

**NOT FOR PUBLICATION
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THE SENATE ARMED
SERVICES COMMITTEE**

**STATEMENT OF
GENERAL WILLIAM L. NYLAND
UNITED STATES MARINE CORPS
ASSISTANT COMMANDANT OF THE MARINE CORPS
BEFORE THE
SENATE ARMED SERVICES COMMITTEE
SUBCOMMITTEE ON READINESS AND MANAGEMENT SUPPORT
ON
MARCH 13, 2003
CONCERNING
ENCROACHMENT**

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Chairman Ensign, Senator Akaka, and Members of the Committee; thank you for the opportunity to speak with you concerning the impacts of encroachment on Marine Corps training ranges, and the Department's legislation known as the Readiness and Range Preservation Initiative. Your efforts on behalf of our men and women in uniform will ensure that the Nation's military remains ready and that our Service members and their families enjoy the quality of life that they deserve. As General Mike Williams, the Assistant Commandant of the Marine Corps before me, accurately noted: good quality of life begins with realistic training because realistic training results in success on the battlefield and success on the battlefield is the only way your Marines can return home safely to their families.

I welcome the opportunity to offer testimony as the Committee considers the implications of encroachment. The Readiness and Range Preservation Initiative is fundamentally important to the Nation because encroachment is on the rise. If left unchecked, encroachment will detrimentally impact the mission of our bases, stations, and ranges in the near term and threaten our future military readiness in the long term. At stake for your Marine Corps is the cost of success in combat. We must do all in our power to ensure that Marines, members of our sister Services, and Service member families do not pay an unnecessarily high price for that success. Marines must train, as they will fight; to do that requires unencumbered access to sea, land, and airspace to properly conduct this essential training.

During the last twenty-four months, Service witnesses have appeared before Congress to speak to encroachment issues at six different hearings: this Subcommittee held a hearing on March 20, 2001; the House Committee on Government Reform held hearings on May 9, 2001

and May 16, 2002; the Subcommittee on Military Readiness of the House Armed Services Committee held hearings on May 22, 2001 and March 8, 2002; and the Senate Environment and Public Works Committee held a hearing on July 9, 2002. The Readiness and Range Preservation Initiative was introduced and debated during the course of these hearings. Marine Corps' witnesses, among others, were afforded the opportunity to articulate in detail their position on the issue of encroachment.

As a result of these efforts, the 107th Congress enacted a provision to clarify Department of Defense responsibilities under the Migratory Bird Treaty Act. Litigation had called into question our responsibilities under this Act, and threatened to halt military training necessary to be combat ready. The Congress took action to remove this litigation threat, and I thank the Congress for this effort. In accordance with last year's legislation, we will continue with our efforts to identify measures to monitor, minimize and mitigate—to the extent practicable, any adverse impacts to migratory birds that may be attributable to military readiness activities. Further, we will work with the Interior Department as they develop and prescribe the regulations the Congress directed.

The 107th Congress also granted authority to the military departments to partner with non-governmental organizations, and State and local governments to acquire land adjacent/proximate to military installations to prevent incompatible development, and to convey surplus real property for natural resource conservation. I would like to take this opportunity to advise you as to what we have already done with this new authority. I believe our efforts demonstrate that we take the encroachment threat seriously.

The Marine Corps is actively pursuing use of the new authority provided by the 107th Congress; and in fact, Camp Lejeune has already utilized the authority. The installation is a member of the Onslow Bight Forum, a group dedicated to protecting the natural heritage of coastal North Carolina. Participants in the Onslow Bight include The Nature Conservancy and other non-governmental organizations, several North Carolina state agencies, the U.S. Fish and Wildlife Service and the U.S. Forest Service. Recently, 2,500 acres adjacent to the Camp Lejeune tank and rifle ranges became available for purchase, and was the subject of interest by a developer hoping to construct 3,000 housing units. The land was purchased by The Nature Conservancy (with partial funding provided by the Marine Corps) and will be transferred to the North Carolina Wildlife Resources Commission for inclusion into the State hunting lands system. The Marine Corps, in exchange for its funding contribution, received a restrictive use easement that will prohibit any land use or development of the parcel that is incompatible with Marine Corps training requirements. The Onslow Bight Forum is continuing to search for other parcels that further the mutual goals of its members.

