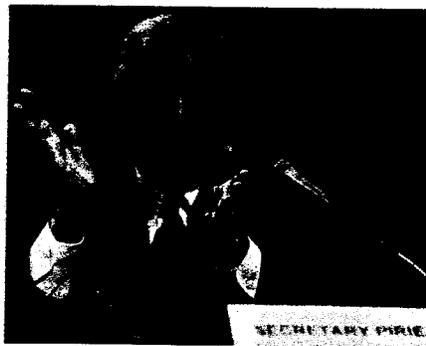


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STATEMENT OF
THE HONORABLE ROBERT B. PIRIE, JR.
BEFORE THE
SUBCOMMITTEE ON READINESS AND MANAGEMENT SUPPORT
OF THE
SENATE ARMED SERVICES COMMITTEE
ON
ENVIRONMENTAL SUSTAINMENT
MARCH 13, 2003

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THE HONORABLE ROBERT B. PIRIE, JR.

Mr. Pirie has over forty years experience in defense-related work in the armed forces, the civil service and in industry. He has served as Assistant Secretary of Defense, Assistant Secretary of the Navy, Undersecretary of the Navy, and Acting Secretary of the Navy. A Naval Academy graduate in the class of 1955, he was also a Rhodes Scholar, and attended Oxford University from 1956 to 1959. He served twenty years as a naval officer, culminating his service with three years in command of a nuclear attack submarine.

Upon retirement from active duty in the Navy in 1975 Mr. Pirie joined the newly formed Congressional Budget Office as Deputy Assistant Director, National Security. In 1977 Mr. Pirie became Principal Deputy Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics). He was nominated to be Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics) by President Carter in December, 1978, and served in that position until January, 1981. After leaving government service he held a variety of positions in the private sector, including that of President of Essex Corporation, Vice President of the Center for Naval Analyses and Vice President of the Institute for Defense Analyses. He also directed the CNO Strategic Studies Group from 1989 to 1992.

Mr. Pirie became Assistant Secretary of the Navy (Installations and Environment) in 1994, Undersecretary of the Navy in 2000 and Acting Secretary of the Navy in 2001.

Mr. Pirie and his wife, the former Joan Adams of Barrington, Rhode Island, reside in Bethesda, Maryland. They have three grown children: two sons, John and Carl, a daughter, Susan, and a granddaughter Ava Roberts Pirie.

STATEMENT OF THE HONORABLE ROBERT B. PIRIE, JR.

Mr. Chairman and members of the committee, I am Robert B. Pirie, Jr. I am grateful to the Committee 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 protection. I served on active duty in the Navy for 20 years, and was privileged to command USS Skipjack, a nuclear attack submarine, for three 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.