

A BILL

To authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, to prescribe military personnel strengths for fiscal year 2004, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America
in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Defense Authorization Act for Fiscal Year 2004".

SEC. 316. READINESS AND RANGE PRESERVATION INITIATIVE.

(a) IN GENERAL.—(1) Part III of subtitle A of title 10, United States Code, is amended by inserting after chapter 101 the following new chapter:

"CHAPTER 101A—READINESS AND RANGE PRESERVATION

"Sec.

"2015 Purpose of this chapter.

"2016. Definitions.

"2017. Military readiness and the conservation of protected species.

"2018. Conformity with State Implementation Plans for air quality.

"2019. Range management and restoration.

"2015. Purpose of this chapter

"The purpose of this chapter is to:

"(1) protect the lives and well-being of citizens of the United States and preserve their freedoms, economic prosperity, and environmental heritage by ensuring military readiness;

"(2) ensure military readiness by addressing problems created by encroachment on military readiness activities and lands, marine areas, and airspace reserved, withdrawn, or designated for a military use;

"(3) reaffirm the principle that such lands, marine areas, and airspace exist to ensure military preparedness;

"(4) shield military readiness activities and lands, marine areas, and airspace reserved, withdrawn, or designated for a military use, including land, sea, and air training and operating areas, from encroachment, while ensuring that the Department of Defense fulfills its environmental stewardship responsibilities;

"(5) manage such lands, marine areas, and airspace for other purposes to the extent the non-military purpose does not reduce capability to support military readiness activities;

"(6) re-establish the appropriate balance between military readiness and environmental stewardship; and

"(7) establish a framework to ensure long-term sustainability of military ranges.

"2016. Definitions

"For purposes of this chapter:

"(1) The term 'military readiness activities' includes all training and operations that relate to combat, and the adequate and realistic testing of military equipment, vehicles, weapons, and sensors for proper operation and suitability for combat use. The term does not include the routine operation of installation operating support functions, such as administrative offices, military exchanges, commissaries, water treatment facilities, storage, schools, housing, motor pools, laundries, morale, welfare and recreation activities, shops, and mess halls, nor the operation of industrial activities, or the construction or demolition of such facilities.

"(2) The terms 'combat' or 'combat use' include all forms of armed conflict and operational employment as well as those support functions necessary for armed conflict and operational employment, including transportation of personnel, weapons, supplies, ammunition and other military material to the vicinity of actual or potential armed conflict; intelligence gathering in support of actual or potential armed conflict; command of and communications between military units; and similar activities necessary for the successful prosecution of armed conflict, whether or not conducted at the scene of actual conflict.

"(3) The term 'the Department' means the Department of Defense as defined in section 101(a)(6) of this title and the Coast Guard when it is not operating as a service in the Department of the Navy.

"2017. Military readiness and the conservation of protected species

"(a) The completion of an Integrated Natural Resources Management Plan, pursuant to the Sikes Act Improvement Act (16 U.S.C. 670a), for lands or other geographical areas owned or controlled by the Department, or designated for its use, that addresses endangered or threatened species and their habitat, provides the 'special management considerations or protection' required under the Endangered Species Act (16 U.S.C. 1532(5)(A)) and precludes designation of critical habitat for any such land or geographical areas under section 4 of the Endangered Species Act (16 U.S.C. 1533).

"(b) This section does not remove the requirement for agency consultation under section 7(a)(2) of the Endangered Species Act (16 U.S.C. 1536(a)(2)).

"2018. Conformity with State Implementation Plans for air quality

"(a) CONFORMITY WITH CLEAN AIR ACT.—In all cases in which the requirements of section 176(c) of the Clean Air Act would have applied to proposed military readiness activities, the Department shall not be prohibited from engaging in such military readiness activities, but shall:

"(1) estimate for all criteria pollutants for which the area is designated 'nonattainment' or 'maintenance' the quantity of emissions that are caused by the military readiness activities;

"(2) notify the state air quality planning agency for the affected area of such emission estimates prior to engaging in proposed military readiness activities; and

"(3) ensure that military readiness activities conform with the requirements of section 176(c) within three years of the date new activities begin.

"(b) EPA APPROVAL.—Notwithstanding any other provisions of law, an implementation plan or plan revision required under the Clean Air Act shall be approved by the Administrator of the Environmental Protection Agency if:

"(1) such plan or revision meets all the requirements applicable to it under the Clean Air Act other than a requirement that such plan or revision demonstrate attainment and maintenance of the relevant national ambient air quality standards by the attainment date specified under the applicable provision of the Act, or in a regulation promulgated under such provision; and

"(2) the submitting State established to the satisfaction of the Administrator that the implementation plan of such State would be adequate to attain and maintain the relevant national ambient air quality standards by the attainment date specified under the applicable provision of the Act, or in a regulation promulgated under such provision, but for emissions emanating from military readiness activities not otherwise meeting section 176(c) of the Act pursuant to paragraph (a) of this section.

