



**CIVILIAN REMEDY:**

The town of Bourne, Mass., had to install new water mains last May after the military installation next door polluted some well water.

# Pre-emptive Exemptions

BY MARGARET KRIZ ■

**W**ith the military's popularity running high, the Pentagon has launched a pre-emptive strike on parts of five major environmental laws, including the Clean Air Act and the Endangered Species Act, in hopes of winning major congressional exemptions and no longer having to apply for case-by-case exceptions. Arguing that

**THE PENTAGON WARNS THAT ITS READINESS COULD SUFFER UNLESS THE HILL SHORTENS THE REACH OF ENVIRONMENTAL LAWS.**

complying with those statutes threatens to jeopardize military readiness, the Department of Defense is asking lawmakers to use the DOD reauthorization bill to restrict the reach of three pollution-control laws and two wildlife-protection laws. That legislation is pending in the House and Senate Armed Services Committees.

Raymond F. DuBois Jr., deputy undersecretary of Defense for installations and environment, argues that federal courts have used the environmental laws to restrict training in ways that are "limiting realistic preparations for combat and,

therefore, our ability to maintain the combat readiness of America's military forces."

As proposed, the Pentagon's exemptions would extend to all "military readiness activities," a legal term of art encompassing a vast array of troop-training, equipment-testing, and combat-support actions. The environmental laws would still fully apply to military operations with weaker links to combat readiness, such as military housing and PX facilities.

Predictably, critics are outraged by both the content and the timing of the Pentagon's request, which comes on the

heels of a similar, partially successful request last year. “I have dealt with the military for years, and they constantly seek to get out from under environmental laws,” Rep. John D. Dingell, D-Mich., thundered in a statement. “But using the current conflict in the Middle East to get unprecedented environmental immunity is despicable.” Dingell is the ranking minority member of the House Energy and Commerce Committee, which normally has jurisdiction over the targeted pollution-control laws.

Pentagon officials vigorously deny that they are trying to capitalize on the war in Iraq or the war on terrorism. “Some have said, ‘You’re taking advantage of 9/11. This has happened all of a sudden,’ ” DuBois said. “Not true. What we’re up against is the way our nation’s environmental laws are being applied and, over time, have been used by third parties to enjoin the military from using the training lands designated by the Congress.”

Those “third parties” are environmental groups that have won court orders restricting certain military operations. For example, the Navy was forced to delay the testing of an anti-submarine sonar system after the Natural Resources Defense Council filed suit, charging that the sonar tests would harm whales safeguarded by the Marine Mammal

readiness: “While our forces receive the best training possible, restrictions on our access to essential training space have begun to raise concerns. We work much harder in many cases to prepare our troops, using multiple ranges to accomplish what we used to be able to do at one.”

Firing back, leading environmentalists charge that the Pentagon’s amendments would have dire consequences for the health of the nation. “If Congress passes the Bush administration’s proposals, millions of Americans can add polluted air and toxic chemicals in their communities to the cost of the Iraq war,” argues Philip Clapp, president of the National Environmental Trust.

And a June 2002 General Accounting Office report concluded that the military has no idea whether current environmental limits have impeded readiness, or even how significantly those restrictions have affected its activities.

Nevertheless, the Pentagon proposes amending not only the Clean Air Act, the Endangered Species Act, and the Marine Mammal Protection Act, but also the Resource Conservation and Recovery Act and the Superfund hazardous-waste cleanup law. Specifically, the military wants the following:

- Three extra years to meet federal air-pollution limits for a wide array of military activities, including deployment of new weapons systems.
- Less regulation of how it handles and cleans up explosives and their toxic components on training ranges; elimination of state authority to police the military’s compliance with hazardous-waste cleanup laws.
- Authorization for the secretary of Defense to exempt the military from protecting declining populations of marine mammals, such as whales and sea otters, during activities related to “national defense.”
- Exemptions for training ranges from key parts of the Endangered Species Act if the military base has a written plan for managing natural resources. Those plans are

supposed to err on the side of protecting the military’s freedom of movement, not protecting endangered species.

