

STATEMENT BY

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ON MILITARY TRAINING**

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Chairman Ensign, Senator Akaka and distinguished members of the Committee, thank you for this opportunity to testify before you on the Fiscal Year 2004 Defense Department Readiness and Range Preservation Initiative (RRPI) legislative proposals.

I would first like to thank you for your continued interest in this subject and for the action taken in the FY03 Defense Authorization Act 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 FY 04 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 twelve 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.

30 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 five 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 US 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 Integrated Natural Resources Management Plan (INRMP) to serve as an alternative to designating Critical Habitat. 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 IRMP 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 war-fighting 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 a 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 7 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 Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Resource Conservation and Recovery Act (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% 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 clean up of military munitions is not required so long as munitions remain on operational ranges where they were fired. The policies governing clean up of munitions located off an operational range and munitions causing imminent and substantial danger on-range would remain unchanged – as would policies governing clean up of former ranges and other defense sites.

These provisions do not seek to avoid the Army's responsibilities to clean-up 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 the 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 DoDs RRPI initiative. 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 the 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 Committee for allowing me to appear before you today. I look forward to working these issues with you.