmidt.

STATEMENT OF MAJ. GEN. RANDALL M. SCHMIDT, USAF, ASSISTANT DEPUTY CHIEF OF STAFF, OFFICE OF THE DEPUTY CHIEF OF STAFF FOR AIR AND SPACE OPERATIONS

General SCHMIDT. Good afternoon, Chairman Ensign and Senator Akaka. I too would like to make a brief oral statement and submit a written testimony for the record.

It is my pleasure to be here representing over 700,000 total force members of your Air Force, 55,000 of whom are currently deployed and many of whom are serving in harm's way in close unison with our fellow soldiers, sailors, marines, and coalition comrades as we speak.

Like you, the leadership of the Air Force is focused on continuing to provide our airmen with a blend of the best training, equipment,

and organization possible. Clearly, our asymmetric edge is in our people, our training, and our technology. Every day we make the hard choices to ensure we continue to pursue proper readiness in several key areas:

- In presenting a balanced force, the correct combination of the right faces in the right places with the improved development and organization to be successfully prepared to face our future joint challenges;
- In leveraged integration, building an expeditionary force better capable to plug and play across the spectrum of conflict. To plug and play requires adapting individual legacy systems with clever new ideas or hooking old things together in new ways. This requires us to pursue the common interactive architectures to enable a seamless joint force; and
- In technology, as our adversaries turn to asymmetric strategies and terrorist tactics, we must continue to leverage our lead in space, air, and information technology to both preserve and to forge new asymmetric strengths of our own, whether these advantages are manned, unmanned, airborne, landborne, or spaceborne.

Readiness is a continuous state of preparation to meet our Nation's security challenges and deals with tough issues balanced against available resources. You can be assured that we are engaged and will remain engaged as we work together with our sister Services, our leadership, and our Congress in continuing to forge the most professional and powerful Air Force in the world.

I would be remiss if I did not echo what has been said earlier about the support you have given us. The results of our investments are seen daily in the battle space over Iraq and Afghanistan.

Thank you for the opportunity to provide this statement and I am ready to answer your questions.

[The prepared statement of General Schmidt follows:]

PREPARED STATEMENT BY MAJ. GEN. RANDALL M. SCHMIDT, USAF

Mr. Chairman, members of the subcommittee, thank you for this opportunity to provide you with the status of Air Force readiness. As the Air Force's Assistant Deputy Chief of Staff, Air and Space Operations, I want to thank you for your continued focus on the readiness challenges facing our airmen today. The Air Force is committed to maintaining a ready force while controlling cost growth, modernizing systems, and recapitalizing physical assets.

As we celebrate 100 years of powered flight this year, we are firmly focused on the future of air and space power. We are in the midst of more than a decade of unparalleled and unmatched air and space dominance across the full spectrum of operations—humanitarian to warfighting. We are proud of our record of success but will not rest on our past accomplishments. We have embraced the opportunities afforded by the information revolution and have marshaled the full resources of our service to leverage these technologies in the battlespace. Our airmen have met the challenges of the changed security environment, and they stand ready for the next challenge at home and abroad. Born as an expeditionary service, we remain true to those roots today, presenting our forces and capabilities through our Air and Space Expeditionary Force (AEF) construct.

Your Air Force highlights three air and space core competencies as our service source of strength: developing airmen, technology-to-warfighting, and integrating operations. Together these core competencies form the basis by which we organize, train, and equip our forces as part of our military power to achieve national security objectives.

Developing airmen is the heart of combat capability. A ready force is founded on its people. Developing the competence of our airmen from accessions through retirement (quality), and producing the correct numbers of skill sets (quantity) continues to evolve as our Air and Space Expeditionary Force (AEF) continues to mature. The men and women that comprise our total Air Force—active duty, Guard, and Reserve—are the best America has to offer. They are officers, enlisted, civilians, and contractors from every corner of the country and every walk of life. These world-class airmen are the key ingredients to sustaining our record of success and we are dedicated to recruiting, training, and retaining professional airmen. We can make no greater investment in and have no greater resource than our people. They are our #1 priority.

The Air Force requires sophisticated airmen who are trained to leverage technology and ready to perform in a dynamic environment. They will become our future air and space leaders for the 21st century. This will require targeted investments in the next generation of airmen, from the ground up and throughout their careers. To that end, the Air Force has introduced a coordinated effort to address all aspects of an airman's career development, professional education, and assignments in sum rather than individually. This deliberate force development effort generates policies tailored to achieve Air Force requirements and address the needs of the individual airman throughout his or her career. The Air Force needs both expert specialists and broadly competent generalists; our force development program overhaul provides both opportunities for our airmen.

Comprehensive in scope, our training is doctrinally based and focused on three levels of development: tactical, operational, and strategic. Tactical development focuses on the individual's functional or mission skills. The AF tactical development is what we accomplish best due to our maturity as a service. Getting the correct mix of people and defining job skills are areas for future refinement.

We refer to the next echelon of development as operational. It is at the operational level where our airmen must seamlessly integrate the employment of our joint capabilities. To accomplish this development, AF senior leadership has instituted numerous efforts for the road ahead. For example, the Secretary of the Air Force has initiated a program to modify our professional military education (PME). This plan has many aspects. First, it improves the intermediate service school in summer of 2003 to provide a greater depth of education for the operational level of warfare and more time to prepare students for the next assignment. It also increases advanced academic degree opportunities for officers, with special emphasis in science, engineering, and politico-military affairs. In conjunction with our standardization of the baseline configuration for the Air and Space Operations Centers (AOC), we will standup an AOC Formal Training Unit (FTU) this summer.

At the strategic level, our development focuses on the integration and interaction between other government departments as well as other governments to achieve our national security objectives. The USAF supports establishment of the Joint National Training Center (JNTC). When implemented, JNTC will create a cooperative collection of interoperable training locations, nodes, and exercises that synthesizes the combatant commander and service requirements to improve our training aligned with the way we intend to fight. AF training transformation builds upon past successes and focuses on three training requirements: First, to connect our high-fidelity simulators and training devices to enable warfighters to train together practicing the integration of multiple joint missions to achieve designated operational objectives; second, to enhance existing service interoperability training by synchronizing events at major training centers to produce airmen well versed in joint operations; third, to develop a robust ability to fully measure joint training effectiveness. The accurate assessment of planning and execution will capture lessons learned and provide the cornerstone of our future improvement and innovation. JNTC, as a pillar of DOD training transformation efforts, will support the joint warfighter and ensure our airmen are properly prepared, and developed as competent leaders in confronting the challenges of the 21st century.

Our number one personnel challenge is adapting to the new Air and Space Expeditionary (AEF) steady state, based on a higher tempo of operations and defining the correct total force balance and a shifting skill mix requirement. With a 30 percent reduction in manpower since 1990 and a significant increase in worldwide taskings over that same period, the Air Force has experienced a dramatic jump in operations and personnel tempo. We have discovered that while the number of airmen is adequate, we must adjust the mix of skill sets and the military/civilian/contractor ratio to reflect new realities.

Recognizing the new demands placed on us by the Operations Enduring Freedom (OEF), Noble Eagle (ONE), and Iraqi Freedom (OIF) war on terrorism, we have initiated a comprehensive manpower review to determine relative stress amongst ca-

reer fields and to explore options to alleviate that stress. We have identified nearly 26,000 military or civilian positions that potentially could be converted to civilian or contractor positions, with the goal of redirecting uniformed airmen into those positions that reflect our distinctive capabilities. Furthermore, we have realigned some new recruits into our stressed career fields and are exploring technologies to reduce the workload. We have several human capital initiatives underway to address this skill mix problem, but it will take focus, time, and funding to solve.

Technology-to-warfighting are the tools of combat capability and the second AF core competency. Moving technology from the drawing board to the hands of the warfighter is essential to maintaining a ready force. When America sends its men and women into combat, they deserve the resources and support to guarantee victory over any adversary they face. We are determined to give them those cutting-edge tools.

The Air Force was born out of innovation, and it remains our hallmark today. With a pioneering spirit, we are dedicated to pushing technology's boundaries. We are rapidly applying recent advances to dramatic effect, translating our technological vision into required warfighting requirements seen in our unmanned aerial vehicles (UAVs), integrated architectures, and revolutionary capabilities.

There is no greater example than the Predator UAV. It combines the dynamics of manned aviation with the remote operations techniques of unmanned satellites and information connectivity into a single system capable not only of collecting and disseminating information, but of producing combat effects. In the midst of combat, we accelerated the Predator program to increase production and to retrofit existing airframes with improved capabilities. The use of streaming video during recent operations was critical, and we are adding Hellfire missiles to the entire Predator fleet.

Global Hawk builds on the success of the Predator system by incorporating a robust reachback capability that reduces our forward operating footprint, lowers costs, and improves personnel tempo. This long endurance, multi-role platform gives us the persistence we need to keep the Joint Force Commander (JFC) informed up-to-the-minute.

We are aggressively developing additional unmanned platforms and are exploring their appropriate future role in combat. We are eager to field these systems because of their persistence capability and capabilities in very high-risk missions. They are responsive to dynamic tasking and afford us the ability to swarm the battlespace and overwhelm enemy defenses.

The integration of these unmanned platforms seamlessly into a network of manned, unmanned, and space-based systems will dramatically shorten the find, fix, track, target, engage, and assess (F2T2EA) cycle allowing us to anticipate our enemy's moves and to defeat him on our terms. To that end, we are transitioning from a collection of independent, stovepipe systems to a horizontally integrated system of systems capable of machine-to-machine conversations.

The Multi-Sensor Command and Control Constellation (MC2C) will provide the JFC with real-time, enhanced battlespace awareness and will help alleviate the high stress on our Low Density/High Demand (LD/HD) assets such as the Rivet Joint, AWACS, Global Hawk, JSTARS, and space-based systems. In the future, the Multi-sensor Command and Control Aircraft (MC2A), the E–10A, a new wide-body platform, will complement our existing, independent C^4ISR platforms. It will be a core element of the future Joint Cruise Missile Defense architecture by fielding the Multi-Platform Radar Technology Insertion Program (MP–RTIP) sensor. This next-generation sensor is capable of wide-area surface surveillance and tracking to find, fix, and track ground targets and airborne cruise missiles. Its enhanced Battle Management/Command and Control (BM/C2) will enable dynamic execution against time sensitive targets, dramatically shortening the kill chain.

We are also partnering with the National Reconnaissance Office on an innovative, creative, technology-pushing initiative known as the Transformational Communications Architecture (TCA). TCA will combine upcoming satellite communications systems such as Advanced EHF and Wideband Gapfiller with future technology-leveraging capabilities such as laser communications and internet-based protocols to remove bandwidth and access as constraints on the warfighter.

The Space-Based Radar (SBR) program will give warfighters the ability to survey as well as reconnoiter deep into denied areas. SBR will be part of a larger mix of air, space, and ground-based intelligence, surveillance, reconnaissance (ISR) assets; all of which, integrated together have the potential synergy to revolutionize our capability to find, fix, target, track, engage, and assess.

Because we recognize the Air Force never fights alone, we are coordinating closely with our sister Services to ensure full interoperability of these future acquisitions and to eliminate seams between existing systems.

We are identifying interaction and connectivity requirements of our C2, ISR, and operational programs to integrate properly for joint employment. For example, we are working to integrate AF sensor information with ground units. We are also researching the capability to integrate SIGINT collection from all Services into a common joint working stations.

The F/A–22 Raptor is the cornerstone of the Air Force's ongoing transformation. America needs the F/A–22 for 21st century air dominance. It is the only aircraft capable of countering anti-access threats from Day 1 of any conflict, allowing joint and coalition forces to operate with impunity inside enemy territory. The F/A–22 brings stealth into the daytime for the first time, enabling persistent 24-hour operations. Its revolutionary capabilities are designed to defeat future air defense systems for decades to come. The Air Force will continue executive oversight of the F/A–22 acquisition to ensure program success.

The F–35 Joint Strike Fighter (JSF) also represents a revolutionary leap in technology and will complement the F/A–22. This versatile multi-role fighter is optimized for all-weather, precision air-to-ground operations and provides the persistent force required for around-the-clock operations. With a commitment to affordability, the Air Force is using the "Cost As an Independent Variable" approach to help ensure the JSF is not cost-prohibitive.

Integrating operations is the AF third core competency and primary means to maximize AF capabilities with our sister Services to create the effects, which achieve the joint commander's objectives. The Air Force effectively focuses the power of its people and the strength of its technology into a synergistic whole to generate immediate effects in the battlespace. We are developing effects-based capabilities rather than individual systems. We are exploring and employing innovative operational concepts to maximize our combat capabilities. Integration of effects-based capabilities is the key to success. Success in this new century requires a modern, ready force with the integrated air-space-information systems, infrastructure, and capabilities necessary to achieve the desired effects.

Capabilities-Based Force

Our emerging Air Force Concepts of Operations (AF CONOPs) are lending focus to our continuing transformation. The AF CONOPs provide focus on effects and mission vice threat. Each AF CONOPs describes capability requirements and will transition us from a platform-based garrison force to a capabilities-based expeditionary force. AF CONOPs define how we fight and drives our efforts to identify, prioritize, and define our air and space capabilities. The AF CONOPs are then assessed for system interoperability in order to integrate with other CONOPs, our joint, allied, and coalition forces, and in the case of homeland security, with other government agencies. AF CONOPs helps to define efficiencies, eliminate waste, and prioritize resources for the warfighter. All defined AF CONOPs capabilities are then assessed for risk and reviewed for any program development disconnects and required end-user capabilities.

Recapitalization and Modernization

Dedicated airmen employing innovative concepts are mitigating the impact of old systems and technology. However, aging systems pose a real threat to our continued air dominance. The average Air Force aircraft has about 23 years in service. With some manufactured as early as 1955, our KC–135 fleet averages 42 years in service. We have never dealt with a force this old. Our aging aircraft are vulnerable to myriad problems, including technical surprise, vanishing vendors, and increased operational costs. We have enjoyed a down payment on our recapitalization but require sustained funding to maintain the force capable of supporting the National Security Strategy and JV2020. Eventually, new acquisitions will have to replace these legacy systems. In the interim, we are finding innovative means to keep current systems operational in the near term and are taking advantage of new opportunities to employ old systems in new ways.

Current projections show all three Air Force bombers should be structurally sound for the next four decades. Through our planned bomber modernization programs, we can meet current AF requirements through the foreseeable future. The Air Force is committed to SOF modernization through fielding the CV–22 and air combat modernization through upgrades to precision employment and data link. The approved multi-year procurement of 180 C–17s will support mobility requirements to move 54.5 million ton-miles per day, with six additional bases receiving C–17s starting in fiscal year 2004.(start)

Precision Munitions

With the advent of precision munitions, the Air Force has effectively improved the employment capability from "many sorties for one target" to "one sortie for many

targets." Today, we employ precision weapons as the preferred weapon of choice to maximize our combat capability while limiting the threat of collateral damage in any weather, day or night—they are critical to our success. Our current efforts in OIF are consuming our precision munitions at a high rate and our reconstitution plan will address weapons replenish. The Air Force will increase its production requirement for laser-guided bombs and the Joint Directed Attack Munitions (JDAM).

Budget

Today and tomorrow, our airmen deserve the resources, training, and cutting-edge weaponry to overwhelm our enemy's capabilities. This and next year's budgets look to build on the fiscal year 2002 foundation, to accelerate modernization while maintaining gains in readiness and people. We are investing short-term and long-term across all of our CONOPs capabilities, balancing modifications of existing systems with the development of new systems. Air Force modernization efforts are supporting our transformation goals while continuing to develop and field needed systems, with nearly half of our investment in RDT&E.

The fiscal year 2004 Air Force budget is a peacetime request. Much of the increased OPTEMPO we see today is for wartime operations. The only major wartime costs in this request are for Combat Air Patrols flying over the continental United States. In this peacetime request, we have tried to balance the competing demands of supporting current readiness levels, as we face aging aircraft and personnel challenges, with the necessity of developing and fielding new weapon systems to keep our Air Force relevant today and into the future. If enacted, this request would continue the positive momentum we are making for people, address increased operating costs, fund peacetime flight operations, continue critical modernization programs, and increase funding for infrastructure improvements above our fiscal year 2003 request. Still, there are more things we could do to strengthen our efforts. While we have added funds over fiscal year 2003 levels, much of this is required to cover higher costs such as utilities and increased maintenance and flying operations costs driven by an aging fleet and higher fuel costs. Near term readiness is more than spare parts, and equipment modifications or iron on the ramp—it's the experienced men and women, military, civilians, and contractors who operate and maintain front line warfighting equipment, support equipment, and infrastructure. Most of the funds we have added for maintenance are eaten up by increased costs of aging weapon systems.