*(See p. 1298 for the pros and cons of the Pentagon’s requests.)*

#### A FAR-REACHING CAMPAIGN

The military’s current push is just the beginning of a broader campaign to reconfigure environmental law, according to a December memo to top military brass from Paul W. Mayberry, executive secretary of the Pentagon’s Senior Readiness Oversight Council. That memo described larger changes that the Pentagon eventually wants to seek in the Clean Air Act and the Endangered Species Act, as well as ways it wants to alter both the Land and Water Conservation Fund program and the Sikes Act, which requires every military facility to have a resource-management plan.



ANMARK DUNCAN

**PRONGHORNS OF A DILEMMA:**  
Voluntary safeguards adopted by the Air Force to protect endangered antelope interfere with flights over Arizona target ranges.

Protection Act. A federal court eventually allowed the testing—but only in waters with few whales.

The Pentagon’s demand for permanent exemptions from parts of five environmental laws is an effort to preempt more-sweeping restrictions on its operations. “There is a wave of pending litigation that we see as a threat,” Benedict S. Cohen, deputy general counsel for environment and installations, told the Senate Environment and Public Works Committee at an April 2 hearing. He accused environmental groups of “seeking to overturn federal regulatory policy and compel federal regulators to impose crippling restrictions on our readiness activities.”

John Walsh, the Pentagon’s special assistant for training ranges, stops just short of saying that obeying court interpretations of environmental laws has diminished military

According to the readiness council's memo, all of those proposals were held back this year because they "are not yet well-defined or fully vetted within the department." The memo added that the proposals "also would engender significant opposition, as all four would entail significant changes to major environmental statutes."

Opponents of the pending first wave of environmental amendments contend that they are unnecessary because the Pentagon already has the power to seek exemptions in the name of national security, but rarely exercises it. Pentagon officials counter that it takes too long to secure such exemptions. And, they add, most environmental laws permit only very restricted exemptions—limited to a particular time and place—that don't fit the military's constantly changing training programs.

Critics also blast the Pentagon for seeking to use the DOD reauthorization bill to rewrite major environmental legislation, potentially bypassing the committees with expertise on pollution and wildlife protection. Republican leaders in the House and Senate apparently have not yet decided whether the environmental sections of the reauthorization bill will be forwarded to environmental committees after being marked up by the Armed Services panels.

Defense officials insist that their environmental amendments would simply codify proposals that were already being kicked around during the Clinton administration. Not true, insist Clinton-era Pentagon officials. Clinton's Defense Department never sought to rewrite the Clean Air Act, they point out. In fact, under President Clinton, the Pentagon worked to improve its reputation on environmental issues and earned kudos from local and state regulators as well as from environmentalists for protecting endangered species through conservation pacts. By aggressively lobbying for permanent exemptions to environmental laws, the Pentagon has "thrown away all that credibility," contends one former Defense official.

The new environmental requests are receiving mixed reviews from Republicans on Capitol Hill. James M. Inhofe, R-Okla., who chairs the Senate Environment and Public Works Committee, has emerged as the most vocal congressional champion of the military's proposals. Inhofe, who also serves on the Senate Armed Services Committee, has launched a public-relations campaign called "Operation End Extremism," aimed at discrediting the proposals' critics. So far, Inhofe's operation has consisted of issuing press releases attacking the Natural Resources Defense Council

## ■ THE BATTLE LINES

**T**he Pentagon seeks significant exemptions from five environmental laws. The pros and cons of what the Defense Department calls its Readiness and Range Preservation Initiative follow:

### CLEAN AIR ACT

The Pentagon wants a three-year reprieve during which new weapons systems or other activities associated with "military readiness" would not have to meet Clean Air Act requirements. Currently, federal facilities in very polluted places are prohibited from increasing their total air-pollution emissions above certain levels. The reprieve would apply specifically to emissions of carbon monoxide, lead, nitrogen dioxide, ozone, sulfur dioxide, and particulate matter or soot. And the Environmental Protection Agency would be barred from penalizing a state that could not meet federal air-pollution limits because of additional military pollution.

**Pro:** The current air-pollution limits could inhibit the military's ability to deploy new weapons systems quickly and to relocate existing equipment as needed.

**Con:** The Clean Air Act has never

impeded military readiness and allows the Defense Department to routinely transfer ships and aircraft, as long as no new support facilities are built for them. The act already allows military exemptions for actions of "paramount national interest," but the Pentagon has never sought such an exemption.

