**REAR ADMIRAL ROBERT WILLARD TESTIMONY**

**COMMISSION ON OCEAN POLICY HAWAII PUBLIC MEETING**

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## U.S. NAVY – STEWARDSHIP AND ENCROACHMENT ISSUES

The Oceans Act of 2000 established the Commission on Ocean Policy with a mandate to make recommendations to the President and Congress for a coordinated and comprehensive national ocean policy covering a broad range of functions and ocean activities. In its November 14, 2001 testimony before the Commission, the Department of Defense identified four specific issues of critical importance where the Oceans Act may have some impact to its mission. These issues are: navigational freedom, stewardship, encroachment and ocean observation. My testimony today will focus on encroachment and stewardship issues, primarily from the Navy perspective in the Pacific Fleet. Although encroachment and stewardship encompass land, sea, and air operations, my testimony will focus on those primarily affecting the ocean environment. We operate over the World's oceans and train in over 765 thousand square nautical miles of designated Navy Sea Ranges. Our ability to meet our National Defense mission is inextricably dependent on our use of these oceans. We strongly urge the Commission to consider the Navy and Department of Defense's National Defense mission, particularly with regard to these four issues, when you formulate your recommendations to the President and Congress.

Before turning to stewardship and encroachment, two points from the Department of Defense's presentation to the Commission last November warrant emphasis. Both are significant to our current war effort. First, freedom of navigation is critical to the Navy's ability to deploy ships, aircraft and personnel where they need to be and when they need to be there. Second, training is the most critical component of our nation's military readiness. Training prepares our personnel to fight effectively. The associated combat readiness saves U.S. lives and wins battles. Our men and women in uniform must train as they fight, under realistic battle conditions. Their first exposure to live fire must not come in a hostile combat environment, but rather in a controlled training environment where they may learn from their experience and mistakes and condition themselves for the real thing. Statistics compiled over many years show that the survivability rate of combat pilots improves exponentially with the first five combat missions flown, illustrating that the readier they are at the onset, the more survivable they are. Land, sea and airspace that have been set aside to provide realistic combat training must be kept viable. That is an obligation to the men and women who train to fight America's wars.

The remainder of my presentation will focus on environmental stewardship and encroachment. I would start by emphasizing the Navy takes its responsibility as an environmental steward very seriously. In my career, I witnessed the dramatic rise in environmental awareness that affected all of America's industries and agencies, including

its Navy. Concurrently, Navy commanders promulgated multitudes of instructions, regulations, and procedures that provided a broad foundation for environmental compliance. We are good stewards because we adhere to these regulations, founded in environmental law. Our written policies and standard operating procedures incorporate these requirements into all aspects of our operations, from routine shipboard practices to major training exercises to war. The Navy's Environmental and Natural Resources Program Manual (OPNAVINST 5090.1B) provides a simple over-arching policy for the Fleet: "Protection of the marine environment is mission essential. Navy ships shall conduct operations, in port and at sea, minimizing or eliminating any adverse impact on the marine environment." From 1991-2001, the Department of Defense invested $48 billion on environmental programs. The Navy alone invests several hundred million dollars annually in ocean-related environmental programs. Some specific areas where we have an excellent record of compliance include sewage discharge, oily waste discharge, hazardous waste disposal, medical waste disposal, garbage disposal and plastic waste disposal.

In construction of ships and submarines, the Navy has incorporated environmentally friendly processes and eliminated many hazardous materials, such as PCBs (polychlorinated biphenyls), asbestos and lead. Some additional initiatives:

- The Military, under Navy's lead, has identified 25 liquid discharges from Department of Defense vessels that have environmental effects and are therefore subject to Federal and State regulations. In a proactive attempt to develop Uniform National Discharge Standards and marine pollution control devices that would be regulated the same everywhere, the Navy requested that Congress amend the Clean Water Act. This was accomplished in 1996, and the Act requires the Department of Defense and the Environmental Protection Agency to develop standards for non-sewage liquid discharges from Navy ships, using criteria that balance environmental and national defense interests, including technical feasibility, cost and mission impact.

- In support of universal efforts to protect the Northern Right Whale, the Navy partially funds state fish and wildlife agencies' efforts to patrol their migration routes with light aircraft, to spot and to report whale sightings. Right Whale migration routes cross through areas that are transited by numerous maritime vessels, including Navy (about 3%). The Navy also participates in the Sighting Advisory System, which broadcasts Right Whale sighting information to mariners in the Northeast to help them avoid the whales.

- In another conservation effort, the Navy partnered with The Nature Conservancy and other conservation groups, and works closely with the U. S. Fish & Wildlife Service and the National Oceanic and Atmospheric Administration to preserve sensitive habitats throughout the U.S.

Bottom line – the Navy has an excellent record of proactive environmental stewardship. Our careers are spent above, on and under the sea. It is in many ways our home, and we take pride in our efforts to help protect it.