The fiscal year 2003 supplemental request for the GWOT and operations in Iraq supports the Department's best aggregate estimate of total defense requirements in this fiscal year. Each Service's portion of the supplemental are not knowable because the nature of OIF is too dynamic to adequated quantify at this time, predominately for personnel and operating costs. Without it, we go broke in our operation and maintenance accounts around 1 June 2003 and 15 July 2003 for military personnel. The expeditious manner that Congress has taken up consideration of this supplemental request will allow us to continue the task at hand—defeating the enemies of peace and freedom.

Readiness

AF readiness trends have been increasing for the past few years; however, recent commitments in Operations Enduring Freedom, Noble Eagle, and now Iraqi Freedom have caused our readiness trends to level off to a current steady state. From 1996 to 1999, readiness rates for our major combat units dropped from 91 percent to a low of 65 percent. Since then, they have climbed and remained at roughly 70 percent. Shortages of personnel, higher tempo, and aging aircraft are keeping readiness below our targeted levels, which is a cause for concern. However, we have been able to hold steady in the face of increased operational demands on our force.

Our aircraft readiness has improved and will continue due to the robust support for spare parts. This is a testament to a dedicated workforce, fleet modernization efforts, and process improvements from depots to the field. In fiscal year 2002, we enjoyed our highest overall readiness rates in 6 years—the largest improvements since the mid-1980s. Sixteen of 20 systems improved mission capable rates, at a time when all of our systems were flying more hours.

In June 2002, the DOD directive 7730.65 established the DOD Readiness Reporting System (DRRS) in accordance with the National Defense Authorization Act of 1999. This directive established a capability-based adaptive, near real-time readiness reporting system. Current AF readiness metrics and supporting data will be captured in the DRRS compatible Enhanced Status of Resource and Training System (ESORTS). The Air Force, in addition to measuring current readiness, is also developing a compatible and Predictive Readiness Assessment System (PRAS) to provide senior leadership with a decision tool to forecast the readiness implications

on the force as it responds to taskings and absorbs changes in key input variables of funding, equipment and logistics, personnel, infrastructure, training, SORTS indicators, and the strategic environment.

Our engine readiness rates have reflected impressive gains as recent investments continued to pay dividends throughout fiscal year 2002. Our U–2s sustained their mission capable rate while flying their most hours since the Gulf War, 35 percent higher than fiscal year 2001. Our Predator fleet posted its best readiness rates ever while averaging almost 200 hours per month. Our C–5s posted their best readiness rates since fiscal year 1996 while flying the most hours since the Gulf War. The B–1 consolidation is paying dividends, as our B–1s posted dramatic gains in readiness, with current rates at historical highs. All of our fighters are experiencing a steady decline in parts cannibalization, which is good. We have made great strides in reducing the number of aircraft in depot for maintenance, putting over 25 percent more aircraft on the ramps for the warfighter since 2000.

Space launch readiness is an area where we are moving forward. Last year was an important year for space launch. Both of our new Evolved Expendable Launch Vehicles (EELV), the Atlas V and the Delta IV, successfully reached orbit on their maiden launches. We are encouraged by their success, but each of our launch providers is suffering due to a downturn in the commercial launch market. Since maintaining two launch providers is critical to assuring access to space for our national security programs, we will continue to grow EELV capability for near-term assured access, while evaluating longer-term alternatives such as the Operationally Responsive Spacelift (ORS) concept.

Of concern, we are at greater risk for losing ground to rising costs of aging systems. This will translate into deferred depot maintenance on engines and aircraft and ultimately affect our readiness. While maintenance readiness challenges remain, we are confident the dramatic gains we experienced last year provide the momentum the Air Force needs for continued improvements.

Our people are ready. We are sustaining our personnel readiness rates in the face of higher OPTEMPO, manning shortages, and reduced training opportunities. Operations Noble Eagle alerts, Enduring Freedom and Iraqi Freedom deployments deplete operational unit capability and the opportunity to train. Fortunately, our pilots are flying adequate hours. Despite uncertainty in taskings and mission profiles, the Air Force fully funded the flying program in fiscal year 2002 and fiscal year 2003 and will continue to fly 100 percent of the flying program. For the past 3 years, the Air Force has executed its budgeted O&M flying hours without requesting additional funding for contingency flying hours. Our airmen are gaining real-world experience you cannot create in a training environment. Today, over 70 percent of our rated aircrews are combat experienced!

However, many of our aircrew instructors have been pulled to fulfill priority operational requirements, making it difficult to train new aircrew to relieve the combat stress. This is especially true of our LD/HD assets which have been working at "surge" capacity. We recognize that some of the most significant detractors to unit readiness are lengthy, frequent deployments. Once airmen return from deployments they require up to a 90-day reconstitution period, primarily for personnel training. Maintaining our AEF rotation schedule helps stability and predictability, but most of our stressed career fields are exceeding the 90-day goal. While the Air Force has taken steps to mitigate the impact of lost training, sustained operations will remain a challenge. As long as the current OPTEMPO persists, we expect Air Force training to remain at current levels, if not decline, as training currencies and continuation training are harder to achieve.

Retention

We have found our high operations tempo and uneven workload are major determinants in an airman's decision to leave the Air Force. It was difficult to accurately determine last year's retention rates due to Air Force implementation of stop loss. Nonetheless, we will continue to use an array of funding tools, to include bonuses, mentoring, and re-recruiting efforts to sustain our record of retention success. Air Force quality of life initiatives will ensure a suitable standard of living for our world-class airmen and are essential retention tools. While our increased accession levels and improved retention have created a unique over strength problem, we remain committed meeting total end strength goals.

Retention of pilots, navigators, and air battle managers is of major concern. Though pilot retention is the highest in 4 years, we still suffer from a long-term shortage of pilots. We have increased the output of our pilot training courses, but training new pilots does not immediately solve the problem—you cannot replace the lost experience. The resulting experience shortage has detrimental effects on force

management leaving us with undermanned staffs, less experienced formal flying training instructors, stressed test programs, and less mentoring opportunities.

Our flexible Aviation Continuation Pay (ACP) program is an important part of our broad-based plan to retain pilots, and we extended the program this year to include navigators and air battle managers. Encouragingly, the ACP long-term initial take rate rose sharply to 49 percent in fiscal year 2002 from 30 percent in fiscal year 2001.

Retention for high tech specialties is also a concern as the pull from industry is strong. This draw is exacerbated by long, frequent deployments in many of our high tech career fields. In response, the Air Force this year introduced the critical skills retention bonus for highly stressed and highly skilled career fields.

The Air Force has reduced its civilian workforce by nearly 100,000 since 1990, leaving only 10 percent of today's Air Force civilians with less than 10 years in service and over 40 percent eligible to retire in 5 years. We must revitalize our professional occupations with new hires while minimizing the impact on the existing civilian employees.

Recent pay increases are making a difference and have reminded our airmen that we value their service. Targeted pay increases that reflect the realities of the marketplace are critical to meeting our toughest retention challenges. We must retain the flexibility to put more pay where it is needed while ensuring that entry-level pay is very competitive.

Another concern is mid-grade officer and enlisted manning levels. We have a skill level mismatch: too many new apprentices and not enough experienced journeymen. The resulting imbalance means higher expectations for our less experienced airmen and greater stresses on the remaining mid-level leaders, managers, and trainers. We cannot afford to lose this experience; it will translate into lower readiness.

While there is clearly room for improvement, we are pleased with our recent gains in equipment readiness and are proud to have maintained overall steady state readiness despite the increased operational challenge.

Reconstituting of our expeditionary forces following Operation Iraqi Freedom will be the key to our future Air Force readiness capability. The Air Force, along with our sister Services are working closely to create the most effective way to reconstitute our forces without compromising our military capabilities and readiness. The Air Force is focusing its reconstitution effort towards a few main goals. First, is to establish a total force steady state battle-rhythm. This will involve the demobilization of our Air National Guard and AF Reserve Forces, the cessation of our current 'stop-loss' programs, and re-deployment of our Active-Duty Forces to resume our AEF scheduling cycle. Second, we will need to replenish our weapons expenditures with the correct quantities and qualitative mix of current and future weapons. A final major goal is to replenish our consumed war reserve materials (WRM). The AF reconstitution effort is only a part of whole military reconstitution effort and the proper implementation will determine the quality of our future force capabilities.

Future Total Force

Like never before in the history of the Air Force, we are a total force. Mission success demands the interdependence of Active Duty, Air Reserve component (ARC), civilian workforce, and contractors. ARC forces are essential to our success; they comprise nearly half of the forces assigned to AEFs and contribute the majority of forces in some mission areas, such as global strike and homeland security. We have begun to consolidate, when practicable, two or more components into a single wing with a single commander. We stood up our first "blended" wing, the 116th Air Control Wing, in October at Robins AFB, GA. This and future blended wings will leverage each component's comparative strengths to increase efficiencies, synergies, and capabilities. We are also placing Reserve airmen directly into Active-Duty flying organizations, giving us a new degree of experience and stability in these units.

Under our new steady state, the ARC will continue to assume more and more of an active duty role. As such, they need compensation, benefits, and entitlements commensurate with these increased responsibilities. We are working to facilitate seamless movement between the components by minimizing appointment and accounting burdens. We are exploring options to relieve surge stressors such as the use of civilian contractors. We are committed to using ARC volunteers versus mobilization whenever possible to allow the units and members the flexibility they need.

We are also closely monitoring ARC recruitment. Historically the ANG and AFRC gain nearly 25 percent of separating Active-Duty members. Continued high OPTEMPO may threaten this source of recruiting and force the ARC to explore alternative options to make up the loss.

Summary

The greatest testament to Air Force readiness is our continued success in ongoing operations to protect America from its enemies. We have the finest airmen in the world and are the most respected Air Force in history. We enjoy the confidence of the American people and are committed to maintaining their trust. This record of success and promising future would not be possible without your support. For that, you have our deepest thanks. Our recruiting and retention success, dramatically improved maintenance rates, infrastructure improvements, and weapon system modernization are a direct result of your recent investments. We are especially grateful for your continued support for pay raises for our people. You share our conviction that adequate compensation is not a luxury but a necessity. Together, we have laid the foundation for continued dramatic improvements and further transformation. Let me assure you, your United States Air Force stands ready, whenever and wherever we are called.

Senator ENSIGN. We thank all of you for your testimony.

Staff has written a beautiful question here. I am going to try to summarize it for you. It basically has to do with comparing this with some kind of a sporting event. You train for the sporting event and then you have the sporting event and then you have afterward, and all of this in relation to readiness for the next sporting event.

The training has been remarkable up to this point. A lot of these people are going to need rest. During a game or during the operation, whether it is Afghanistan or whether it is what we have going on in Iraq right now, to some degree it is just like during a game, that sort of training, but it is executing your training. You are keeping your skills up, but other skills probably are diminishing, and that you are not practicing some fundamentals that you do when you are out there.

So the question is, if each one of you could just take a minute or so to discuss that and how you are going to, as part of reconstitution, get your forces back ready to go. God forbid we have to be in another conflict someplace, but that is what we have to be ready to do.

General CODY. Thank you, Senator. Our staffs hand us stuff too, but they did not hand me that one.

Senator ENSIGN. They might have handed you the one that I got.

General CODY. We fully appreciate the fact that we are right now in a major fight. As we speak, we are in Kosovo, the Balkans, and Afghanistan. What we have learned from those deployments as well as what we learned the last war in Iraq was that we have to maintain the crown jewels of the Army training base and that is our combat training centers.

I just reviewed the training at the National Training Center, the Joint Readiness Training Center, as well as the Combat Maneuver Training Center in Germany. We are maintaining those rotations. It is hard to do, but we must have the force that is not in combat. So we are maintaining those rotations. We are adapting them based upon some quick lessons learned that we are seeing during the fight.

We are a full-spectrum force and you are correct, as soon as we bring this force back we have to rest them, reconstitute them, but turn right around and put them back in, because we have to make sure they are well-trained on the full spectrum of operations. So we have plans to do all that.

I will give you one vignette. Third Brigade Combat Team, 101st Airborne Division, the same brigade that went into the Shalikot Valley some 8 months ago, that brigade is now back in Iraq. When they came back to Fort Campbell and we gave them the time off and started going, we put them right back into a training center and now they are back in the fight.

So those are our plans. But the reconstitution dollars are not just for our weapons systems, because our most important weapon systems are our soldiers and their training and we have plans to do that.

Senator ENSIGN. Thank you.

Admiral GREEN. Senator, I think it is a terrific question that really goes to the very core of what we are about and what we do. I think from our perspective one of the big differences between what we do and what a sporting team might be involved in is that, first of all, we do not know what the schedule is going to be, when our next game is going to come up, and we are not quite sure whether it is going to be hockey or football or baseball or tennis.

Quite frankly, the Abraham Lincoln Battle Group, which thought it was on its way home from a routine scheduled deployment earlier this year, found that we had other work for them to do and in fact is on their way home right now.

What we are compelled to do as we go through each of our engagements, campaigns, or wars is to ensure that we just do not go back to the old pattern of training and development. We need to ensure that we incorporate the lessons learned from not just our own experience, but particularly within the context of this joint force that is winning the war right now. We need to ensure that, while we reconstitute, we are also recapitalizing and we are transforming our force.

As Dr. Mayberry said, I think very well, putting all of that together and making the right decisions is the only approach that makes sense to us. We are deeply engaged, as are the other Services and as are the Office of the Secretary of Defense and the Joint Staff, in ensuring that we are doing the right thing in this reconstitution program and approach that we are taking.

I am very confident that at the end of the day we are going to be ready, whatever that game is and whatever the schedule calls on us to do.

Senator ENSIGN. Thank you.

General BEDARD. Senator, I am a former college wrestling coach and I could well talk about——

Senator ENSIGN. You do not look like a wrestler. [Laughter.]

General BEDARD. But, sir, I will tell you we have been actively involved in, as we take a look at the reconstitution. We look at the aspect of ensuring the readiness of those forces we have that are not committed today and how do we stand up and ensure that training is an integral part of everything we do as we bring the force back.

Dr. Mayberry, although, mentioned it briefly. We have a large training center at Twenty-Nine Palms, California. We will not only bring forces back and start that train up very rapidly, but we have also used that for forces that we are continuing to deploy and are being prepared to deploy over there.

I think the aspect of the lessons learned—we have had a team on the ground since almost the time that we started to deploy forces over there, and providing that almost daily feedback of lessons that are being learned so they can be incorporated in the remainder of the force is a very critical part of what we do as we prepare for the future.

Senator ENSIGN. Thank you.

General Schmidt, when you are addressing, I was just out at Nellis a couple of weeks ago and they were talking about—and I probably should have started before I asked the question, but General Wood out there was saying they have called off several during these last couple of months, several of the planned operations, training operations that they had going on. So how does that all fit in?

General SCHMIDT. Sir, that is a good additive to what I think Team Air Force needs to do to reconstitute. Obviously, the devil is in the details. But in some of the more obvious things, such as before we get in another game, obviously we want to reload our guns, make sure we have the right kind of guns and the right kind of ammunition. Obviously, we want to reestablish our training cycle and we want to make sure we train for the next war, not the last war, so that we are not looking backwards, we are looking forwards.

But we do want to get our battle rhythm back and that is probably the biggest thing. If you have a team and you just played a big game and you have another one coming up, obviously you want to get your primary players back in shape and you want to reestablish your bench. I would probably focus on a couple things that are additive to what my colleagues have already said.

We do want to get our bench repositioned, the Guard and Reserve for the Air Force. They are on mobilized orders right now. The Air Force normally uses large amounts of our Guard and Reserve, but we use them in a voluntary capacity. It does not take very long to call them up and it does not take very much to spin them up to combat-ready status. So stop loss and demobilization, it is very important to us that we get our bench reestablished.

But the heart and soul of what the Air Force needs to do, because our deployable population within our Air Force population is a little over 200,000 people divided into 10 relatively equal Air Expeditionary Forces—and we know the amount of those forces that can be out any time sustained 24–7 indefinitely. We also know that when we go above that level that we go into a declining mode as far as readiness. We also know that at a certain level we begin to break.

We want to get back down to the level where we can sustain operations, and that is at about 20 percent of our deployable force at any one time, in increments of about 60 to 90 days, are out there around the world. That would be the number one priority, reestablish that battle rhythm for our Air Expeditionary Forces.

At Nellis, I am sorry, sir, to answer the rest of your question, what General Wood was referring to are our training exercises. Those assets, those people, and those aircraft, the iron, they are forward. Now, they are getting some training out there, but not against a near-peer adversary.