### RESOURCE CONSERVATION AND RECOVERY ACT; SUPERFUND ACT (COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT)

The Pentagon seeks to change the definitions of "solid waste" and "hazardous waste" in these two laws to end their regulation of explosives, unexploded ordnance, and their components. This proposal is aimed at stopping environmental regulators—both federal and state—from forcing the military to clean up operational ranges, even if groundwater is being contaminated. Defense Department officials say they plan to drop language that would have exempted private research and testing facilities from being regulated under these hazardous-waste cleanup laws.

**Pro:** The changes would prevent training ranges that are still in use

from being regulated under the hazardous-waste laws. Therefore, training would not be interrupted. Under other laws, federal environmental regulators would still be able to control munitions causing an "imminent or substantial endangerment" to sources of drinking water.

**Con:** The changes are unnecessary because the two hazardous-waste laws already let the president grant military exemptions. If adopted, the proposal would severely undercut state and federal efforts to force the military to clean up its hazardous waste. Also, the wording of the proposal is confusing and might prevent regulators from forcing cleanups at closed military ranges.

The amendments would thwart efforts to force the military to clean up weapons materials before they contaminate groundwater or cause other pollution problems. Preventing the states from regulating waste on military ranges would result in fewer cleanups at active and closed military facilities and, thus, more health problems.

### ENDANGERED SPECIES ACT

The Defense Department wants to

and other environmental groups for their opposition to exempting the Pentagon from certain environmental protections.

(Inhofe's actions demonstrate how radically the leadership of his committee has changed. Last year, when Democrats controlled the Senate, Chairman James M. Jeffords, I-Vt., held hearings to criticize the military's efforts to get out from under some environmental requirements.)

Inhofe's enthusiasm for writing broad, permanent military exemptions into law doesn't seem to be shared by Senate Armed Services Committee Chairman John W. Warner, R-Va. In the past, Warner has consistently supported the Defense Department's piecemeal requests to ease environmental constraints on military training activities. At a February congress-



RAYMOND DUBOIS JR.:

"Some have said, 'You're taking advantage of 9/11. This has happened all of a sudden.' Not true."

sional hearing, Warner hinted that he continues to prefer that approach. "I'm reluctant to try and change [the environmental laws] just to protect the military and its operations at bases," he said.

Meanwhile on the House side, Rep. Joel Hefley, R-Colo., who chairs the House Armed Services Subcommittee on Readiness, asked the Pentagon to rank the items on its environmental wish list in order of priority. And Resources Committee Chairman Richard Pombo, R-Calif., has formally asked House leaders to let his panel review the

defense-related amendments to environmental laws that fall within its jurisdiction. Last year, Resources Chairman James Hansen, R-Utah, who has since retired, waived his committee's jurisdictional claims.

Pombo, who is rarely on good terms with environmental groups, said in a recent interview, "I am somewhat hesitant to exempt certain parts of the federal government from

be exempt from this law's habitat-protection requirements at any military base that has a written plan for managing its natural resources. The Sikes Act requires base commanders to develop such plans but specifies that the conservation actions must not limit military use of the facility.

**Pro:** This proposal would codify a Clinton administration policy that allowed base-management plans to be substituted for critical-habitat designations. The Sikes Act is a more flexible law for managing resources because it allows military officials to help preserve species without impairing military readiness.

**Con:** The current law authorizes the secretary of the Interior to determine whether a management plan sufficiently protects a species. The proposed amendment would shift that authority to the secretary of Defense. The Sikes Act does not sufficiently protect species because it requires the Defense Department to err on the



CLEAN-AIR COMBAT:

The military wants out from under rules that it says inappropriately hamper its activities in very polluted regions.

side of the military's needs, not species protection. The Endangered Species Act already contains provisions allowing the Interior Department to exempt military activities.

#### MARINE MAMMAL PROTECTION ACT

The Pentagon wants to empower the secretary of Defense to perpetually exempt any military action related to "national defense" from this law's

reach by continually giving two-year exemptions. The proposal would narrow the types of military actions that would be considered unlawful animal "harassment." The proposal would ease provisions that spell out when the military is allowed to harm or kill marine mammals.

**Pro:** Unlike other environmental laws, the Marine Mammal Protection Act contains no emergency exemption for national security or military readiness.