"(c) EFFECT ON STATE COMPLIANCE WITH OZONE STANDARDS.—Notwithstanding any other provisions of law, any state that establishes to the satisfaction of the Administrator that, with respect to an ozone nonattainment area in such State, such State would have attained the national ambient air quality standard for ozone by the applicable attainment date, but for emissions emanating from military readiness activities not otherwise meeting section 176(c) of the Act pursuant to paragraph (a) of this section, shall not be subject to the provisions of section 182(a)(2) or (5) or section 185 of the Act.

"(d) EFFECT ON STATE COMPLIANCE WITH CARBON MONOXIDE STANDARDS.—

Notwithstanding any other provision of law, any State that establishes to the satisfaction of the Administrator, with respect to a carbon monoxide nonattainment area in such State, that such State has attained the national ambient air quality standard for carbon monoxide by the applicable attainment date, but for emissions emanating from military readiness activities not otherwise meeting section 176(c) of the Act pursuant to paragraph (a) of this section, shall not be subject to the provisions of section 186(b)(2) of the Act.

"(e) EFFECT ON STATE COMPLIANCE WITH PM-10 STANDARDS.—Notwithstanding any other provisions of law, any State that establishes to the satisfaction of the Administrator that, with respect to a PM-10 nonattainment area in such State, such State would have attained the national ambient air quality standard for PM-10 by the applicable attainment date, but for emission emanating from military readiness activities not otherwise meeting section 176(c) of the Act pursuant to paragraph (a) of this section, shall not be subject to the provisions of section 188(b)(2) of the Act.

"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.

"(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.

"(4) Nothing in this section affects the authority of the Department to protect the environment, safety, and health on operational ranges."

(2) The table of chapters at the beginning of such subtitle and the beginning of part III of such subtitle are amended by inserting after the item relating to chapter 101 the following new item:

"101A. Readiness and Range Preservation

.....2015".

(b) MILITARY READINESS AND MARINE MAMMAL PROTECTION RECONCILIATION.—The Marine Mammal Protection Act of 1972, as amended (Public Law 92-522; 86 Stat. 1027; 16 U.S.C. 1361, et. seq.), is amended as follows:

(1) DEFINITIONS.—Section 3 (16 U.S.C. 1362) is amended—

(A) by amending paragraph (18) to read as follows:

"(18)(A) Except as provided in subparagraph (B), 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.

"(iii) The term 'Level A harassment' means harassment described in subparagraph (A)(i).

"(iv) The term 'Level B harassment' means harassment described in subparagraph (A)(ii).

"(B) 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 behavioral 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."; and

(2) by adding at the end the following new paragraphs:

"(30) The term 'military readiness activities' includes all training and operations that relate to combat, and the adequate and realistic testing of military equipment, vehicles, weapons, and sensors for proper operation and suitability for combat use. The term does not include the routine operation of installation operating support functions, such as administrative offices, military exchanges, commissaries, water treatment facilities, storage, schools, housing, motor pools, laundries, morale, welfare and

recreation activities, shops, and mess halls, nor the operation of industrial activities, or the construction or demolition of such facilities.

"(31) The terms 'combat' or 'combat use' include all forms of armed conflict and operational employment as well as those support functions necessary for armed conflict and operational employment, including transportation of personnel, weapons, supplies, ammunition and other military material to the vicinity of actual or potential armed conflict; intelligence gathering in support of actual or potential armed conflict; command of and communications between military units; and similar activities necessary for the successful prosecution of armed conflict, whether or not conducted at the scene of actual conflict.

"(32) The term 'Department of Defense' means the military departments and the Coast Guard when it is not operating as a service in the Department of the Navy."