Camp Pendleton, California is also actively engaged in a similar partnership effort. Camp Pendleton is participating in the South Coast Conservation Forum, a group whose goal is to acquire lands that will be set aside to protect as many of the 50 listed species in the area as possible. Members of this group include Orange, Riverside and San Diego Counties, and non-governmental conservation organizations such as The Nature Conservancy, Trust for Public Land, Sierra Club and Wildlife Habitat League. There may be opportunities to purchase buffer

areas adjacent to the north, east and south sides of Camp Pendleton in order to preserve watersheds, protect natural habitat and avoid urbanization.

The efforts of the 107th Congress, and our subsequent initiatives within the Marine Corps, have been very beneficial. Much more, however, must still be done. We continue to face threats to our training capabilities focused on environmental media the 107th Congress did not address. This year, therefore, the Administration is reintroducing legislative clarifications for five provisions not approved in last year's Readiness and Range Preservation Initiative. These clarifications will:

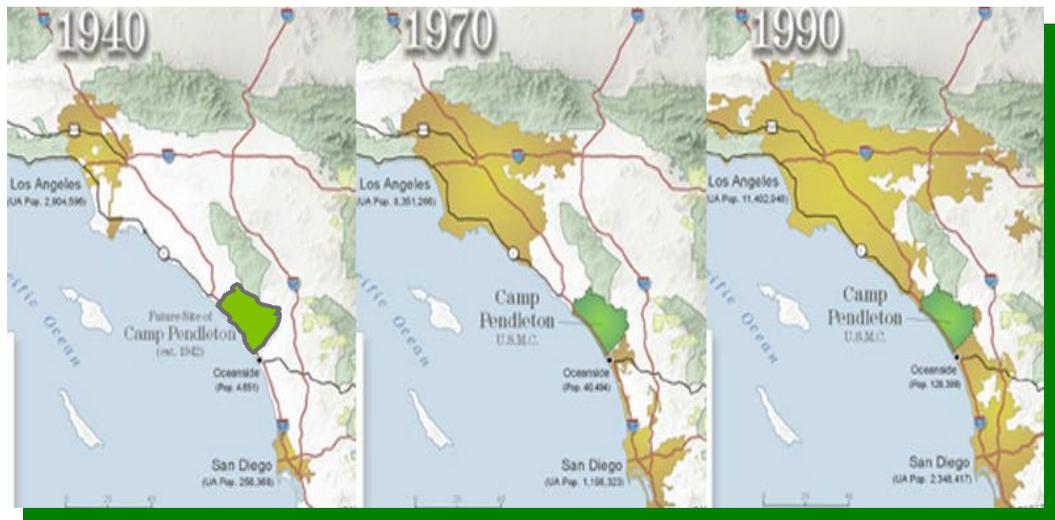
- provide for our integrated natural resource management plans to obviate the need for critical habitat designation under the Endangered Species Act;
- clarify the definition of "harassment" under the Marine Mammal Protection Act;
- provide needed flexibility in working with states regarding the conformity requirement of the Clean Air Act; and
- clarify the role of the Resource Conservation and Recovery Act and the Comprehensive Environmental Response, Compensation, and Liability Act to apply when a range closes to provide a clear demarcation for the application of these laws.