Senator ENSIGN. That was the point I was making. By the way, just one comment. The British were telling us that they have 60 percent of their force deployed right now, so I guess they have some big challenges ahead of them as well.

Senator Akaka.

Senator AKAKA. Thank you very much, Mr. Chairman.

Generals, Admiral, in my opening statement I alluded to a disconnect between current operations and how we here in Congress do budgeting. I know that each of your Services has been cash-flowing funds to pay for our many ongoing missions. Hopefully, we will approve a final supplemental bill shortly that will restore some of those funds.

But I wanted to ask each of you specifically about the readiness impact of doing business in this way. My first question is whether the Services in your view tend to get fully paid back for what they pay out once supplemental funds are approved? If not, what impact does this have on readiness?

My second question is about opportunity costs. Are there certain things that you put off because of this cash flowing that can never be bought back, as it were, even if the money does get restored later? If so, can you give me some examples and tell me what impact you think those loss opportunities have? General Cody?

General CODY. Thank you, Senator, for that question. First off, there is a readiness impact to the operational tempo and deployment tempo that we have had on our forces, not just for Operation Iraqi Freedom, but for Afghanistan as well.

Also, for the Army, if you remember, we started out with just a battalion task force in Kuwait after the war and we kept ramping that up, so now we are rotating a brigade. So over time we have had a lot more what I would call deployed tempo and operational tempo on heavy systems in probably the worst conditions you would want to put them in, and that has taken a wear and tear on those systems.

The question about cash flowing. We have cash flowed in the Army about $2 billion out of our 2003 accounts, and with the supplemental coming it will prevent us from stopping operations in May. We run out of money at the end of May. Will we get fully paid back? This is the first time I have gone through it, Senator. I will see.

I do know that we have a very solid tracking system with OSD on all the preparatory tasks that they approved, that General Franks had asked for, and there was a very strict regimen in the auditing of what we cash flowed, make sure it was all approved and everything else. We will just have to wait and see when the dollars cash flow down.

In terms of opportunity costs, we were very careful this year to make sure that we did not lose the opportunity to field the Stryker Brigade. So all the decisions we made to cash flow, the Stryker Brigade is still on target to be certified in May, and we did not break any programs yet. But the timely receipt of the supplemental in terms of dollar for dollar will ensure us that those things you just mentioned will stay on track.

Senator AKAKA. Admiral.

Admiral GREEN. Thank you for your questions, Senator. Our experience is similar to that of the Army. We have been compelled to forward some cash from the latter part of the year in order to operate in the light of the current contingency and are counting on the supplemental to allow us to continue operations. Should we not receive that supplemental, we will be compelled to cease operations in June.

That said, we have been very well-supported in our readiness accounts this year and that comes on top of a couple of very good years for readiness based on the wisdom of this subcommittee and the great support of the Senate and the House as well. We watch that carefully. We cannot predict what contingencies we might be compelled to answer, but that is why we have this relationship, after all.

In terms of opportunity costs, that will be driven, I suspect, in terms of timing and how quickly we can move to solve whatever the questions are with regard to being able to sustain the operations. But at this point we have great optimism that we are going to be able to continue and get the job done as you expect and require of us.

Senator AKAKA. General Bedard.

General BEDARD. Sir, in terms of cash flow, based on requirements and those things to ensure the capability of the force, we have gone in and probably spent a little over a billion dollars in various programs. We certainly, as I said in my opening remarks, are very much looking forward to the supplemental both in terms of amount and timeliness of it.

I would hope that those dollars that we have spent in the war effort are refunded to the Service. If not, just as General Cody said, we have been very careful to ensure that we have not broken any of our programs in the cash flow business. But we have taken some risks in maintenance and a couple of other areas, which we hope that we will be able to rebuild rapidly as we get the supplemental moneys.

Senator AKAKA. General Schmidt.

General SCHMIDT. Senator, like my colleagues, our crystal ball when we put the budget together for 2004 did not include a lot of things that are now occurring, such as Operation Noble Eagle, where we are over the homeland, where we fly at levels varying from level 3 to level 5, which means the difference between having 15 or 16 fighters on a call to support that operation up to where it is today with about 68 or so, not to mention the tankers, the C–130 airlift, and the early warning aircraft. That is quite expensive and it has taken its toll on the Air National Guard primarily.

The global war on terrorism and operations in Iraq are represented. We are not looking for a replacement necessarily approach to what we get from the supplemental. It is the cost of war. Like my colleagues, we do appreciate that. We do need it. We have taken risk in numerous areas, and we appreciate your support.

Senator AKAKA. Thank you, Mr. Chairman.

Senator ENSIGN. I believe that the end of Hussein's tyranny in southwest Asia will have an impact of historical proportions, I think that all of us feel, and profound implications, especially on that region, in terms of stability. What are your thoughts of the im-

plications of a post-Saddam Middle East basically as far as stability and the rest of it, looking at your crystal balls?

General CODY. I will go first, I guess, sir, because no one else will pipe up on that one. Not being a policy guy, I think from what I have seen, one, we cannot underestimate——

Senator ENSIGN. I am not just asking policywise, by the way. I am asking you to take a guess what the potential military implications, stability are. You all are in charge of our armed services to go and win wars, to keep the peace, sometimes humanitarian aid and all that. So you have to make judgments what you think is going to be out there to have to respond to, and that is really more the line of the question.

General CODY. Thanks for reframing it for me, sir. That makes it a lot easier. The ice is a little thicker on that end of the pond.

I think that for the Army we are looking at some sizable footprint post-hostilities and that footprint will be determined by General Franks, General McKiernan, as well as their staffs. It will depend upon a level of stability that is in that country, as well as the assessment of the level of stability on those bordering countries, and also the amount and how quickly we can secure the WMD sites and the sensitive site exploitations.

That takes boots on the ground. That is a large country, a little bit larger than California, and I do not know how long that will last. The Department, as well as OSD, is looking at several options about how large that force will be. What we are doing in the Army is looking at each one of those courses of actions and trying to set up a rotation that will work with those types of boots on the ground numbers as well as get the reconstitution of the other parts of the force so that we will be ready for the next contingency.

It is a little premature for me to even harbor whether it is going to be two divisions, one division, one brigade or whatever, because General Franks and his combatant commanders have not come back in and said what the numbers are. It will not be measured just in combat divisions or combat brigades. A lot of the post-phase 4, post-hostility operations, will be in the combat service support arena and civil affairs and psychological operations (PSYOPS) arena, and those are small numbers in terms of formations, but usually those are our high demand, low density outfits, and that is where we are watching it very carefully.

Senator ENSIGN. Part of the other question is, for the rest of you, and if you want to take a stab at it do. If you want to avoid it I do not mind you avoiding it. As I am looking out there and I am one of the other tyrants in some of these other countries, I guess you have to look into their mindset and, as quickly and as overwhelmingly as you all moved through Iraq, if I am a Syria or a North Korea, certainly that is part of what I am talking about implication-wise as well, what does that do?

Part of this is a guess. Some of these are going to be bad guesses, some are good guesses. If you want to take a stab at it, go right ahead.

Admiral GREEN. Yes, sir. I was never very good at dodgeball as a kid, so let me jump right into this. It is our expectation, and I think yours as well, that as we go through the process of reconstitution, this question will be central to not just the way that we

reconstitute, but the way we position our forces, which will drive other issues as well.

Our hope, of course, is that upon completion of this campaign that the environment will be much improved in that part of the world. That said, we, the joint force, are compelled to ensure that we have the forces in theater that can persuade those who might wish us ill and might wish to take advantage of a potentially unstable situation that that is not in their best interests and that we are ready to do whatever is needed to defend United States' interests should they make that miscalculation.

There are other regions of the world as well that will require our presence, and we are all global Services. We have the ability to move quickly, to carry out campaigns if necessary, but to assure our friends and allies and to deter those who would wish us ill. That is exactly, in fact, at the very core, the center, of our considerations now as we look at the post-war, the post-Operation Iraqi Freedom world.

General BEDARD. Sir, without repeating what has already been said, I think first of all as we take a look at Iraq itself probably one of the most dangerous times is when we transition from conflict to stability operations. I think ensuring that we have the right force and the right organizations in the theater to do that are critical.

I think this is a very clear wake-up call to Syria, Iran, North Korea. Which way they decide to go based on what they have seen and so on probably remains to be seen, but there certainly is a very clear blueprint to them of what can happen.

I would also say and echo Admiral Green that being out there and being forward deployed is a tremendous deterrence in itself, and I think we need to continue to do that probably in a greater effort in the future. Part of my rationale for that, I think we are going to squirt a lot of terrorism out to a lot of different parts of the world that are probably going to leave from where they are at right now. Those that have been harbored in Iraq or in other countries in that part of the region, we will probably see them in greater numbers and quantities throughout the world in other places, and that I think will be the challenge for us and for our forces.

General SCHMIDT. Mr. Chairman, I think—and I agree with General Bedard—as we look around at the landscape post-Saddam, there are still a few standing large military forces, to include North Korea, that will be looked at for the kind of strategies that we have used traditionally. But I also think that a large piece of the remaining threat out there is more probably a stateless, uniformless, do-or-die ideologist.

We are now adapting our capabilities using technology and other things to deal with this. Our intelligence, surveillance, reconnaissance investments are adapting quickly and we are showing that, while the Services do have in a smaller context our special operators, I think we will spend a lot more resources and investment in building their capabilities and maybe even their size in proportion to the rest of the Service.

Our ability to find, fix, and target that kind of enemy and maybe kill that kind of enemy is going to get called on more and more, I think, in the future. Our force structure, which is people, equip-

ment, and our training, would be more and more tailored I think in the future to do that.

Senator ENSIGN. Thank you all.

My time is up.

Senator AKAKA. Generals and Admiral, Dr. Mayberry testified during the first panel about training transformation and the Joint National Training Capability, and there is no question that future readiness will certainly have a capital "J" on it. I am pleased to see that DOD is focusing a lot of attention on improving joint training in particular. But I wonder also about where the line is between jointness and allowing the military Services to fulfill their Title 10 responsibilities to organize, train, and equip their own forces.

Can each of you comment briefly on your perspectives on this issue and even where you think the line is and, if it is, then why is it? General Cody?

General CODY. Yes, sir. We have talked about this in several of the meetings that we have had with Dr. Mayberry and all of us have been part of the Joint National Training Center concept and training transformation. We are the greatest military power in the world today because we have the best Navy, we have the best Marine Corps, we have the best Air Force, we have the best Army and Coast Guard, and we do not want to sacrifice that for a higher level of joint piece.

What we are going to do with the training transformation is ensure that we do not jeopardize the core competencies of each one of our Services. What we bring to the table is five different ways for an enemy to die and we have to synchronize that, and I think that will be the context and how you will see the joint readiness and the Joint National Training Center brought to bear.

We see it—I will give you an example. The National Training Center brigade combat teams. You can wrap on top of those brigade combat teams the joint piece of it so that the standing joint task force headquarters knows how to orchestrate an Army brigade, a MEF, Marine Expeditionary Force, Navy air power, air power from the Air Force, and synchronize all of that in a joint construct and still not jeopardize that brigade on the ground or that marine battalion on the ground or the fighter piece.

That means we have to do some changes to the enemy set we put at our training centers, we have to make some changes to some of the scenarios so we can get all those parts and pieces in there. But we are not going to sacrifice the core competencies of our different Services to do it.

Senator AKAKA. Admiral.

Admiral GREEN. Thank you, Senator. In fact, from an operator's perspective that is the big question for us. There was a time when we might have defined the cut line being somewhere at about the unit level and I think that no longer pertains, for many of the same reasons that General Cody just described. When we look at mission-essential task lists, we look at the required operational capabilities for units and for formations of units and combinations of joint units in particular, we need to ensure that not only the equipment and not only the unit training, but the combined and joint training satisfies the requirements of the combatant commanders.

They are the ones who really define the requirement on us and under the guidance of the commander of the Joint Forces Command and the Services themselves we are pushing forward to do just exactly what you suggest and require of us.

Speaking as someone who is a member of a Service that has been a joint Service ever since 1775 along with the Marine Corps, this is central to our combat effectiveness and to what we give the country. There is not a fight that I can imagine today that is not a joint fight. There is training that has to follow that model as well, and that is the direction we are going within the Navy through the training resource strategy, but also in continuation and in deepening and broadening the joint task force exercises and the other new exercises that are coming up with the other Services as well.

I think you are absolutely on the mark and we get that message very clearly.

Senator AKAKA. General Bedard.

General BEDARD. Senator, I think first and foremost what each Service probably best contributes to the joint fight is bringing their own competencies of their Services to a level that can be used in the joint effort. From a standpoint of the Marine Corps, I guess we are somewhat unique in that our basic organization of the marine air-ground task force with its aviation and maneuver and a command element and logistics and operating from naval ships gives us a very unique joint perspective at a very early age in our careers in how our force is organized.

But I think too often there is a bill put around our necks that says we are not joint enough. I will tell you, I think, and my colleagues sitting at this table today would agree, the level and degree of jointness that goes on every day, not just over in Iraq, although that is certainly a great testimony to what we do, the training level of jointness has only increased over the last several years in my opinion, and we will continue to make that effort to ensure that we understand how to operate on the battlefield together as a joint force.

Senator AKAKA. General Schmidt.

General SCHMIDT. At the risk of sounding like a parrot that I agree with my colleagues, I do. The core competency the Services have is gained through the training that we do within our own Service, and then we bring that capability to the joint fight. I think the Joint National Training Capability is additive to that.

I think it is a perfect opportunity to horizontally integrate the best of what we bring, and if those systems that we produce, procure, and implement among the Services do not work in our training environment, they are not going to work in our combat environment. Those habit patterns, those reflexes that we develop in the training environment, need to be automatic in the combat environment.

The last comment I think I would add to this conversation is that the future of training really is also migrating to what we call a distributed training. It is not all geographically located in the same place. The concept that we all come to the same range, pound the same dirt, talk on the same line of sight communication systems, is not there any more.

This Joint National Training Capability offers the opportunity to integrate those systems that allow the fighter pilot in South Carolina to work the same fight as the Army in California or the Navy in the Gulf of Mexico. That is the same fight virtually. The training derived from that for everyone to be involved in a large scale is almost inestimable.

Senator AKAKA. Thank you, Mr. Chairman.

Senator ENSIGN. Thank you.

Unfortunately, I have been notified I had something that started at 4 o'clock. We are still working on this budget thing. So I appreciate all of you. I do have other questions and I am sure you do, Senator Akaka, that we will have to submit for the record.

Just in conclusion, I want to thank all of you for your great testimony today. We are really looking forward to working with you on this whole reauthorization bill and providing you what you need to make sure to continue to provide those people who are on the front lines what they need.

I also want to compliment the Services for breaking the whole idea of turf battles. It has been commonly known that each Service takes so much pride in what they do that the idea of this joint training 20 years ago was really almost a foreign concept. I want to compliment you. Part of it out of necessity, but it seems to be that the Services—and I am hearing this all the way down, up and down through the Services, that it is being embraced. That is really, that is a compliment to each and every one of you, because it is absolutely critical that we do it.

It becomes obvious in our operations, but it does not mean that it would be embraced as well as it is being embraced. I would compliment you and encourage you to keep that up, because I think the more that you embrace that while maintaining your core competencies, the better off our military is going to be in the future.

Once again, thanks, Senator Akaka. We have had five terrific hearings now and I think that it will go a long way toward our ability to get you a good markup and provide you what you need. So thank you, each one of you, for being here today.

This hearing is concluded.

[Questions for the record with answers supplied follow:]

QUESTIONS SUBMITTED BY SENATOR DANIEL K. AKAKA

TROOP DEPLOYMENT

1. Senator AKAKA. General Schwartz, since we started deploying large numbers of forces to the Persian Gulf, there have been occasional articles in the press about "hiccups" in the mobilization and deployment process. While it's generally acknowledged that things have gone much more smoothly this time than they did during the Gulf War, there appear to be some challenges that remain. Could you give your take on the mobilization and deployment process for Operation Iraqi Freedom thus far? What has gone well, and what, in your view, needs improvement?

General SCHWARTZ. Overall, the mobilization and deployment processes for OIF has been very successful to date. We have been effective in providing General Franks with the right forces in the right place at the right time. The Department of Defense (DOD) is currently compiling lessons learned from OIF and developing recommendations to improve our processes for mobilizing and deploying forces. In addition, we intend to conduct a study based on current and anticipated events in the global war on terrorism to determine if we have the correct mix between Active and Reserve Forces.