But, make no mistake about it, our mission and commitment to America is the security of the United States, its interests and our allies. The training ranges that have been set aside to help prepare us for combat are vital to our readiness and mission accomplishment. As a fortunate consequence of their isolation and relative security, our ranges have sometimes become sanctuaries for rare and endangered plant and animal species. That is always regarded as a positive unless restrictions on training, costly unplanned investment to protect and/or relocate, or litigious actions causing delays or lost training and weapon development result. Past concessions that have impacted the value of training include limiting exercises to daylight only; curtailed live fire training; and making whole geographic sectors of training ranges off-limits. Numerous environmentally based lawsuits have been filed that impact training range usage, resulting in training interruptions, delays or restrictions that undermine training effectiveness and training readiness. Taken individually, these incidents may not appear significant to outside groups, but the overall impact to training readiness is negative and cumulative. Collectively, such effects are referred to as encroachment.

Encroachment is a complex issue; simply put, the term refers to outside forces that are impacting on, or precluding the Navy's ability to execute its mission. Contributing factors include a lack of understanding of national defense requirements by regulatory agencies, a general lack of public credit for Navy's environmental stewardship and overly broad and ambiguous laws and regulations.

The environmental programs that pose the greatest challenge to Naval training and operations at sea today are the Marine Mammal Protection Act and the Endangered Species Act. These Acts prohibit the "taking" of all marine mammals and endangered species in U.S. waters and on the high seas without prior authorization from the respective regulatory agency. A "taking" is broadly defined under both statutes to include harassment of protected species. The current definition of "harassment" of marine mammals can be interpreted as mere "annoyance" or "potential to disturb" without biologically significant effects. Any Navy test or training activity that "takes" a protected species must be permitted to do so by the applicable regulatory agencies. Additionally, the Endangered Species Act requires Navy to consult with regulators if any action "may affect," even beneficially, a protected species or its critical habitat. Such loose language and broad definitions could be interpreted to prevent almost any maritime activity in the vicinity of marine mammals or endangered species locations, known or unknown. Further, requirements under these laws sometimes contradict requirements under other environmental laws. In challenging Navy training operations, regulatory agencies have also been liberally applying the "precautionary principle," which states that in the absence of scientific certainty, the proposed activity is presumed to harm the environment. This places an undue burden on the Navy to conduct scientific research and survey programs to prove ongoing operations are not harming the environment – while at the same time the Navy attempts to meet its U.S. Title 10 obligation to ensure

America's Navy forces are ready for combat. This combined application of the Endangered Species Act and Marine Mammal Protection Act is impacting the Navy's training and readiness today, in the midst of the Global War on Terror, by imposing severe mitigation actions on training operations and advanced technology testing and evaluation.

Consider anti-submarine warfare. Using this single dimension of warfare as an example, I would like to site several examples of the encroachment challenge.

- We are attempting to obtain authorization under the Marine Mammal Protection Act and Endangered Species Act to deploy the Navy's Surveillance Towed Array Sensor System Low Frequency Active anti-submarine detection system. The environmental impact statement associated with this technology is the most comprehensive and exhaustive environmental impact statement ever undertaken by the Navy for a major seagoing combat system. The document, which was begun in July of 1996 and finalized in January of 2001, includes the results of the 1997-1998 Low Frequency Sound Scientific Research Program. This was a ten million dollar research project conducted independently by world-renowned marine biologists and bio-acousticians. The results of this program led to the determination that this sensor system could be operated safely, with restrictions and mitigation measures adopted in the environmental impact statement, even in proximity to marine mammals considered most susceptible to low frequency sound. This system works…it can detect submarines in scenarios where no other U.S. Navy system can. Until this system is approved for use, U.S. warships are steaming into harms way without the benefit of this sensor array. As a side note, other countries currently deploy this system.

- The Navy is developing new sensors and tactics to track state-of-the-art, quiet diesel submarines operating in shallow waters like the Persian Gulf, the Straits of Hormuz, the South China Sea, and the Taiwan Strait. These new diesel submarines are proliferating in navies worldwide, including Iran, China and North Korea. They are significantly quieter and harder to detect than the submarines that challenged the U.S. Navy during the Cold War. Both the Chief of Naval Operations and Commander in Chief, U.S. Pacific Fleet have announced that improving our Navy's anti-submarine warfare capabilities against this potential threat is a top priority for 2002. Without this vital ASW capability, our Navy would be unable to assure access to littoral regions of the world and secure vital sea lines of communication and trade. In the past six years the programs to develop and test new ASW sensors and tactics have encountered encroachment in the form of challenges by environmental groups 75% of time. In the last three years, 9 of 10 operational tests have been affected. One test was cancelled and 17 related projects have been scaled back.

As is true among most American institutions, the establishment of wildlife sanctuaries generally receives widespread praise throughout the Navy. That said, we are concerned with the impact sanctuary designations, which cross the boundaries of training ranges, have on Navy combat training.