The challenge of encroachment is clear, as is the importance of this Hearing and the proposed Initiative. The Readiness and Range Preservation Initiative is narrowly tailored to protect military readiness activities, and does not purport to address the entire scope of Department of Defense activities. The thrust of the Initiative is to clarify rather than to roll back existing regulation, and each of the Initiative's proposals would benefit each of the military

services to varying degrees. For the Marine Corps, endangered species issues are at the forefront of our encroachment concerns. The Readiness and Range Preservation Initiative proposal that addresses critical habitat, therefore, is the provision that would provide the Marine Corps with the greatest training value. (I will address our endangered species issues in more detail shortly.) The absolute necessity of maintaining military readiness is beyond debate, and readiness depends upon quality training that realistically simulates combat conditions. The issue, then, is how to balance the demands of national security with environmental stewardship, which at times are competing but are often complementary.

Most of the Marine Corps' bases and stations were established in remote areas prior to or during World War II. Since then significant urban development has occurred around many of these installations. At the same time, our warfighting doctrine, weapons platforms, and tactics have evolved

to counter new threats. The Marine Corps now requires greater standoff



distances and larger maneuver areas. Simultaneously, our access to training resources is becoming more constrained, primarily as a result of growing populations around our bases and stations. The dramatic urban development near many of our installations has had numerous

unintended consequences. For example, wildlife (often threatened or endangered species) seek out our installations, as they are often the last remaining open spaces in areas otherwise overtaken by human habitation and use.

Previous testimony at the hearings referenced above provided compelling statements regarding encroachment. The Marine Corps recognized, however, that evidence of negative encroachment impacts, though persuasive, were largely anecdotal. Consequently, the Marine Corps set out to establish quantitative data regarding this issue. Selecting Marine Corps Base Camp Pendleton, California as the subject of the study, we examined encroachment impacts on a Marine Air Ground Task Force during the conduct of an amphibious landing. We relied upon established standards to measure the proficiency of Marines based upon the Individual Training Standards of their military occupational specialties. The performance of Marine units was assessed against long established standards based upon Mission Essential Task Lists. We used these standards as the building blocks upon which we were able to quantify encroachment impacts.

There are literally hundreds of elements to a Marine Air Ground Task Force. The study, therefore, selected three separate combat arms elements of the Marine Air Ground Task Force to examine: the artillery battery; the light armored reconnaissance platoon, and the mortar man. The tasks for each combat arms element were identified, and completion rates for each task were evaluated. Given that safety during training is paramount, and therefore certain types of training can be limited for safety purposes, the study concentrated on non-firing tasks (defined as all tasks

that did not involve the use of live ammunition or explosives). In doing so, we avoided any concern that the study would confuse safety with encroachment issues.

The initial results of the Camp Pendleton Quantification Study were surprising. The three combat arms elements were able to accomplish only 69 percent of established standards for non-firing field training.

The combat engineer Military Occupational Specialty was also examined in the context of the scenario, as the engineers have important tasks in

support of the three combat arms elements. They were able to accomplish 77 percent of established standards for non-firing field training. In the study, endangered species

was the largest contributing encroachment factor. Endangered species and their habitat, for example, significantly constrain individual Marines and Marine units from digging fighting positions, gun emplacements, vehicle defilade, and for combat engineers earthmoving and



QUANTIFICATION OF ENCROACHMENT IMPACTS AT MCB CAMP PENDLETON

- Scenario: Amphibious landing at Red Beach
- Components assessed to date: Light Armored Reconnaissance Platoon, Artillery Battery, and Mortars

Results:

	# of Tasks	Percentage Completion to Standard	Training Readiness Level	Inhibited Activities
Field Tasks	132	50%	 T-4 Not Combat Capable	Off-road Maneuvers
Non-Firing Field Tasks	77	69%	 T-3 Combat Capable (low threat)	Digging Airspace Noise

SORTS Readiness Percentage Thresholds for each T-Level		Points	USMC Readiness Categories
>= 85%	T-1	10	Fully Combat Qualified
>= 70%	T-2	8.5-9.9	Combat Qualified (high threat)
>= 55%	T-3	7.0-8.4	Combat Ready (medium threat)
< 55%	T-4	6.0-6.9	Combat Capable (low threat)
		< 6	Not Combat Capable

vehicle recovery activities. These findings reinforce my comment above that for the Marine Corps, endangered species issues are at the forefront of our encroachment debate.