**Con:** The proposal would let the Defense Department grant itself open-ended exemptions for virtually any military activity. The result would be less protection for marine mammals and less monitoring of DOD activities. No explicit military exemption is needed because the National Marine Fisheries Service has never barred the Pentagon from harming marine mammals as long as the action did not threaten a species with extinction. —M.K.



**UNNATURALLY CONFUSED?**

Citing whale beaching, environmentalists won a court order that temporarily delayed the Navy's testing of long-range, anti-sub sonar.

these laws. If there is a problem with the way the law's being implemented, we ought to fix it for everybody. I don't think just exempting certain people or certain agencies of the federal government resolves the problem."

Meanwhile, House Energy and Commerce Committee Chairman W.J. "Billy" Tauzin, R-La., is negotiating with House Republican leaders over his jurisdictional concerns, according to a committee staffer. And Sen. Olympia Snowe, R-Maine, who chairs the Senate subcommittee with jurisdiction over the Marine Mammal Protection Act, has asked that the Pentagon's proposed amendment be referred to her panel.

Unlike their GOP counterparts, the congressional Democrats taking an active interest in the Pentagon's pursuit of major environmental exemptions are united in their opposition. The ranking Democrats on the House Energy and Commerce Committee (Dingell), House Resources Committee (Nick J. Rahall II of West Virginia), and the House Armed Services Committee (Ike Skelton of Missouri) wrote to the House's Republican leadership to ask that the Pentagon's requests be reviewed by environmental panels, not just by Armed Services.

And on April 7, the minority staffs of the House Resources Committee and the House Energy and Commerce Committee issued a white paper blasting what they called Bush administration efforts to "weaken or eliminate the DOD's responsibilities under several important public health, pollution, and conservation statutes." The report pointed out that the military has yet to cite a single example

of the Clean Air Act or the hazardous-waste cleanup laws having impeded military readiness.

**A TWO-FRONT WAR**

The Defense Department launched its environmental campaign last year with a blitzkrieg attack. On April 19, 2002, the Pentagon asked Congress to use the defense reauthorization bill to rewrite eight environmental laws. That demand came just four days before the House Armed Services Committee was scheduled to mark up the bill. "They thought they were going to smoke this thing through Congress," recalls one Democratic congressional aide.

Administration insiders say the proposal was released as soon as it had made its way through an extensive interagency review, a process in which the military was forced to scale back its requests. For example, the Office of Management and Budget blocked the idea of rewriting the Clean Water Act to "clarify that munitions firings do not constitute discharges of hazardous materials" under the law.

Environmental regulators were less successful in the interagency review. The Environmental Protection Agency objected to Defense efforts to cut the states out of the hazardous-waste cleanup process at military ranges and to limit the

EPA's ability to regulate dangerous waste on military ranges. And the National Park Service argued that the Pentagon amendments "would cause substantial degradation of natural

resources, including migratory birds, marine mammals, natural quiet, and water quality." But the Pentagon "steamrollered over" the objections, according to a career Interior Department official.

In the end, the Pentagon persuaded Congress last year to approve two small changes to environmental law, as well as a far-reaching amendment that granted a one-year exemption from the Migratory Bird Treaty Act for "military readiness" activities and that ordered the Interior Department to develop regulations to make that exception permanent. The Migratory Bird Treaty Act is intended to protect a wide variety of birds.

The Pentagon asked for the migratory-bird exemption after the Center for Biological Diversity, an Arizona-based environmental group, sued the Navy to stop bombing exercises on Farallon de Medinilla, a 200-acre Pacific isle that is part of the Northern Mariana Islands. Environmentalists said the bombing runs were killing protected birds, including the endangered Micronesian megapode.

Hoping to build on last year's successes, the Pentagon has redoubled its efforts to persuade Congress to rewrite the five other environmental laws. The military is beefing up its lobbying forces, which now include Bush administration environmental officials, and is marching a steady stream of its top brass to Capitol Hill to recount tales of training being limited because of the Endangered Species Act. The Pentagon's readiness council predicts that it will take a "multiyear campaign" to win all the environmental changes.

On a separate track, the Defense Department is working to expedite requests for the environmental exemptions available under existing laws. In a March 7 memo, Deputy Defense Secretary Paul Wolfowitz stressed that exemptions are appropriate “in cases where environmental requirements threaten our continued ability to properly train and equip the men and women of the armed forces.” He added, “In the vast majority of cases, we have demonstrated that we are able both to comply with environmental requirements and to conduct necessary military training and testing. In those exceptional cases where we cannot and the law permits us to do so, we owe it to our young men and women to request an appropriate exemption.”