One area that we are currently evaluating is the mobilization time period. We are attempting to balance the needs of the combatant commander for rapidly deployable

forces versus the need for Services to train, equip, and prepare Reserve Forces for deployment. The Reserve component is a major contributor to OIF forces in the areas of combat support and combat service support. DOD instruction recommends 30 days between receipt of mobilization orders and the requirement to report for mobilization, and providing the full 30-day time period remains the intent of DOD. For OIF, reservists averaged from 10 to 15 days between receipt of mobilization orders and actually reporting for mobilization. Our goal is to establish procedures that will increase the deployment readiness of the Reserve Force and reduce the time between a combatant commander's request for forces and deployment of those forces.

With regards to deployment, the request for forces/deployment order process we are using for OIF allows the Secretary of Defense to meter the force flow. This approach provides a more flexible response to the combatant commander's force requests and ensures excess forces are not deployed. This approach also ensures we have as many forces as possible available for other potential contingencies and reduces the costs of the operation by avoiding unnecessary deployments. As we work through the lessons learned, we will seek to reengineer the current joint deployment process to streamline and to increase responsiveness to meet combatant commander requirements.

2. Senator AKAKA. General Schwartz, how well does the fiscal year 2004 budget request support any improvements that are necessary?

General SCHWARTZ. The fiscal year 2004 budget request does not include funding estimates for mobilization and demobilization improvements based on Operation Iraqi Freedom. Future budget requests may address improvements to the mobilization and deployment process as the Department continues to study lessons learned to create more agile and responsive processes.

HELICOPTER MAINTENANCE

3. Senator AKAKA. General Cody and General Bedard, some of the media coverage in Iraq has talked about the challenges that the very fine dust in that region poses for our rotary wing aircraft in particular. Certainly it makes landings very hazardous. How difficult is it to maintain our helicopters there now, and how hard will it be for us to restore our helicopters to good condition once they return?

General CODY. Helicopter operations in a desert environment are a tremendous challenge, both operationally and logistically. Operation Iraqi Freedom has proven to be no exception.

Operationally, our pilots experience "brown-outs" during nearly every takeoff and landing. A "brown-out" is when a cloud of dust or fine sand, stirred up by the helicopter's rotor wash, becomes so thick that it obscures the pilots' vision. When pilots lose visibility during a takeoff or landing, they may become disoriented and inadvertently begin to drift in a direction that they had not intended. These 'brown-outs' have resulted in at least seven significantly damaged aircraft. A flight stabilization system is available to mitigate this risk to our aircraft and crews. The system uses Global Positioning Satellite signals and an internal display to improve low visibility situational awareness.

The extremely fine sand in the region has also significantly impacted the maintenance and logistical support of our aircraft. The sand erodes rotor blades, clogs and unduly wears engines, pits our windscreens, clogs filters, causes premature bearing failure, intrudes into and chafes wire bundles, and a host of other problems. Not surprisingly, we have seen a tremendous increase in our consumption of engines, blades, and bearings. While it hasn't been a significant issue yet, the extreme temperatures of the region will also adversely impact our aircraft engine performance; limiting operational loads, range, and maneuverability.

We do anticipate a large reconstitution effort, for both air combat and combat support systems. Our primary objective will be to return our fleets to a pre-war condition to ensure readiness to meet future missions. In addition to the extensive cleaning and repair of deployed systems, the effort will include the acquisition of new systems to replace those lost in combat and accidents. Where it is efficient to do so, we may incorporate some of our recapitalization efforts with the reconstitution. We will have to be extremely careful to synchronize this effort in such a way that we continue to support the Army's ongoing missions; peace keeping, humanitarian, stability and support, and global war on terrorism operations, as well as support home station training requirements and Army transformation. This may mean we have to conduct some of our reconstitution efforts forward in the theaters of operation.

Currently, the Army Staff, the Army Material Command, Program Executive Office-Aviation, and the Major Commands are conducting a detailed mission analysis to determine the full requirement and to develop a coordinated, synchronized strategy that balances the reconstitution workload across the full spectrum of the Army's industrial base capability. The Army is reviewing the full capability of the sustainment base to include, organic depots, installation Directorate's for Logistics and the private sector industrial base. We anticipate the private sector, in partnership with our organic base, to conduct a significant amount of work, within the limits imposed by United States Code Title 10, Sections 2464 and 2466. Additionally, our parts suppliers, both manufacturers and overhaul facilities, will be called on to increase production to support this reconstitution effort.

General BEDARD. The impact on aircraft engines particularly the T–64 has resulted in engine changes at a rate of twice the normal non-deployed rate. Failures are due primarily to leaking/inadequate Engine Air Particle Separators (EAPS) and EAPS seals. The purpose of the EAPS is to filter out and discharge overboard all particulate matter in the air stream. The inability of the EAPS to effectively filter out fine sand while operating in austere desert sites results in excessive wear on the engines, resulting in reduced power, and early removal. Current availability of engines is adequate, but accelerated engine removals negatively impacted both the organizational and intermediate level maintenance departments' ability to reconstitute engine pools. Additionally, the accelerated removals drive up the cost per flight hour for the CH–53.

The major effects on rotor blades continues to be pitting and corrosion, however, the damage rates and replacement ratios for Operation Iraqi Freedom (OIF) have not yet been determined. Aircraft returning from OIF will initially require some level of additional maintenance to recover from deferred maintenance that could not be accomplished in theatre. The initial increase in required maintenance man-hours per flight hour may be significant on return to home bases but should not be long term in duration.

4. Senator AKAKA. General Cody, I am particularly concerned about the Army's helicopters, which I know you care deeply about, because of their ongoing problems with spare parts shortages. I believe a recent readiness report stated that Army helicopter readiness rates are likely to remain low for at least 12 to 18 months, until long-lead spare parts arrive in the fleet. Would you comment on this issue?

General CODY. I do expect to see lower aircraft readiness rates for a period of time, but not solely due to spare part lead times. The primary reason for lower readiness will be from the increased maintenance down time resulting from reconstitution.

As I discussed in the previous question, the aviation reconstitution will be a tremendous effort. Our goal is to complete this effort in approximately 2 years. As discussed earlier, we are also in the process of synchronizing the effort to support the Army's ongoing peace keeping, humanitarian, stability and support, and global war on terrorism operations, possible future missions, as well as sustain home station training requirements and Army transformation.

OPERATIONAL LESSONS

5. Senator AKAKA. General Cody, Admiral Green, General Bedard, and General Schmidt, last year witnesses from each of your Services provided a fairly lengthy written response about lessons learned in recent operations. If you would, I'd like to ask you to update those answers for the record to reflect the past 13 months. Are there particular lessons that stand out from the global war on terrorism and/or Operation Iraqi Freedom?

General CODY. Our current operations in Afghanistan and in Iraq have provided the Army with several lessons. The first lesson is that our training programs work—in particular our Combat Training Center (CTC) program. Soldiers and leaders continually have attested to the value of the "CTC experience" in preparing them for combat operations in Afghanistan and Iraq. We must continue to fund training and training resources, to include the expansion of our range capacity and the full implementation of our Joint National Training Capability (JNTC) concept.

Tough, demanding training supported by an infrastructure that allows us to train, sustain, and deploy is essential to readiness. History shows that the higher the quality of training, the better the leaders and warfighters we produce. The performance of Army soldiers in OIF clearly shows the benefits of high quality training and improved readiness. Army forces repeatedly engaged and defeated numerically superior enemy forces in a variety of terrain and weather conditions.

To continue our successful training strategy, we must fully modernize training ranges, combat training centers, and training aids, devices, simulators, and simulations to provide adequate and challenging training. In addition to live field training, the Army has funded the integration of virtual and constructive training capabilities. Yet, despite all the advantages of virtual and constructive training we expect to gain, there is no substitute for training in the field. As the quality of our forces, our equipment, and our networkcentric command and control operations continue to advance, our forces will operate with ever-greater dispersion. Maintaining sufficient maneuver areas for training these extended formations will become even more critical.

Prior to initiation of combat operations in Iraq, Army forces utilized vast portions of Northern Kuwait for training exercises. This training area afforded our forces the opportunity to exercise in the same tactical formations used in combat operations and contributed to their success in OIF. Such opportunities are limited to only a few training areas in the world. Both within the continental United States and in our overseas training areas, these areas are increasingly being encroached upon, intensifying environmental constraints and operational limitations that place very restrictive limits on testing and training facilities. The Army is one of the best stewards of the environment. To improve on our stewardship, we are implementing a sustainable program that integrates operational needs, land management, explosives safety, and environmental concerns into the lifecycle management of our ranges.

The next lesson is that our forces are ready to fight when they arrive, but we must continue to work with the Air Force and Navy as well as the Joint Staff and USTRANSCOM to ensure that they arrive in theater faster. OIF clearly illustrated the need for more strategic airlift and sealift. This weakness became apparent when the movement of forces into northern Iraq was delayed after Turkey denied our request to stage from their territory. The lack of strategic airlift and the inability to sustain our forces through airlift once deployed to Iraq delayed the movement of heavy and medium forces from Europe. The Army fully supports continued purchase of C–17 aircraft and fast sealift to ensure the joint force can get us to where the Nation needs us, when it needs us.

Finally, the complexities of the Contemporary Operational Environment (COE)—as experienced in both Operation Enduring Freedom (OEF) and OIF—are here to stay. This reinforces the Army's transformation efforts and demonstrates a clear need to field both the Stryker Brigade Combat Teams (SBCT) and the Objective Force. Operations in Iraq demonstrated the need for a rapidly deployable medium force. The SBCT provides the combatant commander with a rapidly deployable force to deal with unforeseen challenges. If the SBCT had been available, it could have been quickly deployed to Iraq to provide greater security for Army and Marine lines of communication, or could have provided light forces in Northern Iraq with more lethality, survivability, and mobility.

OIF clearly illustrated the great promise of transformation and the continuing relevance of the Army's heavy forces. The joint force exploited dramatically improved C^4ISR capabilities to achieve near real time situational awareness. Commanders used their improved understanding of the battlefield to leverage the speed and lethality of air and ground forces resulting in the Iraqi regime's complete disintegration—with minimal collateral damage and coalition casualties. We must continue to enhance our C^4ISR capabilities with particular focus on joint and multi-national interoperability. The M2 Bradley fighting vehicle and M1 Abrams tank continued to prove their worth in major combat operations, surviving multiple engagements with minimal damage, and dominating enemy forces. During OIF, we achieved an unprecedented level of integration of SOF units/elements with our heavy forces and a re-validation of the heavy-light concepts we train at the CTCs.

OIF also exposed vulnerabilities in the current force that will be addressed by Army transformation. Heavy ground forces are still dependent upon vulnerable supply lines. The Army's Interim and Objective Forces reduced logistics footprints will minimize the requirement to maintain long lines of communication. These forces will also deploy more rapidly and with less strategic lift to provide the commander with multiple options for responding to unforeseen challenges on the battlefield.

The Army does not think short term. History has shown that the Army not only wins wars, but it also bears the preponderance of the responsibility for post-hostility operations. U.S. ground force presence is critical to stabilize the region and support the long process of rebuilding the economic and political infrastructure in Iraq.

As we have demonstrated previously in Panama, the Gulf, Haiti, Bosnia, and Kosovo, and more recently in Afghanistan and Iraq, soldiers can defeat enemy armies, seize and control terrain, and control populations and resources with minimal collateral casualties and damage. They can operate across the spectrum of military

operations, from full-scale conventional conflicts to asymmetric conditions, from fighting terrorists to setting the conditions for humanitarian assistance and transition seamlessly between these levels. In an era of precision weapons, nothing is more precise and discriminating than the U.S. Army soldier.

Admiral GREEN. While we continue to analyze the lessons from OIF and the ongoing global war on terrorism, our preliminary analysis reinforces the lessons learned from Operation Enduring Freedom, validates some enduring principles of naval warfare, and provides additional insights that we are using to prepare for future joint combat operations.

Navy lessons learned from OEF stressed the value of carrier-based airpower in a limited access environment, the importance of leveraging Special Operating Forces (SOF), the significant impact of agile and ready expeditionary forces, and the contributions of our coalition partners. As OEF continued, the readiness investments that Navy was able to make over the previous 2 years with your support continued to pay dividends. We were able to provide the President significant flexibility in setting the force for OIF with a focused effort to provide 7 Carrier Strike Groups (CSG) on call from August 2002, the planning and execution of a surge plan to get 12 TLAM-armed SSNs on station to support strike operations, the availability of two maritime pre-positioned squadrons to support deployment of a Marine Expeditionary Force (MPSRONs), the short notice deployment of two Amphibious Task Forces (ATF), and early activation of sufficient Military Sealift Command shipping to meet TRANSCOM requirements.

OIF clearly validated the strategic utility of sea-based forces. Even with the difficulties in obtaining access, overflight, and basing from countries in the region, and the requirements to posture additional deterrent forces in the Western Pacific (1 CSG, 1 ARG, and 4 SSNs), Navy provided the flexibility to be able to meet Central Command's naval force requirements, including 5 CSGs, 3 ARGs, 2 ATFs, 2 MPSRONs, 12 SSNs, a command ship for theater Reserve, and ISR capabilities.

Naval forces were able to contribute significantly to the timely precision fires necessary for an effects-based war. A key enabler for successful precision fires was persistent, fused ISR at both the strategic and theater level. We were able to mitigate early basing shortfalls with over 800 sea-based TLAMs fired, with over 88 percent discernible damage assessed in the preliminary analysis. Similarly, carrier air provided tremendous flexibility and precision, with over 95 percent of the ordnance expended being precision guided, and targeting information sent to over 78 percent of the missions in-flight. In conjunction with the JFACC, an unprecedented number of time sensitive target (TST) missions were executed within the ATO process, with over 800 conducted with an average of 3.5 hours from nomination to ordnance on target.

OIF again demonstrated that it was possible to meet strategic objectives without massed force by leveraging conventional support to SOF, including immediate precision fires (e.g. Navy Tactical Air (TACAIR) providing close air support) and support by ISR assets at the tactical level. In fact, SOF both supported conventional forces such as 3rd ID and IMEF and was supported by conventional ground forces such as the 26th MEU and 173rd Airborne Brigade. Navy SOF successfully executed key missions by taking early, calculated risks focused on key nodes. One example was the early take down of the Iraqi gas oil platforms and Al Faw pumping stations to preserve the oil infrastructure and prevent environmental damage. This integrated operation involved SEALs, coalition SOF, coalition surface ships, tactical ISR, Navy armed helos, Air Force SOF helos, and USMC support. Similarly, Joint SOF was able to integrate dedicated general-purpose forces to support WMD and leadership interdiction as well as POW rescue operations. Finally, the effective integration of Information Operations (IO) into the OIF campaign plan also appears to have achieved unprecedented success. Initial observations support the conclusion that IO contributed to oil fields being preserved despite the emplacement of explosives, mass desertions of enemy forces, and WMD not being employed.

Maritime dominance remained critical to success in OIF. Over 25 surface combatants were dedicated to escorting shipping for OIF, which supported the flow of forces and logistical support into theater including over 184 sealift and pre-positioned ships. Because of the ongoing terrorist threat, force protection requirements extended worldwide. This requirement was met by leveraging coalition naval support assigned to OEF and coalition naval forces outside the region (e.g. Spain in the Straits of Gibraltar). Although our maritime dominance provided unimpeded tactical movement of naval forces and rapid access for humanitarian assistance, an equally important lesson is that OIF was not as challenging as potential future scenarios in that there was no submarine threat, a negligible enemy surface force, and no Iraqi air threat. Clearly, maritime dominance cannot be taken for granted in future conflicts but remains crucial for success.

OIF also generated several issues that we are working jointly to resolve. First, multiple blue-on-blue engagements occurred in OIF, involving coalition partners and all Services. Second, execution of joint close air support (JCAS), while successful, requires standardization throughout the joint force. Third, the growing importance of IO demands the development of measures of effectiveness and a timely, integrated kinetic/non-kinetic combat assessment process. Fourth, ISR capabilities require improved analytical capacity to permit timely exploitation. Fifth, a number of processes instituted to support targeting in OIF (e.g. Time Sensitive Targets, Commander Priority Targets, and TLAM ATO changes) require improvement and effective integration into CAOC doctrine. Sixth, although the CAOC structure was effective and joint to an extent never before realized, we must institutionalize a process to quickly stand-up a truly joint CAOC. Finally, coalition networks were not mature enough to provide the required connectivity for all users.