A second phase of this study is on the verge of completion. A final report of some 650 tasks is due to the Commanding General, Marine Corps Base, Camp Pendleton later this month. The second phase examined additional elements of the Marine Air Ground Task Force, including a Battalion Landing Team, an Infantry Company, the Cobra Attack Helicopter, and an Assault Amphibian Vehicle Crewman. I can report that the second phase's initial findings are consistent with the first phase. On average, a 70 percent completion rate applies to these additional elements of a Marine Air Ground Task Force conducting an amphibious operation at Camp Pendleton.

One of the hundreds of tasks examined in the Pendleton Quantification Study was simple digging. Digging fighting holes is a core competency for Marine infantrymen, and one that is severely constrained at Camp Pendleton due to the presence of endangered species and habitat, cultural resources, or wetlands. To the layman, it may sound strange to suggest that digging is a technique that must be practiced; however, digging must be second nature in combat.

A historical example will prove my point. During the Chosin Reservoir campaign of the Korean War, a Marine infantry company occupied a mountain pass for what was to have been a brief rest before advancing. Beginning that night, and for several days, they came under constant attack. Eventually, the entire 1st Marine Division fought back through that pass. Years later, the company commander recalled:

"I'll never forget how close we came to not digging in that first night. It seemed almost foolish at the time, because we expected to move off the position early the next morning. But something made me order them to break out those entrenching tools, even though it was growing dark and we were dead tired. If we hadn't, we would have been wiped out. We would not have survived that first night."

[Martin Russ, *Breakout: The Chosin Reservoir Campaign*, page 316]

The "something" to which the company commander refers is realistic training, which was then—unlike now, unconstrained at Camp Pendleton. His Marines had been trained to dig their fighting holes as an automatic response in combat conditions. That response came as a result of repetition and reinforcement in a training environment; repetition and reinforcement that is not fully available today.

Returning to the Pendleton Quantification Study for one minute, I would like to note that the study is not meant to identify the combat readiness of any particular Marine unit. Instead, the study is a report card on Camp Pendleton's ability to provide the training environment necessary for Marines to complete their missions to task or standard. Marines who cannot get their training at Camp Pendleton must and do go elsewhere to train. Naturally, there are associated costs here, not only in terms of money but also in quality of life.

Evidence of negative encroachment impacts is not limited to the Camp Pendleton Quantification Study. Perhaps the most sweeping example within the Marine Corps is a proposal—made in calendar year 2000, to designate critical habitat on 57% of the 125,000-acre

Camp Pendleton and 65% of the 23,000-acre Marine Corps Air Station Miramar. The Marine Corps worked with the U.S. Fish and Wildlife Service (Service) to develop a scientifically and legally based policy that precluded the need to designate critical habitat on Miramar, and precluded the designation of critical habitat on the vast majority of Camp Pendleton. This policy recognized that Marine Corps Integrated Natural Resource Management Plans, developed in coordination with the Service, can provide the special management necessary for endangered species, and can preclude the need to designate critical habitat. Special interest groups have now challenged the Service's final rule in court. With the consent of the court, the Service withdrew their final rule. The Service is currently reconsidering critical habitat designation, and is required to issue a new draft rule in April 2003.

Meanwhile, the Fish and Wildlife Service has been applying their policy to other federal agencies with acceptable natural resource management plans. The Service applied the policy, for example, to a Forest Service management plan on lands that are habitat for the Mexican Spotted Owl. In January 2003, a federal district court in Arizona held that the Service's policy, as it was applied to the Forest Service management plan, was "knowingly unlawful." The Readiness and Range Preservation Initiative has within it a provision that would codify current Service practice. Given recent judicial opinions, codification is necessary to confirm for the courts that the Service's policy is lawful. Absent the passage of this specific provision, environmental litigation may still cause over 65% of Marine Corps Air Station Miramar and 57% of Camp Pendleton to be designated critical habitat.