Critics of granting the military sweeping exemptions note that the Defense Department has never sought legislative exemptions from the Clean Air Act or hazardous-waste laws and that it has rarely been refused an exemption under the Endangered Species Act. And even though the Marine Mammal Protection Act doesn't contain a military exemption, Pentagon petitions to “take”—meaning harm or kill—marine mammals have always been granted if the action would not significantly deplete a specific mammal's population, environmentalists say.

Opponents also argue that the Pentagon is sending military commanders contradictory messages about compliance with environmental laws. Although Wolfowitz has encouraged broader use of exemptions and more cooperation with local communities, a November memo from then-Navy Secretary Gordon R. England warned base commanders not to make compliance look easy. He said that signing habitat-preservation agreements with local communities could undercut efforts to rewrite the Endangered Species Act: “It is important that our well-intentioned personnel in the field not make local accommodations to introduce new species, habitats, etc., on our bases outside or beyond the requirements of the ESA, [because] some concessions could run counter to the legislative relief that we are continuing to pursue with Congress.”

The Defense Department's battle to rewrite the environmental laws has two fronts: pollution control and wildlife protection. The military has produced only scant evidence that the air-pollution and hazardous-waste cleanup laws have hurt its ability to prepare for war. And Pentagon officials tend to play down their requests to change those laws.

State attorneys general and state environmental officials, who tend to hold significant sway on Capitol Hill and who are responsible for local enforcement of pollution limits, strongly oppose giving the military broad exemptions to pollution laws. Speaking on behalf of 14 states and the

Northern Mariana Islands at the April 2 Senate Environment and Public Works hearing, Colorado Assistant Attorney General Dan Miller testified, “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.”

In targeting the Clean Air Act, the Pentagon wants to amend provisions that forbid federal facilities in highly polluted regions of the country from increasing the air pollution they emit each year. DOD wants a three-year exemption from those air-pollution health standards for new weapons



#### HITTING THE BEACH:

The Pentagon says air-pollution rules might limit the sort of amphibious assault vehicles it could base in Southern California.

systems and other new “readiness activities,” including training, equipment-testing, and combat-support activities.

Military officials concede that environmentalists have never sued the Defense Department under the Clean Air Act, nor has the Pentagon ever applied for an exemption. But they say they've experienced “a number of near-misses” in transferring military aircraft to regions with serious air-pollution problems, such as California and Virginia. The officials say that unless the Clean Air Act is rewritten, they might not be able to base future weapons systems in very polluted places. That could thwart plans to base “the V-22, Joint Strike Fighter, and the Advanced Amphibious Assault Vehicle in any Southern California locale,” according to a Defense Department fact sheet.

The Defense Department's proposal would require the EPA to excuse states that can't meet their federal air-pollution limits solely because of pollution from the new military equipment. But state regulators say that a federal waiver would be little solace to the residents forced to breathe more-polluted air. “State and local air-pollution control officials will still feel the responsibility to deliver truly healthy air to the public we serve. And therefore, we will have no choice but to call upon other sectors in order to obtain the emissions reductions we can no longer secure from the military facilities,” the State and Territorial Air Pollution Program Administrators and the Association of Local Air Pollu-

AP/DENNIS PORROY

tion Control Officials have warned the Armed Services Committees.

State officials are also fighting military efforts to rewrite hazardous-waste laws. The Pentagon wants to revise the definitions of "solid waste" and "hazardous waste" to exempt explosives, munitions, unexploded ordnance, and related wastes. The Pentagon argues that it merely wants to prevent environmental regulators from applying waste-cleanup rules to active military training ranges. In an interview, DOD's Cohen said the Resource Conservation and Recovery Act "is a waste-management statute, and we don't regard live-fire training as a waste-management activity."

But critics say the Pentagon's amendment is poorly drafted and could have consequences much more far-reaching than the ones being acknowledged. For example, Defense Department officials insist that they are not trying to eliminate their responsibility to clean up training ranges once they've been closed. But a group of state attorneys general argues that DOD's amendments to the hazardous-waste laws "would likely affect cleanups of unexploded ordnance at thousands of sites nationwide, including many that are no longer in federal ownership, and could be read to exempt all munitions-related and explosive-related wastes from regulatory hazardous waste," according to a March 19 memo to the House Armed Services Committee from the attorneys general of Arizona, California, Colorado, Idaho, Massachusetts, New Mexico, Utah, and Washington state.