In preparation for future conflicts, Navy has begun to significantly modify its operational posture to provide a constant surge capability in addition to its rotational force presence. The CNO, Admiral Clark, has directed the Commander, Fleet Forces Command, to implement a concept called the Fleet Response Plan. In his implementation message to the Fleet, Admiral Natter noted that the war on terrorism requires the Navy to "be more ready and more responsive." The FRP has a goal of providing a force of six surge-ready CSGs, including those forward deployed, with two additional CSGs ready soon after. As such, the Navy's traditional schedule of sending ships to sea for 6 months, followed by 18 months at home preparing for the next deployment, could be made far more flexible so more ships are available to surge during a national crisis. Navy expects to be able to reset its forces and be ready to respond to future threats within the approved supplemental funding of $9.8 billion approved by Congress and allocated into direct appropriations and the approximately $1 billion allocated from the Iraqi Freedom Fund.

General BEDARD. The Marine Corps recently published the Combat Assessment Team summary report for Operation Enduring Freedom and distributed them to Members of Congress (HQMC, Office of Legislative Affairs can provide additional copies if desired). Some of those lessons may apply to OIF. Teams are in the Central Command theater, gathering surveys and interviews in order to capture lessons from OIF, and we'll share our assessment when complete. There will undoubtedly be areas for improvement, but the indications that I've received are that many of our lessons will be positive and favorable.

- Our expeditionary, forward deployed forces provide combatant commanders a rapid response capability, and sea-basing can overcome challenges of anti-access.
- Our ability to quickly deploy, marry up with pre-positioned equipment, and provide combat forces ready for immediate action is crucial to our continued success.
- Our Marine Air Ground Task Forces (MAGTFs) are scalable, multi-faceted, and able to task organize on the fly to conduct highly sophisticated joint and coalition operations covering the spectrum of combat missions, including port seizure, operations in urban terrain, hostage rescue, and peace keeping operations.
- An increased confidence and reliance on the timing and prioritization of well-coordinated precision fires (artillery and close air support), enabled the bold maneuvering of our MAGTF, SOF, and coalition ground forces operating in the MAGTF's assigned area of responsibility, while facilitating the exploitation of their successes.
- Marine forces conducted sustained operations ashore on an unprecedented scale and at great distances.
- Our MAGTFs must possess the ability to communicate and interface with SOF, joint, and coalition forces without being constrained by terrain or geography.

General SCHMIDT. Success in future operations hinges upon our ability to learn from previous operations and prepare for future operations. To ensure the Air Force learns from ongoing operations and adapts accordingly, the CSAF established the Task Force Enduring Look (TFEL) office. TFEL is responsible for Air Force-wide data collection, exploitation, documentation, and reporting for all our campaigns in the global war on terror—including ONE, OEF–A, and now OIF. The objective for TFEL is clear—provide reach-back support to the warfighter, and properly recognize and apply lessons learned—during, rather than only at the conclusion of, these operations. To accomplish this mission, we deployed TFEL experts to the Combined Air Operations Center (CAOC) during Operation Iraqi Freedom to collect data during all phases of the war—from planning-preparation-execution through assessment—

traditionally done in the months following a conflict. We are beginning to analyze the data that we've collected from OIF and at least one major theme is emerging: "Integration is the Key."

A well-trained integrated joint force is a force multiplier producing effective and successful results, and very lethal results to our enemies. The potential is unlimited when the unique and complementary (Air-Land-Sea-Space-Info) capabilities of all the Services and our allies are linked together for integrated joint employment. The U.S. military again proved "the more we sweat in peace, the less we bleed in war." Our joint team achieved victory in Iraq because we were the best-trained, equipped, and prepared force ever fielded for an operation. The CAOC painstakingly trained and practiced its processes, procedures, and scenarios before the onset of OIF. The USAF and Special Operations Forces jointly practiced counter-mobile missile operations ("SCUD hunting") to deny the Iraqi SCUD threat. The Army/Air Force joint mobility rehearsed exercises and training of airborne ops which allowed the seamless inter-service execution of air insertion. Our "precision employment force," composed of ISR, navigation, information, and weapons systems, successfully prosecuted a record number of surgical TST strikes at a pace faster than any in history. The persistent all-weather precision employment against all target sets mitigated collateral damage. The experiences gained from Joint C^2ISR and air dominance in the AOR for the past decade (due to OSW, ONW) has paved the way for these integrated joint successes.

We are only at the genesis of OIF lessons learned and will continue to gather, analyze, exploit, and assess the data from Operation Iraqi Freedom and focus on the improvements for future potential operations.

6. Senator AKAKA. General Cody, Admiral Green, General Bedard, and General Schmidt, to the extent that any of these lessons have resource implications, how well are any adjustments supported in the fiscal year 2004 budget request?

General CODY. Because the Army's planning and programming is not short sighted, the fiscal year 2004 budget does provide adequate funding for the readiness and transformation lessons addressed in Question #5.

The first lesson is that our training programs work—in particular our CTC program. Soldiers and leaders continually have attested to the value of the "CTC experience" in preparing them for combat operations in Afghanistan and Iraq. We must continue to fund training and training resources, to include expansion of our range capacity and the full implementation of our JNTC concept. To support this lesson learned all scheduled training rotations are fully funded: 10 brigade rotations (9 Active components and 1 Army National Guard) through the National Training Center, 10 brigade rotations (9 Active components and 1 Army National Guard) through the Joint Readiness Training Center, and 4 brigade rotations through the Combat Maneuver Training Center. The Battle Command Training Program will conduct three corps warfighter exercises and train seven Active component division command and staff groups.

The next lesson: the complexities of the COE—as experienced in both OEF and OIF—are here to stay. This reality reinforces the Army's transformation efforts and demonstrates a clear need to field both the SBCT and the Objective Force. To support this lesson learned, in fiscal year 2004 the Army continues the research and development of the Future Combat Systems (FCS), providing the Army a full spectrum force system with substantially improved deployability; provides funding to purchase 301 Stryker vehicles for the 4th Stryker Brigade Combat Team; continues selected procurement programs to improve strategic responsiveness, increase lethality of light forces, and recapitalize legacy systems; and restructures or divests $2.3 billion from procurement programs that did not meet the Army vision to provide research, development, test, and evaluation resources for the Army transformation.

Admiral GREEN. Initial analysis of the lessons learned from the global war on terrorism (GWOT), including OEF and OIF, has validated the enduring principles of naval warfare and the funding decisions supporting their development. The PB04 budget request supports investments in current readiness, weapons procurement, and the further development of specific focus capabilities, such as information, surveillance, and reconnaissance (ISR), IO, and antiterrorism and force protection (AT/FP). As additional analysis is completed, and new lessons learned are analyzed, the Navy's future budget requests will reflect the necessary adjustments.

Readiness investments remain an integral part of the success achieved in recent operations. OEF and OIF validated Congress' and the Navy's recent investments in current readiness. The PB04 request maintains current readiness funding levels necessary to support the Navy's forward presence and surge capabilities being developed as a part of the Fleet Response Plan (FRP).

In addition to overall fleet readiness, significant investments have been made in weapons procurement, that contributed to the successes of the global war on terrorism. While Tomahawk land attack missile (TLAM) is no longer in production, funding for the follow-on missile, Tactical Tomahawk, was increased by $835 million across the FYDP between PB03 and PB04. The effect is an increase in production totaling 638 missiles across the FYDP.

Both OEF and OIF validated the theory that military campaigns of the future would require less ordnance but more precise weapons. The shift in weapons procurement in the PB04 Navy budget reflect a trimming down of weapons inventories and development of more capable, precise, tri-service weapons such as the Joint Direct Attack Munition (JDAM), Joint Standoff Weapon (JSOW) and Joint Common Missile (JCM).

To support the delivery of new weapons, the DON PB04 budget for naval aviation includes several significant initiatives to sustain our current force and produce a future naval aviation capability that incorporates lessons learned from OEF and OIF. The premiere strike fighter capability delivered from Carrier Strike Groups (CSGs) has been right-sized in the TACAIR integration initiative jointly endorsed by the Chief of Naval Operations (CNO) and the Commandant of the Marine Corps (CMC). This transformational initiative set inventory objectives for F/A–18E/F and Joint Strike Fighter, as well as set investment objectives for significant capability improvements such as Advance Targeting FLIR, Advanced Electronically Scanned Array (AESA) radar and Joint Helmet Mounted Cueing System (JHMCS). These capability investments promise a smaller, more capable force.

A focus of the lessons learned from GWOT has been in the areas of ISR and IO, two of the mission capability packages (MCP) that comprise the FORCENet pillar of the CNO's Sea Power 21. Funding for both ISR and IO programs experience a substantial increase across the FYDP, reflecting the importance the Navy has placed on improving performance in these two areas. Several key programs have begun development or have received necessary funding increases to meet overall Navy objectives in these two areas. These programs include: broad area maritime surveillance (BAMS), unmanned combat air vehicle (UCAV) and EP–3 upgrades. The chart below summarizes the increases in funding from PB03 to PB04 in the areas of ISR and IO.

[In millions of dollars]

	Fiscal Year						FYDP
	2004	2005	2006	2007	2008	2009	
PB03 ISR	160.1	457.8	188.0	187.0	N/A	N/A	992.9
PB04 ISR	301.3	509.1	515.5	569.9	651.6	679.6	3,227.0
DELTA (fiscal year 2004–2007)	+141.2	+51.3	+327.5	+382.9	.....	.....	+902.9
PB03 IO	324.4	408.9	568.4	924.2	N/A	N/A	2,225.9
PB04 IO	775.8	817.6	830.8	710.9	756.5	537.8	5,529.4
DELTA (fiscal year 2004–2007)	+451.4	+408.7	+262.4	(213.3)	.....	.....	+909.2

As a result of recent global events, including the U.S.S. *Cole* incident, the events of September 11, 2001, and the two recent conflicts, the Navy has focused strongly on improving the protection of its forces. The Navy has increased its efforts in antiterrorism and force protection in the 2004 President's budget submission. Aggressive programs have been funded in physical security (afloat and ashore) and chemical and biological protection (ashore, afloat, and aviation).

[In millions of dollars]

	Fiscal Year						FYDP
	2004	2005	2006	2007	2008	2009	
ATFP PB03	1,628.0	1,857.3	2,066.4	1,977.7	N/A	N/A	7,529.4
ATFP PB04	2,139.5	2,669.9	2,582.7	2,324.6	3,183.5	2,912.7	15,812.9
DELTA (fiscal year 2004–2007)	+511.5	+812.6	+516.3	+346.9	.....	.....	+2,187.3

In addition to the aviation investments in ISR/IO discussed above, DON has initiated replacement for the EA–6B electronic attack capability with the EA–18G. Investment in anti-terrorism/force protection and mine warfare were improved with commitment to funding the helicopter concept of operations through procurement of

the MH–60R with integrated armed helicopter capability and the MH–60S that will field both an organic mine countermeasure and armed helicopter capability.

The PB04 budget request has been validated by several key lessons learned from recent operations. Throughout future budget processes, the lessons learned will be incorporated into the analysis that supports future budget submissions.

General BEDARD. The fiscal year 2004 budget serves as a baseline that addresses our program requirements and forward posture, to include lessons learned prior to the budget submission. The costs incurred associated with Operation Iraqi Freedom and global war on terrorism support have not yet been fully identified and need to be addressed in a future budget adjustment. In the interim, we will continue to evaluate our lessons learned, re-validate our requirements, and make whatever adjustments are needed to ensure that the Marine Corps remains the Nation's premier total force in readiness.

General SCHMIDT. Integration is the key requirement to meeting our current and future Air Force's expeditionary challenges. The fiscal year 2004 budget continues to make investments prioritized to develop our airmen, to pursue machine-to-machine interfaces, and to integrate our air and space operations with our sister Services' operations to create desired effects. Our integration achievements were the foundation to the success of Operation Iraqi Freedom. Today, we are still assessing the lessons of this operation. We hope to accommodate some of the lessons learned in recent engagements as we plan for the reconstitution of assets in Operation Iraqi Freedom.

SPARE PARTS

7. Senator AKAKA. General Cody, I am pleased to see the Army appears to have found the resources to address its shortfalls in spare parts, which we knew are crucial to equipment readiness. It seems, however, that this issue had to reach a "crisis" stage before it was dealt with. In your view, why did it take the Army so long to identify that it had severe spare parts shortages?

General CODY. The Army first identified the problem in the summer of 2000. In the mid-1990s, the Army systemically reduced our strategic inventories supporting all major weapon systems. This decision was made in response to the Office of the Secretary of Defense (OSD) mandate to reduce inventories and implement stock funding of depot level reparables as well as force structure changes. For several years, high weapon system readiness rates and high supply stock-availability rates were maintained by redistribution of excess inventories and local repair of components. However, in recent years, the combination of increased operating tempo (OPTEMPO), aging weapon systems, and reduced national level stocks negatively impacted weapon system readiness and supply availability.

In early 2000, the Army logistics and financial communities started working to develop and validate the increased requirement for spares. The initial fiscal year 2001 requirement of $1.268 billion was to support current readiness and OPTEMPO, "prime the pump" for our RECAP program, and put spares on the shelf to sustain future contingency operations. The Army worked internally to fund some of the sustainment requirement and the RECAP program—we took risks on the contingency operations stocks. In fiscal year 2002, the strategic-level requirement to sustain current peacetime readiness continued to grow, specifically $1.006 billion for aviation support, $320 million for ground systems as well as a $237 million for future contingency operations. The Army continued to work the issue internally, but this requirement was competing with a multitude of other force structure and operational requirements. As the global war on terrorism started to unfold, the requirement continued to grow until the fiscal year 2003 unfinanced requirement (UFR) reached $1.563 billion in August 2002. The Army leadership was able to fund 91 percent of the requirement. This provided authorization to the United States Army Materiel Command to procure new assets and repair unserviceable ones where we did not have enough on hand to support the increased demand. Because the Army has long acquisition lead-times due to the complex, highly technical, weapon system specific items that we manage, it will be 18–24 months before the majority of stocks are delivered. Repair lines should start producing serviceable items in 4–6 months.

The fiscal year 2003 UFR primarily supports a garrison OPTEMPO. We have asked for an additional $408 million in funding for spares in the current supplemental request to support OIF and might have to increase our requirement to support the demands we are continuing to incur during OIF. We are closely monitoring the supplies flowing into the theater of operation. As units redeploy, we will use these assets to the maximum extent possible to offset the UFR, but they will not fill our total requirement. In addition, we do not know at this point how much will

be expended in the area of operations, returned to the shelves, or be available for redistribution. The Army continues to size the requirement in order to sustain the warfighter.

8. Senator AKAKA. General Cody, why were indicators of these problems not evident in readiness reporting?

General CODY. The Army's readiness reporting encompasses several systems with varying degrees of detail depending upon the specific application or functional area. For example, our unit status reporting (USR) system provides information regarding the status of personnel, equipment, and training for our operational forces. Specific details regarding class nine (IX) repair parts reside in our logistics reporting channels maintained by the Office of the Deputy Chief of Staff for Logistics (G4). On a monthly basis, the Army's senior leaders review key readiness indicators that draw information from these two systems, as well as many others. The specific indicators revealing unit level shortcomings with spare parts were not available via our current reporting systems. In October 2002, the Army began implementing the Strategic Readiness System (SRS) designed to capture leading measures that trigger leadership intervention prior to performance falling below acceptable levels. Our previous systems as mentioned above rely on lagging measures using empirical data. The SRS will look across the entire Army to assess for example, the distribution pipeline, production timelines, warehouse stockage levels, and transshipment timelines that effect availability of spare parts. When fully implemented, the SRS will synchronize the cause and effect of performance across the Army through the alignment and use of balanced scorecards.

9. Senator AKAKA. General Cody, what steps are being taken to ensure that we don't end up with shortfalls in the future, which degrade readiness, while parts are being manufactured?

General CODY. The Army has established several management oversight mechanisms to preclude a future shortage of spares. We have a joint logistics/financial process action group with members from the Department of the Army and the United States Army Materiel Command (USAMC). This group reviews and validates the requirement, works to obtain funds, and oversees the execution of additional funding and authorization for repair and procurement. As a result of the efforts to support the global war on terrorism, the Office of the Deputy Chief of Staff, G–4, in conjunction with the USAMC, G–3, established a biweekly reporting structure that analyzes the top 25 readiness drivers for our major weapons systems—helicopters, ground equipment, and engineer equipment. This has allowed us to focus our attention and funding on items that are essential to sustain readiness and the warfighter. We report out quarterly to the Vice Chief of Staff, Army (VCSA) on execution of the additional funding for spares. The monthly Army strategic readiness update to the Secretary of the Army and Chief of Staff, Army provides the current readiness posture. We are working to include a "spares assessment" as part of this update.