(2) TAKING AND IMPORTING MARINE MAMMALS.—Section 101 (16 U.S.C. 1371) is amended—

(A) in subsection (a)—

(i) in paragraph (5)—

(I) in subparagraph (A), by inserting "and military readiness activities" after "other than commercial fishing"; and

(II) in subparagraph (D)(i), by inserting "and military readiness activities" after "other than commercial fishing"; and

(ii) by adding at the end the following new paragraph:

"(7)(A) Upon request by the Department of Defense for an authorization related to military readiness activities, the Secretary, shall allow, during periods of

not more than five consecutive years each, the incidental, but not intentional, taking of marine mammals of a species or population stock if the Secretary—

"(i) finds that the total of such taking during each five-year (or less) period concerned will have a negligible impact upon such species or stock and will not have an unmitigable adverse impact on the availability of such species or stock for taking for subsistence uses pursuant to subsection (b) of this section or section 1379(f) of this title, or in the case of a cooperative agreement under both this chapter and the Whaling Convention Act of 1949 (16 USC. 916 et seq.), pursuant to section 1382(c) of this title; and

"(ii) prescribes regulations setting forth—

"(I) permissible methods of taking pursuant to such activity, and other means of affecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries and mating grounds, and on the availability of such species or stock for subsistence uses; and

"(II) requirements pertaining to the monitoring and reporting of such taking.

"(B) The Secretary shall withdraw, or suspend for a time certain, the permission to take marine mammals granted under subparagraph (A), if the Secretary finds, after notice and opportunity for public comment (unless subparagraph (C)(i) applies), that—

"(i) the regulations prescribed under subparagraph (A) regarding methods of taking, monitoring, or reporting are not being substantially complied with; or

"(ii) the taking allowed under subparagraph (A) is having, or may have, more than a negligible impact on the species or stock concerned.

"(C)(i) The requirement for notice and opportunity for public comment shall not apply in the case of a suspension of permission to take if the Secretary determines that an emergency exists which poses a significant risk to well-being of the species or stock concerned.

"(ii) Sections 1373 and 1374 of this title shall not apply to the taking of marine mammals under the authority of this paragraph.

"(D)(i) Upon request by the Department of Defense for an authorization related to military readiness activities, the Secretary shall authorize, for periods of not more than 1 year, subject to such conditions as the Secretary may specify, the incidental, but not intentional, taking by harassment of marine mammals of a species or population stock if the Secretary finds that such harassment during each period concerned—

"(I) will have a negligible impact on such species or stock, and

"(II) will not have an unmitigable adverse impact on the availability of such species or stock for taking for subsistence uses pursuant to subsection (b) of this section, or 1379(f) of this title, or pursuant to a cooperative agreement under section 1388 of this title.

"(ii) The authorization for such military readiness activities shall prescribe, where applicable—

"(I) 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 on the availability of such species or stock for subsistence uses pursuant to subsection (b) of this section, or 1379(f) of this title, or pursuant to a cooperative agreement under section 1388 of this title;

"(II) the measures that the Secretary of Commerce or Secretary of Interior determines are necessary to ensure no unmitigable adverse impact upon the availability of the species or stock for subsistence uses pursuant to subsection (b) of this section, or 1379(f) of this title, or pursuant to a cooperative agreement under section 1388 of this title; and

"(III) requirements pertaining to the monitoring and reporting of such taking by harassment, including requirements for the independent peer review of proposed monitoring plans or other research proposals where the proposed military readiness activity may affect the availability of the species or stock for subsistence uses pursuant to subsection (b) of this section, or 1379(f) of this title, or pursuant to a cooperative agreement under section 1388 of this title.

"(iii) The Secretary shall publish a proposed authorization not later than 45 days after receiving a request under this subparagraph and request public

comment through notice in the Federal Register for a period of 30 days after publication. Not later than 45 days after the close of the public comment period, if the Secretary makes the findings set forth in clause (E)(i), the Secretary shall issue an authorization with appropriate conditions to meet the requirements of clause (D)(ii).

"(iv) The Secretary shall modify, suspend, or revoke an authorization if the Secretary finds that the provisions of clauses (D)(i) or (D)(ii) are not being met.

"(v) A person conducting a military readiness activity for which an authorization has been granted under this subparagraph shall not be subject to the penalties of this chapter for taking by harassment that occurs in compliance with such authorization.

"(E) Nothing in this chapter shall require disclosure of information classified in the interests of national defense.";

(3) by redesignating subsection (e) as subsection (f); and

(4) by inserting after subsection (d) the following new subsection (e):

"(e) EXEMPTION OF ACTIONS NECESSARY FOR NATIONAL DEFENSE.—The Secretary of Defense, after conferring with the Secretary of Commerce, the Secretary of Interior, or both, as appropriate, may exempt any action or category of actions undertaken by the Department of Defense or its components from compliance with any requirement of the Marine Mammal Protection Act, 16 U.S.C. 1361 et seq., if he determines that it is necessary for national defense. Exemptions granted under this section shall be for a period of not more than two years. Additional exemptions for periods not to exceed two years each may be granted for the same

action or category of actions upon the Secretary of Defense, after conferring with the Secretary of Commerce, the Secretary of Interior, or both as appropriate, making a new determination.”.