In his testimony, Colorado's Miller argued that the Pentagon's proposal "would likely pre-empt states and EPA from using [the hazardous-waste laws] to regulate the cleanup of unexploded ordnance and other munitions-related contamination at 16 million acres of land on closed, transferred, and transferring ranges.... Much of this land is in private ownership."

Miller said in an interview that his state has used federal hazardous-waste laws to force the military to clean up unexploded ordnance on the closed Lowry Bombing and Gunnery Range near Aurora, Colo. "The only way the state has any leverage in discussions with the Department of Defense is when we have this legal authority," he added. "If you make it clear that they're not subject to any state authority, we're very concerned that they're not going to voluntarily do the right thing."

Military officials insist that they are committed to cleaning up closed ranges. But the state officials argue that the Pentagon has dragged its feet on cleaning up the 131 military hazardous-waste sites on the federal Superfund law's priority cleanup list. "As far as hazardous waste goes, the federal government is by far the biggest polluter in the country," Miller said.

Opponents also worry that if the Pentagon obtains the pollution-control exemptions it seeks, it will no longer be required to clean up active firing ranges, even if the toxic materials begin to decompose and leach into groundwater.

The Pentagon used to claim that toxic chemicals from its training ranges had no impact on the environment beyond the range fence line. But that claim stopped in 1997, when the EPA forced the Defense Department to permanently stop using live ammunition at the Massachusetts Military Reservation on Cape Cod because toxic chemicals associated with cancer and thyroid problems had seeped from the weapons range into groundwater—the only local source of drinking water for 200,000 people.

The Massachusetts case is not unique. Similar groundwater problems have been discovered at the military's Aberdeen Proving Ground in Maryland.

The Pentagon insists that even if it obtains the exemptions it seeks, the EPA will still be able to force the military to protect drinking-water supplies under the Safe Drinking Water Act or the emergency provisions in Superfund.

For her part, EPA Administrator Christie Whitman testified in February, "I am not aware of any particular area where environmental protection regulations are preventing the desired training." Even so, in March she told reporters that her agency is "very comfortable" with the Pentagon's proposed exemptions.

At an April 2 congressional hearing, the EPA's enforcement chief, John Peter Suarez, said Whitman's comments were not contradictory. Although the Clean Air Act and hazardous-waste cleanup laws have not hampered national security, he explained, "prospectively, we can envision ways that these laws might have an impact on military readiness."

#### TARGETING WILDLIFE LAWS

The Pentagon seems to be making the most headway in its pursuit of exemptions from federal wildlife-protection laws. The Defense Department regularly peppers its congressional testimony with lists of

military operations that it says have been restricted or delayed in the name of protecting an endangered species or its habitat.

On April 1, Republican Sen. John McCain expressed outrage over restrictions on test flights at the Barry M. Goldwater Air Force Range in his home state of Arizona. The range is home to 100 of the few remaining Sonoran pronghorn antelope in the United States. To protect that endangered species, the Defense Department surveys the region before flying sorties over seven target areas. If an antelope is spotted near a particular target, that target isn't used in the training run. (The Air Force voluntarily adopted those restrictions in 1997 to avoid the possibility of being forced to abide by the Endangered Species Act.) As a result, almost 40 percent of the live-fire missions planned at the range since then have had to be canceled or restricted.

McCain fumed, "You can't run a military efficiently ... by canceling 40 percent of the training that's being conducted. We're faced here with a choice between the Sonoran pronghorn and conducting a realistic training for our men and women who, as we speak, are in harm's way."

But some of the military's horror stories seem exaggerated. For example, exemption supporters continue to assert that 57 percent of California's Camp Pendleton has been placed off-



UPI/ROGER L. WOLLENBERG

#### CHRISTIE WHITMAN:

The EPA administrator is "very comfortable" with the proposed exemptions but knows of no example of environmental rules "preventing the desired training."

limits to military operations in an effort to preserve the habitat of the California gnatcatcher and other endangered species. The Congressional Research Service estimates, however, that less than 3 percent of the Marine base's 186,700 acres is designated "critical habitat" subject to training restrictions.