The Army continues to be concerned about the health of our spares inventory and its effects on readiness. Our attention is focused on getting well. This will take a while. Our initial efforts were focused on a peacetime, garrison environment. The successful effort to conduct OIF has stressed our logistics system and emptied the shelves of essential parts. As we posture ourselves to "reset" our equipment and sustainment inventory to their pre-OIF levels, we will have to undertake the job of replenishing the shelves. The requirement for spares will be tempered by our switch to performance based logistics and reliance on contractor support. We are currently assessing the levels we will need and looking for resources to obtain assets. We are working to achieve a judicious mix of spares and equipment to sustain readiness. Our capability to sustain the warfighter remains our number one goal.

FORCE STRUCTURE ADJUSTMENTS

10. Senator AKAKA. General Schmidt, in a written response to a question from last year's hearing, General Wald stated that "unprecedented demands are being placed on our aircraft and people," and that coping with higher OPTEMPO would require the Air Force to either to "cut back on the number and types of missions that we do worldwide, or increase our force structure to accommodate the new demand." In your written testimony you stated that you do not need additional manpower, but that your force structure needs to be adjusted. Will making these changes relieve the stresses on the force, or is the Air Force still considering reductions in its missions? If so, which ones?

General SCHMIDT. The Air Force is currently transforming/maturing itself by adjusting both the workforce and the force structure to create 10 equally-capable Air and Space Expeditionary Forces (AEFs), which exploits advantages in efficiencies and economies of scale. Operations Enduring Freedom, Noble Eagle, and Iraqi Freedom, for example, continue to validate the AEF construct. The AEF is allowing the AF to present sustained Air and Space Expeditionary Task Forces (AETFs) to provide combat employment capability to the Joint Force Commander much quicker, precisely, and more lethal than in the past.

As our AEF continues to mature, the AF continues to mitigate the "AEF stresses" through increasing the eligibility across more airmen for AEF taskings, and to identify and create the correct mix/balance of job skills required for AEF operations.

We believe these measured investments will result in the long-term stress reduction in our worldwide OPTEMPO while preserving our ability to meet our current and future missions. As always, the U.S. Air Force, along with our sister Services, will continue to be prepared to achieve the national security objectives for the United States.

FLEET RESPONSE CONCEPT

11. Senator AKAKA. Admiral Green, the Chief of Naval Operations has directed that the Navy will move to a new Fleet Response Concept (FRC) in order to enhance the Navy's surge capability. Would you give a brief description of the FRC, including its implications for maintenance and training?

Admiral GREEN. The purpose of the FRC is to ensure we are always ready to rapidly build on the combat power of our forward deployed forces. It is an approach to achieve and maintain a Navy ready to surge when required. CNO tasked Commander, Fleet Forces Command to lead an effort to develop the FRC, changing our readiness processes to institutionalize an enhanced surge capability for our Navy. The FRC requires both readiness and asset availability.

By the FRC, the intent is to conduct more efficient maintenance scheduling and execution, and following maintenance, to train units to prescribed readiness goals, achieving various phases of employability prior to regularly scheduled deployments.

12. Senator AKAKA. Admiral Green, does implementing the FRC have any budget implications, and if so, are they reflected in the fiscal year 2004 budget request?

Admiral GREEN. The FRC was developed to align within current budgetary considerations (President Budget 2004). The FRC has now evolved into the Fleet Response Plan (FRP) as discussed in CNO GENADMIN 222221Z May 2003. Implementation of this plan centers around a progressive readiness concept with significant emphasis on maintaining manning levels and properly planned and funded ship depot maintenance periods. The FRP contains no new funding requirements. Commander Fleet Forces Command (CFFC) is reviewing all aspects of the FRP to determine any associated funding risk within the fiscal year 2004 budget request.

SUSTAINING READINESS

13. Senator AKAKA. General Cody, Admiral Green, General Bedard, and General Schmidt, in your written testimony, Admiral Green, you stated that overall readiness is higher than you can ever remember it. A number of other witnesses have made similar statements to our committee this year, and some of you have mentioned it to me in personal conversations as well. This is great news, and I want to make sure we stay focused on what things we can do that would be most helpful in ensuring that readiness stays as high as possible in the future. Can each of you tell me your "top three" priorities for sustaining the readiness of our forces?

General CODY. As outlined in my opening statement, the Army's primary metric for resourcing and ensuring future years' readiness is ground and air operating tempo (OPTEMPO). To this end it is essential that we continue to maintain adequate funding in these critical training accounts to support execution of our training strategy. It is this strategy that prepared and trained the force we currently have in Iraq and fighting the global war on terrorism. The post-Iraqi Freedom Army will undoubtedly have substantial reconstitution costs to reset our forces, repair and replace our equipment, restock our spare parts, and replenish prepositioned stocks and munitions. Being able to do this as quickly and efficiently as possible will be a critical factor in sustaining our future readiness and may require substantial supplemental funding. In addition, continuing to fund Army Transformation to enable the Army to fully field the Interim Force and continue to move toward the Objective

Force, while sustaining the Legacy Force, will ensure that the Army maintains its current high readiness levels.

Admiral GREEN. The Navy's top three readiness priorities are as follows:

1. Full funding of the readiness accounts (Ship Operations and Flying Hour Program), as well as the readiness enabler accounts (ship and aviation maintenance, aviation support equipment, air systems support, etc.). This will ensure that personnel are properly trained, that the systems are properly maintained, and both are ready when needed.

2. Readiness and Range Preservation Initiative (RRPI). Encroachment on military training and test areas has gradually increased over time to the point where we find ourselves stretched to the limit of our ability to implement effective training processes. While we have found ways generally to work around encroachment in the past, the net effect of satisfying existing regulatory requirements is "death by a thousand cuts," and DOD is increasingly forced to restrict or relocate training and testing when encroachment affects our ranges. Both of those alternatives degrade the readiness of U.S. military forces, and the cumulative effect of environmental restrictions can prevent effective training for combat. The RRPI seeks modest and narrowly focused legislative clarification where laws are being applied beyond their original legislative intent. These reforms strike a balance between the Title 10 requirement of providing a combat ready force and creating a regulatory regime for military readiness activities while maintaining our commitment to environmental stewardship.

As it pertains to the Marine Mammal Protection Act (MMPA), the proposal would clarify the definition of "harassment" to reflect the position of the National Research Council and focus on minimizing injury and biologically significant disruptions to behavior critical to survival and reproduction. It also clarifies the application of the MMPA to strictly military readiness activities when permits are required, adds a national security exemption, and provides definitions for the terms "military readiness activities," "combat," and "combat use" as they are used in the statute.

As it pertains to the Endangered Species Act (ESA), the legislative proposal requests the use of Integrated Natural Resource Management Plans (INRMPs) as a substitute for critical habitat designation under the ESA, where the U.S. Fish and Wildlife Service (USFWS) concurs with the INRMP. INRMPs are required for all installations by the Sikes Act, are prepared in coordination with USFWS and State fish and wildlife agencies, and are subject to public review and comment. They consider an installation's natural resources holistically and provide greater flexibility for installation commanders to manage their lands for the benefit of both readiness and threatened and endangered species that are present.

3. Expanding mission funding of naval shipyards. Our naval forces returning from wartime operations will challenge our shipyard capacity. To alleviate this, we are expanding our mission funding initiative of naval shipyards with a proposed 2-year pilot program at the Puget Sound Naval Shipyard (PSNSY). Also, allowing a consolidated depot maintenance budget will help us achieve the synergistic benefits (e.g. more efficient sharing of skilled workforce) that we anticipate from a common funding system based on the previously executed pilot and now permanent program at the Pearl Harbor Naval Shipyard and Intermediate Maintenance Facility.

General BEDARD. The Marine Corps' pre-conflict readiness rates were high due to: the Corps' emphasis on current readiness—even greater than the emphasis placed on the important goals of modernization and transformation, stop loss/stop move, and recent congressional actions which increased the funding available for readiness efforts. We are grateful for Congress' support. Our top three priorities are to maintain current readiness, reset our force, and modernize/transform our force.

General SCHMIDT. Sustaining and restoring our readiness will require years of substantial and sustained recapitalization in our people, equipment, and infrastructure. To accomplish this the Air Force will:

1. Continue to address personnel issues such as manning shortfalls in critical specialties through bonuses, re-enlistment incentives, re-training programs, and the continued use of Air Reserve component volunteers.

2. Continue to address aging weapon system concerns. The age of some aircraft have resulted in previously unanticipated problems on the aircraft. Service life extensions, fleet viability, and maintenance costs remain concerns across the Air Force. The old age of a variety of aircraft and systems in the Air Force inventory require new solutions such as the Lockheed Martin [LMT] F/A–22 and the lease of Boeing [BA] 767 tanker aircraft. Additionally, the Air Force has continued commitments to improve spares management to include funding.

3. Stabilize the operations and personnel TEMPO in order to restore our capabilities to meet future AEF requirements. It's important to return to a predictable AEF battle rhythm for our expeditionary force, especially for the LD/HD assets. To ac-

complish this the following factors will be considered. First, provide our people needed post-hostility time for their overall health, family matters, and professional education opportunities. In addition, units need time to resume training plans, repair equipment, reduce backlogs, and restock consumables.

FORCE ENABLERS

14. Senator AKAKA. General Schmidt, your statement noted that "force enablers", like lift and munitions, would be the biggest inhibitors to responding to other contingencies. Are we redirecting significant resources in the fiscal year 2004 budget request or across the Future Years Defense Plan to relieve pressures in these areas? If not, why not?

General SCHMIDT. The Department is currently looking at all force enablers to determine how we can best invest to ensure responsiveness to future contingencies. We will request that Congress redirect fiscal year 2004 resources if necessary.

QUESTIONS SUBMITTED BY SENATOR BILL NELSON

SIMULATION SYSTEMS

15. Senator BILL NELSON. Dr. Mayberry and General Schwartz, we have noted the cancellation of the Joint Simulation System (JSIMS) program in the Department's fiscal year 2004 request. Those of us on the Armed Services Committee who care deeply about the pace and scope of efforts to increase joint experimentation, joint training, creation of a standing joint operational headquarters, and validation of joint requirements and acquisition, are troubled by this development. I am concerned that we have abandoned this program on the threshold of its initial operational capability. Block I of the system is supposed to be undergoing validation testing at Joint Forces Command now. We seem to be blithely accepting years of possible delay of a simulation system necessary to successful joint training and experimentation. What analysis informs this decision and provides the compelling justification for so dramatic and comprehensive a reduction?

Dr. MAYBERRY and General SCHWARTZ. The Department added significant resources on three occasions to provide full funding for the JSIMS program and keep it on schedule. In August 1999, $7.9 million was reprogrammed to ensure an initial operational capability (IOC) of April 2001. In August 2000, an additional $265.5 million was allocated for fiscal year 2002–2007 to support a rescheduled IOC of March 2002. Several months later, during the budget review, a further $7.4 million increase was approved for fiscal year 2001–2002, to address shortfalls identified late in the process by the program office.

Several changes also were made to the management structure in an attempt to improve program performance and keep development on track. In December 1999, the program was given an ACAT–1D (Acquisition Category 1D) designation to increase management oversight. In January 2000, the Army was directed to appoint a full-time program manager. At the same time, the program office was instructed to produce a cost estimate, split JSIMS development into blocks, and develop appropriate acquisition documents. Although some of these measures were adopted, problems persisted. By December 2002, the official IOC date had slid to March 2005.

In addition to standard ACAT–1D oversight, there were at least four other reviews to assist program management, two of which were led by former Directors of Defense Research and Engineering. In December 1999, the Senior Review Board directed the program office to reconfigure its development plan around the Department's high-level architecture standard. Then, in 2001, an independent panelled by Dr. Anita Jones concluded that JSIMS needed to establish sound performance-prediction capabilities and improve its integration with its major partners, like the Army's Warfighter Simulation program. That same year, an audit conducted by the Army Materiel Command concluded that current engineering practices would not resolve performance issues within cost and schedule constraints. Finally, in December 2002, another independent review team, this time headed by Dr. Dolores Etter, recommended looking externally for commercial technologies and strategies that support scalability in order to facilitate spiral development for future JSIMS blocks. Dr. Etter's team also recommended an independent outside assessment of the JSIMS architecture. All of these reviews, in addition to numerous ACAT–1D assessments, highlighted serious concerns about the technical and performance standards for JSIMS. The decision to conduct an analysis of alternatives (AoA) before proceeding with further JSIMS development is consistent with the results of these reviews.

16. Senator BILL NELSON. Dr. Mayberry and General Schwartz, what alternatives are DOD/JFCOM considering to meet the requirement for a simulation tool that supports joint training, joint experimentation, and joint program evaluation?

Dr. MAYBERRY and General SCHWARTZ. This question will be addressed by the AoA and cannot be definitively answered before the study is complete. Final guidance is now being developed, but the AoA will likely consider the following alternatives: 1) continuing the JSIMS program, 2) separating the joint and Service JSIMS elements and pursuing them as independent programs, 3) modifying existing simulations, and 4) commercial sources.

17. Senator BILL NELSON. Dr. Mayberry and General Schwartz, how much will delivery of a joint simulation system slip based on this decision and what risks (operational and programmatic) are associated with such a slip?

Dr. MAYBERRY and General SCHWARTZ. JFCOM did not plan to fully replace the Joint Training Confederation with the JSIMS until the Block III software had been delivered. Since Block III software requirements have not yet been defined and there is no delivery schedule, any estimates of slippage in JSIMS' delivery would only be speculative. Because of this, the military Services and defense agencies had all programmed funds to support legacy simulation training systems through at least fiscal year 2008.

Current systems and the JNTC, when it is available, will meet the Department's immediate training needs. One limitation of current systems is the lead-time required for scenario generation, narrowing the scope of missions the Department can rehearse on short notice. It is unknown whether JSIMS would correct this deficiency, but it should. The AoA is intended to be a risk-mitigating step to determine the most cost-effective method for meeting joint and Service training requirements. The AoA will assess risk associated with each alternative against the JSIMS cost estimate.

18. Senator BILL NELSON. Dr. Mayberry and General Schwartz, how will DOD/JFCOM support, and who will be responsible for, a new joint simulation program in the fiscal year 2004 request?

Dr. MAYBERRY and General SCHWARTZ. A new joint simulation is not funded in the fiscal year 2004 budget. The Department has initiated an AoA to identify the most cost-effective approach for meeting joint and Service training requirements. Until the AoA is complete, we cannot say whether a new program ultimately might be needed.

19. Senator BILL NELSON. Dr. Mayberry and General Schwartz, Congress appropriated millions of dollars for JSIMS and its related Service programs in fiscal year 2003. How does DOD/JFCOM propose to use that funding now that they are all (with one exception) zeroed in the fiscal year 2004 request and Future Years Defense Plan?

Dr. MAYBERRY and General SCHWARTZ. All fiscal year 2003 funds remained with the program to ensure delivery of Block I software in accordance with program office estimates. The JSIMS Software Support Facility was funded at $14 million in fiscal year 2004, using monies originally planned for the JSIMS program office. The remaining $168.6 million in fiscal year 2004 funding proposed in the fiscal year 2003 President's budget was allocated to other priorities.

20. Senator BILL NELSON. Dr. Mayberry and General Schwartz, this program decision memorandum potentially unhinges a valuable "center of gravity" in modeling and simulation research, development, and acquisition based upon the synergy of a tightly organized and interdependent network of industry, academia, and military agencies that has existed and excelled over a number of years. How will DOD/JFCOM ensure that this network is sustained, energized, and leveraged in fiscal year 2003 and fiscal year 2004 while alternatives to JSIMS and its related programs are evaluated for the out years?

Dr. MAYBERRY and General SCHWARTZ. The intent of the Program Decision Memorandum (PDM) is to take delivery of Block I software at the Joint Warfighting Center, where a software support facility will be established to maintain JSIMS products. This action, in conjunction with moving the hardware and cataloging documentation, will preserve our software investment for future use, should a decision be made to resume the program. JSIMS is only one of many modeling and simulation programs being conducted in Orlando, Florida. While many engineers will no longer work directly on JSIMS, their expertise will transfer readily to these other programs, thereby keeping their modeling and simulation skills current. Should the AoA recommend a continuation of the program, we would seek to reassemble the

best of the team and restart the program, using the Block I software maintained at the software support facility.

21. Senator BILL NELSON. Dr. Mayberry and General Schwartz, how will DOD/JFCOM avoid increased costs associated with a "new start" program in the out years?

Dr. MAYBERRY and General SCHWARTZ. The JSIMS program has a poor cost-forecasting record, and no independent cost estimates have been prepared for it, making it impossible to assert that any new start would incur additional costs. It is possible that a new program may actually be less costly. This question will be addressed by the AoA and cannot be answered prior to the study's completion.