As the legislative response to the Pendleton/Miramar critical habitat proposals demonstrate, clarification of existing law in accordance with Administration policy is the purpose of the Readiness and Range Preservation Initiative. The intent of the Initiative is not to roll back the environmental stewardship responsibilities of the armed forces. Rather, by clarifying relevant environmental statutes, the Initiative will enhance the ability of the armed forces to train properly for combat.

There are those who note that the military services already have limited legislative exemptions available in some of the environmental statutes; they note that these exemptions are seldom used, and suggest that they are the appropriate venue under which the military should address encroachment impacts. We disagree. A national security exemption, such as the one available under the Endangered Species Act, is like the tool-box in your car. Exemptions, like the automobile tool-box, are necessary for emergency situations; they should not, however, be necessary every day for the daily commute to work. We seek legislative clarification for the day-to-day functioning of our military installations. National security exemptions are not the appropriate method to deal with daily operations.

While we seek legislative clarification for the day-to-day functioning of our military installations, our effort does not address every function of our military installations. A military installation can be viewed as a “tale of two cities.” On the one hand, our installations are comparable to many medium-sized cities, complete with populations of 50,000 residents, schools, wastewater treatment facilities, power plants, and a hospital. There are environmental responsibilities associated with each of these amenities, and we seek no relief from any of these

responsibilities. A military installation, however, is also a military combat test and training center. The primary purpose of the military installation is to promote military readiness. No civilian city has a similar purpose. It is within the venue of military readiness, that we seek to address the impact of encroachment on combat readiness activities. Our goal is to establish the appropriate balance between our Title X responsibility to be combat ready at all times, and our additional environmental compliance and stewardship responsibilities. The Initiative's provisions are focused solely on readiness activities. Marine Corps activities unrelated to combat remain unchanged.

Encroachment has grown over time, and while each issue taken individually may not seem detrimental to our training mission, it is their cumulative effect, and the predictable increase in these encroachment pressures that has lead the Department of Defense to seek the clarifications of existing statutes.

The provisions contained in the Readiness and Range Preservation Initiative are primarily designed to maintain the status quo so that our training can continue at its current pace. For example, the critical habitat provision codifies current Fish and Wildlife Service practice. This practice holds that Integrated Natural Resource Management Plans prepared pursuant to the Sikes Act provide the special management considerations necessary under the Endangered Species Act. Critical habitat designation on military installations is, therefore, unnecessary. Similarly, the Readiness and Range Preservation Initiative provision addressing marine mammals provides a definition of harassment that is consistent with guidance of the National Research Council to maintain adequate protection of marine mammals. The Clean Air Act

compliance provision provides limited flexibility—a three-year period, within which the military services would be required to demonstrate conformity with applicable State Implementation Plans. And finally, the military munitions provisions are designed to codify current Administration policy regarding when military munitions are solid and hazardous wastes.

The Marine Corps is a good steward of the resources entrusted to it. Even those who question our need for legislative relief acknowledge that fact. Our responsibility to the American people is to maintain a high state of readiness while preserving and protecting the environment of the Nation. Unlike commercial developers, the military needs a natural environment for realistic field training. As a result, our environmental management efforts have produced increasing populations of endangered species on our lands.

The Readiness and Range Preservation Initiative is essential to ensure a proper balance between two National imperatives: military readiness and environmental conservation. The Initiative is key to future readiness. It is an appropriate response to the encroachment threat, and I encourage your full support for this balanced approach toward both the requirement to maintain military readiness and the requirement to protect the environmental resources of the Nation.

Thank you for your interest in this National issue.