The military's critics say the Pentagon vastly overestimates the territory that has been restricted to protect animals. "Out of their 25 million acres, they're going to find an extremely tiny percentage of land has been put off-limits by habitat-conservation plans," said John Kostyack, counsel for endangered habitats at the National Wildlife Federation. "You have a handful of bases where there are critical-habitat debates going on. But ... the vast majority of bases have no critical-habitat issues."

The Pentagon wants to amend the Endangered Species Act to allow any military base that drafts a natural-resources management plan to be exempt from federal rules for protecting endangered species. In fact, under the Sikes Act all military facilities are already required to draw up such resource-management plans to outline how they will manage wildlife on the bases. Unlike the protections mandated by the Endangered Species Act, however, the management plans are not enforceable, and species protection is not mandatory. Critics also note that the Sikes management plans are supposed to put the military's needs ahead of species protection.

Pentagon officials say the management plans are a logical substitute for the more-restrictive plans for protecting the habitats of endangered species. "Management plans are intended to ensure that an installation will be able to meet its military missions, now and into the future, without degrading the valuable natural resources present on the installation," said the Defense Department's Cohen. He said the plans "ensure environmental protectiveness in a flexible way." Cohen stressed that under the Pentagon's proposed amendment, management plans could be substituted for Endangered Species Act protections only if, in the view of the secretary of Defense, the two approaches would provide equal protection for endangered species.

Environmentalists say that many of the military's management plans would fail to protect declining species. "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," argued Jamie Rappaport Clark, who headed the Fish and Wildlife Service during the Clinton administration and is now senior vice president for conservation programs at the National Wildlife Federation. At the April 2 congressional hearing, Clark declared that the Pentagon amendments would open the door to "poorly designed [management plans] that allow destruction of essential habitat and put fish, wildlife, or plant species at serious risk of extinction."

Meanwhile, conservative property-rights groups are also cautiously watching the Pentagon's species-protection amendments. They worry that if military lands aren't required to provide a home for dwindling species, federal regulators will force nearby private landowners to take up the slack. "If changes are made to the ESA, they should ben-

efit everyone, not just one favored entity," said Chuck Cushman, executive director of the American Land Rights Association, in a March 7 letter to Congress. "Carving out exemptions for any reason, even as important as national defense, leaves other citizens behind and reduces the momentum and incentives for improving this seriously flawed law."

For the Marine Mammal Protection Act, the Pentagon has more-extensive changes in mind. It wants to allow the secretary of Defense to exempt any military action related to "national defense" from the statute's requirements by continually granting two-year reprieves. The Pentagon's amendments would also place new limits on the military's responsibility to protect marine mammals. The House Democratic white paper described the Pentagon request as a "brazen proposal to rid itself of complying with the [marine mammal protection] requirements and shield itself from citizen lawsuits."

The military is reacting to lawsuits that have delayed and attempted to stop ocean testing of long-range sonar equipment. Environmental groups argue that the sonar experiments have caused confused whales to beach themselves and die. But the Navy argues that the tests are needed to develop sonar equipment that can detect the quiet diesel submarines used by China, Iran, and North Korea.

The military's battle for the environmental exemptions is becoming increasingly contentious. Sen. Joe Lieberman, D-Conn., has accused the military of trying to "run roughshod over the environment." He said, "The administration has dressed up major environmental rollbacks in a national security camouflage."

But Sen. John Cornyn, R-Texas, countered that "current restrictions on training do affect the preparation and the readiness of our Special Operations forces—the very same forces who, by the way, just recently liberated

Private Jessica Lynch from an Iraqi hospital."

Many environmentalists see the Pentagon's legislative exemption wish list as part of a Bush administration crusade to undermine the nation's bedrock environmental laws. They charge that the Pentagon amendments are unlikely to help current war efforts and could do lasting harm to the nation's air, water, and wildlife.

Military officials indignantly deny that they timed their 2003 legislative push to coincide with the conflict in Iraq. Nonetheless, administration officials lobbying for the environmental exceptions have constantly alluded to the war. "Given world events today, we know that our forces and our weaponry must be more diverse and flexible than ever before," Cohen told lawmakers.

The question Congress must decide is whether the military needs the flexibility to evade some of the nation's strongest environmental protections. ■

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JOHN DINGELL:

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