JOINT NATIONAL TRAINING CAPABILITY

22. Senator BILL NELSON. Dr. Mayberry and General Schwartz, what is the current state of analysis and planning leading to creation of a JNTC?

Dr. MAYBERRY. The JNTC program has an approved budget, and JFCOM is setting up a Joint Management Office. The implementation plan, now being drafted, will define what will be required to support JNTC certification and accreditation. Fiscal year 2003 activities will include establishing and testing technical support requirements, determining opposing force capabilities, developing and testing data collection methods, and establishing and testing the exercise-control architecture. JFCOM is leading the planning for JNTC events in fiscal year 2004 and beyond.

General SCHWARTZ. U.S. Joint Force Command is making significant progress on analysis and planning leading to the creation of a Joint National Training Capability by October 2004. The Joint Management Office (JMO) has been established. It has instituted a formal requirements process with full Service participation, developed a detailed implementation plan, and prepared personnel, facilities, equipment, acquisition, and interim contracting plans. The JMO has coordinated efforts to transform Service-training venues to accommodate training in specific joint tactical tasks including joint combat air support, joint personnel recovery, joint combat identification, and joint fires. Plans for integrated east and west coast range complexes and communications architectures are being developed. Initial event planning has yielded significant operational improvement related to the single integrated air picture (SIAP), exercise fidelity, joint context, instrumentation, live virtual-constructive simulation, coalition capabilities, and logistics. Site certification and event accreditation requirements are also in development and will be implemented for initial sites and events.

23. Senator BILL NELSON. Dr. Mayberry and General Schwartz, what are the overarching challenges identified at this point to creation of a JNTC?

Dr. MAYBERRY. The overarching challenge for the program is to create a solution within a high-level architecture that provides for rapid integration of live, virtual, and constructive components so that trainees are immersed in a seamless, combat-like environment, without realizing that some aspects are virtual or constructive.

General SCHWARTZ. The foremost challenge is to establish transformed training programs that preserve Service core competencies while at the same time making needed improvements in training within a proper joint context. This includes the need to fully identify tasks, conditions, standards, and desired capabilities that can be measured ranging from the tactical to strategic levels of military operations. A second challenge is to integrate the best training capabilities and systems of the individual Services and defense agencies promoting improved joint training, reducing redundancies, and optimizing use of national resources. Third is the challenge of the program to create a solution within a higher level architecture that provides for rapid integration of live, virtual, and constructive simulations so that trainees are immersed in a seamless, combat-like environment such that the training audience is unaware of artificialities.

24. Senator BILL NELSON. Dr. Mayberry and General Schwartz, how does cancellation of the JSIMS and related Service simulation programs contribute to the challenge or facilitate the creation of a JNTC?

Dr. MAYBERRY. JSIMS and JNTC are independent of each other, although JSIMS could be used by JNTC if it met JNTC requirements. Without JSIMS, JNTC will use legacy systems, complemented if necessary by new systems, to meet its objectives.

General SCHWARTZ. Our ability to achieve initial operational capability and execute near-term JNTC activities is not impacted by the success or failure of Joint

Simulation System. These are independent capabilities. The current Joint Training Confederation, the Millennium Challenge 2002 model federation, tools such as the Joint Theater Level Simulation and the Joint Conflict and Tactical Simulation, and continuing efforts by the Services, industry, and academia to search for and develop improved models will be sufficient to sustain the implementation and maturation of the JNTC. The single area not fully supported by current models or projected near-term model improvements is rapid database builds for mission rehearsal. But, this is a future requirement.

MOBILIZATION

25. Senator BILL NELSON. Dr. Mayberry and General Schwartz, current and future operations in Iraq and in the global war on terrorism are increasingly requiring mobilization of large numbers of Reserve component forces. Mobilization of these patriotic citizen-soldiers is, of course, a burden on thousands of families and communities nationwide. Looking into the future, what do you think the long-term impact of extended and frequent Reserve mobilizations will be on the strength and readiness of the Reserve Forces?

Dr. MAYBERRY. On April 17, 2002, we had a total of about 220,000 Reserve component (RC) individuals and units mobilized in support of Operations Noble Eagle/Enduring Freedom/Iraqi Freedom. This number represents about 18 percent of the RC force of 1.2 million. Although a small majority of these reservists have been mobilized frequently, the Department has been effective in implementing judicious and prudent use of RC personnel. We have tried to minimize the burden on families, employers, and communities through a variety of support programs.

In the long run, history tells us there will be a modest, positive readiness impact on most mobilized units and individuals—especially in the short-term. Troops who are mobilized in a prudent and judicious manner are personally and professionally satisfied at having accomplished a meaningful mission. There is a higher degree of morale and comradeship in these units and an increased appreciation for the value of good training and maintenance. Retention improves, personnel are better trained following a call-up, and for the most part recently mobilized units tend to have more and better equipment. The readiness effect of recently mobilized units and individuals needs to be maintained during normal training periods to sustain the improvement. I see no reason to believe this trend will not continue.

General SCHWARTZ. While the current operations are certainly demanding, our Reserve component (RC) forces will continue to participate in contingencies with minimal impact to strength and readiness. Our RCs are completely integrated into operations in Iraq and our war against terrorism. Because we do have a substantial RC pool to draw from we are able to support additional requirements using the current partial mobilization authority and the use of volunteers. It is our intent to demobilize RC forces as quickly as possible consistent with ongoing operational requirements. We have seen no marked changes in RC recruiting or retention over the past 12 months. It may be too soon to tell if recent PERSTEMPO will negatively impact retention. We are monitoring these trends closely. But, we'll certainly need the continued support of employers and families to maintain the commitment of our many reservists and guardsmen.

26. Senator BILL NELSON. Dr. Mayberry and General Schwartz, is the current mobilization causing you to re-think the size, structure, and readiness priorities of the Reserve Forces?

Dr. MAYBERRY. The overall size of the Reserve Force is about right and we do not recommend any changes to end strength this time. However, there are efforts underway within the Department to rebalance the Active/Reserve component force mix to prevent the frequent, repeated mobilization of the National Guard and Reserve that have occurred during Operations Noble Eagle/Enduring Freedom/Iraqi Freedom. The readiness priorities of the Reserve and forces continue to focus on ensuring that our soldiers, sailors, airmen, marines, and coastguardsmen are trained and ready to fight.

General SCHWARTZ. There are always lessons to be learned from any action, and of course we attempt to consider all previous actions (OIF, ONE, OEF, etc.) when we do our planning for the future.

I am certain there are minor adjustments for the Reserve components that should be considered based upon our observations of current mobilizations, just as there are adjustments we should make to the Active component to improve the total force. We do not believe, however, that wholesale changes are required, as by all accounts we appear to have been rather successful.

We do need to guard, however, against the ever-present temptation to "fight the last war," as the next requirement will invariably not be a repeat of the most recent event. Hence, as we study the full spectrum of requirements and make force recommendations to satisfy them, we must review the mobilization process to make certain it is as efficient as possible. We must determine what forces/specialties we anticipate having the highest usage. We must make certain they are readily available, Active or Reserve. If it makes sense to have a given force type in the Reserve components, we must make certain they are adequately funded for training so that their readiness level allows us to immediately draw upon their skills.

BASE REALIGNMENT AND CLOSURE

27. Senator BILL NELSON. Dr. Mayberry and General Schwartz, what is your role in the establishment of criteria, collection, and analysis of data, and recommendations or decisions during the base realignment and closure (BRAC) 2005 process?

Dr. MAYBERRY. In his November 15, 2002, memorandum to kick off the BRAC 2005 process, "Transformation through Base Realignment and Closure," the Secretary of Defense directed the formation of two senior groups to oversee and operate the BRAC 2005 process. The Infrastructure Executive Council (IEC), chaired by the Deputy Secretary, will be the policymaking and oversight body for the entire BRAC 2005 process. The subordinate Infrastructure Steering Group (ISG), chaired by the USD(AT&L), will oversee joint cross-Service analyses of common business oriented functions and ensure the integration of that process with the military department and defense agency specific analyses of all other functions. The ISG approved the Principal Deputy USD(P&R) as chair of the Education and Training (E&T) Joint Cross-Service Group (JCSG). The E&T JCSG has been convened with the key Service and Joint Staff education and training OPRs who will participate in the consideration and recommendation of the functions that should receive joint cross-Service analysis. I am participating in this process within the JCSG.

General SCHWARTZ. The BRAC process is an important effort designed to ensure the Department maintains and operates a military basing and supporting infrastructure posture that optimally balances training, readiness, and presence requirements in order to meet national security needs in the most cost-efficient manner.

To oversee and operate the BRAC 2005 process, two senior leadership groups have been established. The Chairman of the Joint Chiefs of Staff sits on the Infrastructure Executive Council, which will be the policymaking and oversight body for BRAC 2005. The subordinate Infrastructure Steering Group will oversee joint cross-Service analysis of common business oriented functions and ensure the integration of that process with the military departments and defense agencies. These leadership groups will oversee the establishment of criteria, collection, and analysis of data, and make recommendations or decisions during the BRAC 2005 process.

28. Senator BILL NELSON. Dr. Mayberry and General Schwartz, several admirals in the Navy have told me how much they regret losing Naval Air Station Cecil Field in the 1995 BRAC. How will we avoid that kind of mistake in this next round?

Dr. MAYBERRY. The BRAC 2005 process we are now embarking on will be a comprehensive analysis of all military installations with the primary goal being enhanced war fighting capability and efficiency. The Department will do everything possible to ensure the BRAC process is fair and objective, within a very disciplined analytical framework. All military installations will be reviewed and all recommendations will be based on approved, published selection criteria and a force structure plan. As required by Public Law 107–107, military value is the primary consideration in analyzing and making closure or realignment recommendations. The Education & Training (E&T) Joint Cross-Service Group (JCSG) will work to develop closure and realignment recommendations through detailed analyses and strict adherence to BRAC guidelines. The Infrastructure Steering Group and the Infrastructure Executive Council will review the E&T JCSG procedures and recommendations for consideration by the Secretary of Defense. The independent BRAC Commission will review the SecDef's closure and realignment recommendations (due to the Commission by May 16, 2005). Commissioners will be nominated by the President in consultation with the congressional leadership. Upon completion of public hearings and deliberations, the Commission must forward its closure and realignment recommendations to the President for approval not later than September 8, 2005. The President must approve the recommendations (on an all-or-none basis) and forward them to Congress.

General SCHWARTZ. The BRAC 2005 process we are now embarking on will be a comprehensive analysis of all military installations with the primary goal being en-

hanced war fighting capability and efficiency. The Department will do everything possible to ensure the BRAC process is as fair and objective as possible, within a very disciplined analytical framework. All military installations will be reviewed and all recommendations will be based on approved, published selection criteria and a force structure plan. As required by Public Law 107–107, military value is the primary consideration in analyzing and making closure or realignment recommendations. The independent BRAC Commission will review the SecDef's closure and realignment recommendations (due to the Commission by 16 May 2005). The President in consultation with the congressional leadership will nominate commissioners. Upon completion of public hearings and deliberations, the Commission must forward its closure and realignment recommendations to the President for approval not later than 8 September 2005. The President must approve the recommendations (on an all-or-none basis) and forward them to Congress. I am confident this process will produce basing recommendations that will serve us well over the long term.

29. Senator BILL NELSON. Dr. Mayberry and General Schwartz, how will training resources be captured and evaluated through this process to ensure that installations are accurately measured for their current and future military value?

Dr. MAYBERRY. The Secretary signed out a BRAC "kickoff" memorandum in November 2002 that provides the analytical construct for conducting the 2005 BRAC analyses. In this memorandum, the Secretary indicated that a primary objective of BRAC 2005 is to examine and implement opportunities for greater joint activity. To implement this direction, the memorandum further divided the BRAC analyses into two categories of functions: joint cross-Service teams will analyze the common business-oriented support functions and the military departments will analyze all Service-unique functions. Where the Department determines that education and training functions are common business-oriented, they will be reviewed and analyzed by one of these teams. The remaining training functions will be analyzed by the responsible military department.

General SCHWARTZ. Public Law 107–107, which authorizes the BRAC process, requires that military value be the primary consideration in making closure and realignment recommendations. Installation training resources is an important component in determining military value. The Secretary of Defense signed out a BRAC "kickoff" memorandum in November 2002 that provides the analytical construct for conducting the 2005 BRAC analyses. In this memorandum, the Secretary indicated that a primary objective of BRAC 2005 is to examine and implement opportunities for greater joint activity. To implement this direction, the memorandum further divided the BRAC analyses into two categories of functions: joint cross-Service teams will analyze the common business-oriented support functions and the military departments will analyze all Service-unique functions.

All installations will be considered during BRAC 2005. They will be assessed based on enabling legislative guidelines, the force structure plan, and approved selection criteria with military value being primary consideration. In doing so, we will take into account the training resources at these installations.

SPECIAL OPERATIONS

30. Senator BILL NELSON. Dr. Mayberry and General Schwartz, the President's budget includes a significant increase in funding for Special Operations Forces. Special Operations Forces are busier than ever, but there are real limits to how big these forces can be without compromising their quality. In future years, how do you see the Department managing the training challenge of ever-increasing operational tempo for these forces with the inherently limited size of Special Operations units?

Dr. MAYBERRY. This question is equally applicable Defense-wide and is not limited to Special Operations Forces. America's competitive advantage of her Armed Forces is people. Those who serve—be they in the Active, Reserve, or civilian component—are well trained and equipped. But it is our people, quality/people, who make the difference every day of every year. We will never compromise quality for size.

We can however mitigate risks be they operational tempo, requirements-resource imbalances or training challenges, by adopting a capabilities based approach to planning to deter and defeat adversaries who will rely on surprise, deception, and asymmetric warfare to achieve their objectives. We must, as Secretary Rumsfeld has said, maintain our military advantages in key areas while developing new areas of military advantages through the transformation of U.S. forces and capabilities. This administration is committed to transformation. We will divest ourselves of legacy forces and organizations and processes to maximize warfighting effectiveness. As part of this transformation, Special Operations Command will be divested of various

missions, such as routine foreign military training and civil support that can be successfully accomplished by other elements of the U.S. Armed Forces, agencies, or outsourced.

The Secretary's highest priority following fighting the global war on terrorism is transforming training to better enable joint operations. The Department's vision for transformation training is to provide dynamic, capabilities-based training for the Department of Defense in support of national security requirements across the full spectrum of Service, joint, interagency, intergovernmental, and multinational operations.

The Department is in the process of defining the requirements to develop a training capability that provides interoperability of live, virtual, and constructive training systems across the Department, leading to the creation of a Joint National Training Capability environment that meets Service, interoperability, and combatant commander training needs.

With your continued support we will create this Joint National Training Capability that allows for a realistic network centric, distributed global combat joint training and mission rehearsal capability.

General SCHWARTZ. I agree that SOF cannot be mass-produced, and it is the human dimension of SOF, not necessarily the hardware, which makes U.S. Special Operations Command such a capable organization. We, therefore, continue to wrestle with the operational tempo implications that the war on terrorism has imposed on SOF units.

While it's true that prosecuting a major combat operation impacts the readiness of the overall force, it is also true that nothing prepares our forces for conflict as well as participation in real-world operations. That said, a period of reconstitution following combat operations will be necessary and we expect the Reserve component forces to assume a significant role in the reconstitution process for the foreseeable future.

This is not a new problem set for SOF commanders. SOF has always been a low-density/high-demand commodity performing a balancing act between operational demands, training requirements, and personal time. SOF commanders have met this challenge, and will continue to do so, through a combination of careful management of personnel, awareness of current and future requirements, and individual sacrifice.

In an attempt to mitigate the burden on the SOF community, we intend to increase numbers but will not do so at the expense of readiness or quality of personnel, as this would result in a net loss of capability. We will focus on retention of personnel by providing quality-of-life, advancement opportunities, and effective family support. Where appropriate, we will utilize the expertise of former SOF personnel, DOD civilians, and contractors, and will carefully manage assignment of SOF personnel outside the SOF community.

Finally, we must ensure that we do not over-commit at the expense of our training institutions. Instructors are sometimes seen as a convenient source of additional personnel. Cannibalizing our schoolhouses to support operations, however, is risky as it restricts our ability to reconstitute the force and will quickly result in reduced readiness.

31. Senator BILL NELSON. Dr. Mayberry and General Schwartz, how will managing this training challenge affect the global war on terrorism in the long term?

Dr. MAYBERRY. As the Secretary has stated, when our Nation was attacked on September 11, there was a great deal of pressure to put off transformation—people cautioned, you can't fight the global war on terrorism and simultaneously transform the Department. The opposite is the case. The global war on terror has made transforming an even more urgent priority. Our experience on September 11 made clear that our adversaries are transforming the ways in which they will threaten our people. We cannot sit still.

