

Legislative Successes Balance National Security Needs With Environmental Protection Requirements

In the summer 2003 issue of *Currents*, we discussed how and why the N45 organization was realigned to enhance the Navy's operational environmental readiness posture. Operational and training readiness remains at the top of our "to do" list, and my message in this issue is focused on the Department of Defense (DoD) environmental legislative initiative that was, in part, adopted by the Congress in the National Defense Authorization Act (NDAA), and will have a major positive impact on our readiness posture in the future.

Navy leadership played a major role in convincing Congress that minor, but extremely important, changes to the Endangered Species Act (ESA) and the Marine Mammal Protection Act (MMPA) were essential to balance national security needs with environmental protection requirements.

The vehicle for moving the ESA and MMPA changes that we needed and vigorously supported was the Range and Readiness Preservation Initiative (RRPI). The RRPI was crafted by DoD to address real and potential reductions to force readiness resulting from the interpretation and application of environmental laws and regulations. RRPI addressed readiness issues that were common to all services, and some that were service unique. The goal of RRPI was to modify several existing environmental laws to achieve a more rational and scientifically-based balance between environmental stewardship and DoD's national defense mission.

From the Navy's perspective, the two most important aspects of RRPI (ESA and MMPA modifications) were successfully passed, and became part of the FY 2004 NDAA during the last session of Congress. The ESA and MMPA, as modified by the NDAA, now provide the Department of the Navy with much greater flexibility in meeting its primary mission requirement of providing Sailors and Marines with the kind of realistic training that wins conflicts while saving lives. With these changes we believe we can sustain our training base and achieve our

training and operational readiness goals while ensuring that our nation's environmental goals and values are also fully protected.

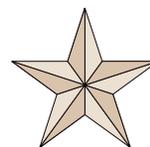
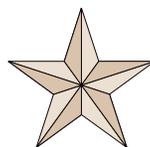
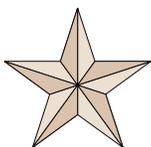
Changes to the ESA

Critical habitat designations made under the auspices of the ESA to provide enhanced protection for threatened or endangered species were becoming increasingly focused on military installations with the associated threat of making critical training areas unusable, and essential training activities impossible to conduct. Therefore, RRPI proposed and Congress authorized, a modification to the ESA that prohibits designations of critical habitat on military installations that have an Integrated Natural Resources Management Plan in place that was prepared in cooperation with DoD and state and federal fish and wildlife agencies. This new provision does not annul any existing critical habitat designations, and does not allow DoD to take any action that would harm an endangered or threatened species. It does ensure, however, that federal lands set aside to support national defense will be used for their intended purposes.

Changes to the MMPA

The modifications to the MMPA contained in the NDAA provide much-needed clarification to the term "harassment" as previously defined in the MMPA. The Amendment contained in the NDAA raised the litigative "bar" for the legal evaluation of national defense activities relative to determining compliance with the MMPA by focusing analysis on the "likelihood" of significant disruptions to behaviors critical to survival and reproduction, rather than on the much broader criteria of having the "potential" to affect a marine mammal—i.e., on real impacts supported by scientific data rather than minor startle responses that have not been shown to be harmful.

Finally, the amended MMPA provides for a national defense exemption. In extraordinary situations, the Secretary of Defense may invoke a two-year national secu-



rity exemption of the MMPA relative to defense activities after conferring with the Secretary of Commerce, the Secretary of Interior, or both. This exemption provision puts the MMPA on par with the Endangered Species Act, the Clean Air Act, the Clean Water Act, and several other major environmental laws.

All of these changes to the MMPA build upon recommendations of the National Research Council (NRC), an arm of the National Academy of Sciences, and upon initiatives of the past and current Administration designed to clarify the statute, focus on scientific analysis rather than on subjective conclusions or unproven assumptions, and increase military readiness while ensuring protection of marine mammals.

The Way Ahead

With the adoption by Congress of our proffered amendments to the ESA and MMPA, we have taken the first step. Our opponents have vowed to reverse the amendments to the ESA and MMPA contained in the NDAA, and we have no doubt they will come back to the Hill “loaded for bear,” so to speak. In fact, we have already begun to see action. My boss, Vice Admiral Moore, has held luncheons with both House and Senate staffers to discuss these amendments and why they are essential. He has also met personally with the Chairman of the House subcommittee that has the authority to submit for consideration by Congress an MMPA reauthorization bill that could reverse the key gains recently made.

These efforts are not enough, however. During this critical period of national review and reflection on this matter, the entire Navy must continue to demonstrate the superb environmental stewardship that we have been noted for in the past, and that these amendments require for successful implementation.

Range Sustainment Initiatives

The Navy takes its dual responsibilities of protecting the nation and the environment very seriously. The events of 9/11 proved conclusively that, as a nation, we face many challenges and dedicated adversaries. I see no evidence at this time that suggests this situation will change any time soon. This means that we must be ready at all times to engage our enemies, whoever they are, and to decisively counteract or defeat them. To do this, the Navy must be

able to continuously conduct comprehensive, realistic training, and equip our Sailors with the tools they need prior to sailing into harm’s way.

Continued military readiness depends on sustained access to all necessary training, testing, and operational exercise areas. Our military training ranges are national assets that allow our forces to train in a controlled, realistic, and safe environment. Urban sprawl, the obligations of environmental compliance on land and at sea, and concerns about noise and airspace congestion require a comprehensive approach to ensure our sustained access to key training ranges and operational areas.

The Navy has stepped up to this challenge by developing and initiating the Tactical Training Theater Assessment and Planning Program (TAP). TAP, together with other related initiatives, is the backbone of a fully integrated, systematic range sustainment program that balances achievement of our national security and environmental stewardship goals at our training ranges and operational areas. The funding programmed in the 2004 Program Objectives Memorandum is now in place to support full implementation of the TAP initiative.

This Issue of Currents

In this issue of Currents, we provide articles that describe the components of our Navy range sustainment program (“Unveiling the Navy’s Range Sustainment Program: Ensuring Consistency and Continued Access for Crucial Navy Training Areas” on pages 44–55) and touch on the related topics of munitions response (“Building the Navy’s Munitions Response Program: Program Cleans Up Discarded Munitions & Unexploded Ordnance” on pages 60–61) and range cleanup (“Cleaning Up Kaho’olawe: Navy Nearly Finished with Ordnance Removal on Former Bombing Range” on pages 56–58).

These efforts will position us on the environmental high ground, and ensure our continuous and effective stewardship of Navy ranges and operating areas. ⚓

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