The leadership of the Department is deeply engaged in training transformation. Our implementation efforts are growing significantly in pace and intensity. Over time this effort will significantly enhance our capability to fight the global war on terrorism.

General SCHWARTZ. As I stated previously, nothing prepares our troops for conflict as well as real-world operations. Experience is perhaps the single greatest force multiplier there is. SOF units are gaining experience with each passing day and stand prepared to meet the full demands of Operation Iraqi Freedom and to continue to fulfill our global commitments in the war on terror. We will manage reconstitution of the force while satisfying our global military demands.

Maintaining this level of effort obviously presents challenges. While our ability to generate major forces is robust, our SOF assets will require close management and

careful prioritization. We are conducting an assessment of both SOF core and collateral missions and capabilities required for the global war on terrorism. As we transform the Services, it is likely that some capabilities and missions now commonly associated with SOF could find a home in conventional forces. We expect the skill-sets of our conventional forces to increase dramatically as we continue to prosecute the global war on terror, allowing them to assume increasingly difficult missions and lessening the burden for SOF.

Additionally, the U.S. Special Operations Command and the U.S. Marine Corps are working closely together to examine how SOF and U.S. Marines can operate jointly to undertake a range of contingencies previously done exclusively by SOF. Similar collaborations will further ease demands on our special operations units and allow them to focus on core missions.

SIMULATORS

32. Senator BILL NELSON. General Cody, Admiral Green, General Bedard, and General Schmidt, what is your position on the cancellation of the JSIMS program and the impact on your related Service simulation programs?

General CODY. I do not believe the cancellation of the program will have an impact on joint training. The fiscal year 2003 funding was retained, so that the program manager could deliver the Block I software to the Joint Warfighting Training Center (JWFC) for their use to conduct Joint Task Force (JTF) component level training. This will enable the JWFC to continue further development to support joint training, doctrine, and experimentation. Moreover, the program decision memorandum (PDM) directed an AoA to identify a cost effective method of meeting future joint and Service training requirements. The impact on the Army simulation is greater, however, because the Block I software provides little utility for Service use. To this end, I believe it is better for the Army to pursue its own Title 10 solution with a capability to link with a joint simulation when it has matured.

Admiral GREEN. Navy supports the decision to cancel the JSIMS for Service use. JSIMS was over budget ($12 million in fiscal year 2003), behind schedule (over 1 year for Block I and estimates as much as 5 years for Block II), and delivering a product that does not meet all of the requirements in the Operational Requirements Document. The impact to the Navy is that funding to support wargaming development has been zeroed. However, unlike the other Services, Navy training requirements for wargaming are directed at a small audience (Battle Group/Amphibious Ready Group Staff only) and therefore do not require the extensive hardware and manpower to run a JSIMS scenario. Navy will reprogram existing funds to upgrade the Enhanced Naval Wargaming System (ENWGS) to meet emerging training requirements. Because the reprogramming is minimal, Navy chose not to reclama the JSIMS portion of the PDM to DOD.

General BEDARD. The cancellation of JSIMS will not have a significant effect on the near term Joint National Training Center support or simulation programs.

General SCHMIDT. The Air Force accepts the fiscal trade-offs that led to the OSD PDM decision on the JSIMS program. Impacts to related Air Force simulation programs will require funding adjustments to maintain and improve legacy systems in current use for Service and joint training, doctrine, and experimentation.

33. Senator BILL NELSON. General Cody, Admiral Green, General Bedard, and General Schmidt, are you satisfied that DOD directed the cancellation with a clear understanding of the risks and costs associated with closing the existing program, delaying establishment of a replacement program, and the potential loss of time and skilled modeling and simulation development personnel?

General CODY. I can only assume that DOD had a clear understanding of the risks and costs of terminating this program. The Army worked very closely with them while they were drafting the PDM. We recommended completing Block I, assessing the software, and then developing an AoA before deciding on termination. We also strongly recommended the Service program funding be retained regardless of the JSIMS decision so that the Services could progress on their own toward their own Title 10 capability with the intent to link to JSIMS at a later date.

Admiral GREEN. Navy is satisfied that DOD made a good faith decision on the JSIMS based on dysfunctional management structure, overhead, and nature of the separate development environments. JSIMS has not adhered to basic acquisition principles and shows no potential to deliver a usable product for Service use in the near future (certainly not within the Acquisition Program Baseline timeframe). However, the PDM does allow for completion of Block I to address joint training requirements. The PDM directed AoA should recommend a follow-on program that has

the ability to "learn" from JSIMS mistakes and possibly deliver a better product in less time than JSIMS had projected for Block II.

General BEDARD. Simulation training support for MEF level exercises and Joint Task Force exercises were two of eight primary objectives for the Marine Corps participation in the JSIMS development program that the Marine Corps would like to enhance with simulation. The JSIMS program simulates a joint training capability that is less than the Marine Corps' desired threshold. Therefore, further development of the JSIMS program would not be prudent. The Marine Corps supports the Secretary of Defense's ongoing initiative to develop and field a JNTC for all of the reasons provided during Dr. Mayberry's testimony. In the interim, the Marine Corps will forego simulation training in these particular areas until the JNTC concept can be adapted to provide the degree of automation required.

General SCHMIDT. We are satisfied that OSD principals understood the risks and costs implied and that the final decision reflects the difficult fiscal trade-offs often required among competing OSD priorities and the mandate to remain within DOD total obligation authority.

34. Senator BILL NELSON. General Cody, I understand that the Army has found funds to continue development of WARSIM, but to what joint simulation will this be connected? How will we know if WARSIM will be compatible with the next joint simulation? Isn't this a bit of a developmental gamble?

General CODY. The Army has not found funds to continue development of WARSIM. The only funds currently against the program are the $15 million the Office of the Secretary of Defense restored in fiscal year 2004. We are exploring options for the next generation of constructive simulations, and it will certainly be built to link to a joint simulation at a later date. However, the WARSIM program lost $168 million of Army Total Obligation Authority in fiscal year 2004–2009, and it will difficult to restore that funding in the program objective memorandum.

35. Senator BILL NELSON. General Cody, are you satisfied that cancellation of the JSIMS program is necessary to accelerate establishment of a Joint National Training Capability or does it complicate achieving such an objective?

General CODY. Cancellation of the JSIMS program should not complicate achieving a JNTC. Constructive simulations are only a small piece to JNTC effort and current/existing simulations should support near term JNTC requirements until JSIMS is built to meet that requirement.

36. Senator BILL NELSON. General Cody, what are your views on the importance of quality modeling and simulation to joint experimentation, joint training, joint doctrine, joint requirements development, and joint acquisition?

General CODY. Quality modeling and simulation is indispensable to effective joint experimentation, joint training, joint doctrine, joint requirements development, and joint acquisition. Regrettably, a simulation that is good for training and doctrine may not be suitable for experimentation and requirements development. We in the Army and DOD need the flexibility to develop the right simulations for each of the purposes you mention.

Problems frequently arise in simulation development when we try to apply a single modeling and simulation solution to accomplish multiple requirements. Recent history has shown that trying to develop large, complex simulations can be costly, difficult, and very risky. Even federations made up of smaller simulations, such as Millennium Challenge 2002, can grow in size to where the cost, complexity, and risk can become excessive. We can't let the word "joint" delude us into thinking that one simulation is applicable for every situation and every Service.

The DOD must have a modeling and simulation environment available to it that allows for multiple simulations to be quickly and efficiently built and/or used. Critical to this type of environment is the underlying knowledge, data, models and algorithms, and especially the organizational agility, to rapidly assimilate these components into a "quality" simulation that is most relevant to the intended use. Ultimately, smaller overlapping simulations are likely to be more effective and efficient than attempts to create one all-encompassing simulation.

37. Senator BILL NELSON. General Cody, in your view, what DOD agency should be responsible for the definition of requirements, research, development, testing, evaluation, and procurement of a joint simulation system?

General CODY. No single agency can address all of these tasks by itself. A combination of established agencies working through one overarching organization, such as Joint Forces Command (JFCOM), would provide a unified direction and purpose. JFCOM should identify research topics but allow established research agencies at

both the Service and Office of the Secretary of Defense level to conduct research within their guidance. Established Service level agencies should continue small or unique program procurement, while larger programs are managed through a Joint Program Management office. In both cases, requirements definition, testing, and evaluation for a joint simulation system should be a JFCOM responsibility with Service input.

BASE REALIGNMENT AND CLOSURE

38. Senator BILL NELSON. General Cody, Admiral Green, General Bedard, and General Schmidt, I have no doubt that the Services are well into preparation for data collection and analysis leading up to a BRAC recommendation in 2005. I am interested to know your views on BRAC. What is your role within your Service or DOD in the establishment of criteria, collection and analysis of data, and recommendations or decisions during the BRAC 2005 process?

General CODY. I view BRAC 2005 as a great opportunity to enhance our warfighting capability and efficiency through infrastructure realignment. It will be a critical component of our transformation.

As the Deputy Chief of Staff, G3, I am the staff proponent for unit activations, inactivations, relocations, and other force structure changes, and, ultimately, the strategic stationing of Army forces. I will provide the Army's Stationing Strategy to the Army's Basing Study Group, and participate in the development and evaluation of alternatives.

I am also a member of the Army's BRAC Senior Review Group, which provides guidance to and reviews products of the BRAC 2005 study group.

Admiral GREEN. A successful BRAC 2005 is most important to the Department of the Navy, to the Department of Defense, and to the Nation. Now more than ever we need to convert excess capacity into warfighting capability—we owe it to all Americans—particularly our men and women in uniform—to seek every efficiency in the applications of funds on behalf of our warfighter.

As the Deputy Chief of Naval Operations (Plans, Policy and Operations), I do not have a direct role in any aspect of the Department's BRAC 2005 efforts. However, my understanding is the Department of Defense, with all of its components, will work as a team to develop the BRAC 2005 selection criteria. The common theme will be having military value as the primary consideration.

General BEDARD. The Marine Corps supports the requirement of the Department of Defense to reduce excess infrastructure, in order to redirect resources to other important programs. The Marine Corps is fully committed to participation in the BRAC process. The Department of Defense has formed two senior groups to oversee and evaluate the process. The Commandant of the Marine Corps serves on the Infrastructure Executive Council and the Assistant Commandant serves on the Infrastructure Steering Group. Marine Corps Reserve Forces are also fully participating in the review and analysis. I will be actively engaged in this process through periodic updates as the analysis proceeds, and will consult as to the military value of the results or recommendations arising from that analysis from my perspective as Deputy Commandant, Plans, Policies, and Operations. The Secretary of Defense has stated that all installations will be subject to review during this analysis.

General SCHMIDT. Under BRAC law, the Secretary of Defense proposes and finalizes selection criteria upon which the Services and DOD are to base their closure and realignment recommendations. All Services will have input into these criteria through the Infrastructure Executive Council and Infrastructure Steering Group created by the Secretary of Defense to oversee and operate the BRAC 2005 process.

Based upon these criteria, both DOD joint cross-Service groups and the Services will design detailed questions to collect the information and data necessary to analyze all required military installations on the basis of these criteria, the DOD force-structure plan, and the infrastructure inventory required by BRAC law. Through both DOD and Service internal control plans, we will ensure our analysis and recommendations are based on accurate and complete data and that the process is properly documented and auditable. The Services have established interdisciplinary teams to design the questions and make recommendations through the Service Secretary to DOD, and DOD in turn has established similar mechanisms. Under the BRAC law, however, the final recommendations transmitted to the BRAC Commission are those of the Secretary of Defense.

39. Senator BILL NELSON. General Cody, Admiral Green, General Bedard, and General Schmidt, what systems are in place that give you confidence that we will avoid a NAS Cecil Field kind of mistake in this next round?

General CODY. I cannot comment on decisions made involving installations belonging to other Services in previous BRAC rounds. However, the Army intends to take full advantage of lessons learned from previous BRAC rounds throughout our entire process. In addition, the Army has implemented several systems that give me confidence that we can avoid missteps in this round of BRAC. They include more sophisticated analytical tools, a disciplined data collection/certification process, a rigorous set of internal control procedures, and a thorough, comprehensive review of all BRAC products by the Army's Senior Review Group.

Admiral GREEN. I cannot speak to decisions made in previous BRAC rounds however, for BRAC 2005 the law sets out a very fair selection and review process. It requires all bases to be treated equally, whether considered for closure or realignment in the past; all recommendations will be based only on 20-year force structure plan, infrastructure inventory, and published selection criteria; all data used will be certified as accurate and complete and provided to the Commission and Congress; and all DOD recommendations will be reviewed by independent Commission and President.

General BEDARD. The Department of Defense has studied lessons learned from the last four rounds of BRAC. The Marine Corps is working closely with the other Services to develop tools that will improve the BRAC decision-making processes. One of the tools the Office of the Secretary Defense is developing to use in BRAC analysis is the Installation Visualization Tool (IVT), which will employ Geographical Information Systems (GIS) to provide decisionmakers with more complete information about installations and their environment. The Air Force has the lead for the development of the IVT. The IVT will assist in relating operational infrastructure, training requirements, airspace and environmental analysis.

General SCHMIDT. The BRAC law prescribes a very logical progression of rigorous and objective reports, studies, and analysis that should culminate in Secretary of Defense recommendations for closures and realignments that reasonably, effectively, and efficiently meet our national defense security needs. The Department of Defense and the Services either have or will establish and rigorously adhere to Internal Control Plans to ensure our analysis and recommendations are based on accurate and complete data and that the process is properly documented and auditable. As DOD's recommendations are reviewed, evaluated, revised, and/or approved by the BRAC Commission, the Comptroller General's Office, the President, and ultimately by Congress, numerous levels of checks and balances are built in to the process.

40. Senator BILL NELSON. General Cody, Admiral Green, General Bedard, and General Schmidt, how will your critical training resources—land, airspace, and sea—be captured and evaluated through this process to ensure that installations are accurately measured for their current and future military value?

General CODY. We have well-defined training resource requirements for our current forces and a good working template for future force requirements. Our critical training resources will be captured and evaluated to ensure that installations are accurately measured for their current and future military value by implementing a process which includes clearly defined requirements, a disciplined data collection/certification process, a rigorous and auditable analytical process, and a thorough post-analysis review.

Admiral GREEN. The law requires that published selection criteria must ensure that military value is the primary consideration. I anticipate that both current and potential future training resources will be identified and considered as a part of the installation military value assessments during the BRAC 2005 process. Additionally, as required by the law, the selection criteria must address the following:

- Preservation of training areas for maneuver by ground, naval, or air forces
- Preservation of military installations in the United States as staging areas for the use of the Armed Forces in homeland defense missions
- Preservation of military installations throughout a diversity of climate and terrain in the United States for training purposes
- Consider the impact on joint warfighting, training, and readiness
- Contingency, mobilization, and future total force requirements at both existing and potential receiving locations to support operations and training
- The extent and timing of potential costs and savings, including the number of years, beginning with the date of completion of the closure or realignment, for the savings to exceed the costs
- The economic impact on existing communities in the vicinity of military installations
- The ability of both the existing and potential receiving conununities' infrastructure to support forces, missions, and personnel

- The impact of costs related to potential environmental restoration, waste management, and environmental compliance activities.

General BEDARD. The Department of Defense has begun to form the structure for the Base Realignment and Closure process. The Commandant of the Marine Corps serves on the Infrastructure Executive Council and the Assistant Commandant serves on the Infrastructure Steering Group. These groups will provide the executive level oversight to ensure future requirements are fully considered. Marine Corps Reserve Forces are also fully participating in the review and analysis. Six joint cross-Service groups are formulating procedures for looking across the Services for many common functions. Individual departments will review Service unique functions. We will be working closely with the other Services to ensure accurate data collection and analysis to determine the optimum infrastructure and alignment to support our force structure, weapons systems, doctrine, and tactics for how we will operate and train for the foreseeable future. The Secretary of Defense has stated that all installations will be subject to review during this analysis.

General SCHMIDT. Until DOD's final selection criteria are proposed and finalized in accordance with the BRAC law, we cannot provide a definitive response. However, the BRAC law does provide that for the BRAC 2005 process military value must be the primary consideration for these selection criteria and DOD's recommendations. The BRAC law further specifies that military value must include: preservation of suitable training areas for maneuver for all forces now and in the future; preserving military installations for training purposes throughout a diversity of climate and terrain; impact on training; and contingency, mobilization, and total force requirements, current and future, at both existing and potential receiving locations to support operations and training. Accordingly, critical training resources will, at a minimum, be captured and analyzed in this manner.

[Whereupon, at 4:11 p.m., the subcommittee adjourned.]