- A National Oceanic and Atmospheric Administration proposal could result in a three-fold increase in the size of the Channel Islands National Marine Sanctuary. This would extend its boundary into the Point Mugu Sea Test Range and the launch envelope for Vandenburg Air Force Base. If this proposal were implemented, the Navy and Air Force would be required to seek outside agency permission to conduct operations within their own ranges. Additionally, the National Oceanic and Atmospheric Administration is also proposing to eliminate the language "grandfathering" current military activities authorized to be conducted on these ranges. To date, Department of Defense efforts to negotiate with the local National Oceanic and Atmospheric Administration officials have failed. Ironically, opposition exists to grandfathering long-standing military activities that have taken place on these ranges, despite documented growth in the marine mammal populations around the Channel Islands. There are twelve other National Marine Sanctuaries that could present similar concerns for the Navy.

- The California Marine Life Protection Act's proposed designation of marine protected areas could conflict with military operations at San Clemente and San Nicolas Islands. This would impact critical Research, Development, Testing, & Evaluation activities, as well as ongoing operational training. The Department of Defense has submitted a counterproposal to the California Resources Agency, Dept. of Fish & Game that would shift marine protected areas to non-operational locations and provide a clear exemption for currently ongoing military activities.

- The Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve is proposing to attain National Marine Sanctuary status. The Navy must continue to carefully monitor and articulate its concerns regarding any restrictions to military training/operations to ensure mission capabilities are not compromised by a sanctuary designation.

Aggravating the encroachment challenge is a general unwillingness of environmental agencies to credit the Navy with its many stewardship successes or demonstrate a willingness to strike a balance between military operations requirements, stewardship and regulatory restrictions. Using Vieques, Puerto Rico as an example, the Navy oversaw the successful release to sea of over 17,000 sea turtle hatchlings from their training range beaches. Despite the Navy's long-standing successes, the Biological Opinions issued by the regulatory agencies in the midst of the Vieques protests required an immediate suspension of carrier battle group training in any area where a "take" of a single sea turtle had occurred. There are several similar examples regarding endangered birds, specifically the San Clemente Loggerhead Shrike in Southern California, where the Navy has overseen dramatically increased populations on its land, but is not authorized to "take" a single animal as a consequence of readiness training. This is an area where we would welcome a more balanced approach.

The third factor contributing to the encroachment challenge involves overly broad and ambiguous environmental laws and regulations that are subject to liberal application and inconsistent interpretation. The Department of Defense has identified several

specific laws containing ambiguous language that may be subject to misinterpretation and consequently pose a risk to critical Navy training and readiness. Ambiguities in environmental statutes can and have led to lawsuits in the past, even when the regulatory agency and the Department of Defense have instituted mutually acceptable policies and procedures. Proposed changes to these laws have been submitted to Congress as part of the FY03 National Defense Authorization Bill and are collectively called the Readiness and Range Preservation Initiative. This initiative is neither an attempt to roll back existing regulations and environmental laws, nor is it an attempt to seek blanket exemptions from environmental laws. Rather, these reasonable proposed changes have been vetted through and have received the concurrence of the impacted federal agencies, including the Environmental Protection Agency, Department of Interior (U.S. Fish and Wildlife Service), and the Department of Commerce (National Oceanic and Atmospheric Administration). Three of the laws contained in the Readiness and Range Preservation Initiative are:

- **Endangered Species Act**: The legislation confirms the Clinton Administration's decision that there is no need to designate critical habitat on military installations for which an Integrated Natural Resources Management Plan has been completed. These plans for conserving natural resources on military property, required by the Sikes Act, are developed in cooperation with state wildlife agencies, the U.S. Fish and Wildlife Service, and the public. They offer superior protection for species because they consider the base's environment holistically, rather than using an obsolete and unscientific species-by-species analysis.

- **Marine Mammal Protection Act**: The bill follows the National Research Council's recommendation that the current, ambiguous definition of "harassment" of marine mammals, which includes "annoyance" and "potential to disturb," be reworded to define more biologically significant effects.

- **Migratory Bird Treaty Act**: The bill would reverse a March 2002 court decision that suspended training at the Farallon de Medinilla (FDM) range in the Western Pacific near Guam. FDM is a live fire training range facility that is critical to the readiness of forward deployed Navy and Marine Corps forces and transiting Naval forces in the Western Pacific Ocean. Despite the fact that the Navy and U.S. Fish and Wildlife Service have developed mutually acceptable policies and agreements, including significant mitigation measures and surveying requirements, the Navy is being enjoined from conducting training at FDM. Ongoing surveys have proven there is no biologically significant impact on the migratory bird populations in Guam resulting from live fire exercises at FDM. If training is not resumed soon, the readiness of forward and deployed Seventh Fleet air wings will decline below minimally acceptable standards.

The U.S. Navy is very proud of its ability to respond to the President's call to "Be Ready" in the current Global War on Terror. Indeed, law and the expectation of the American people require that their military services are ready. A fundamental tenet of Fleet readiness is to "train as we fight." That means fully leveraging the range facilities that have been set aside for realistic combat training. The environmental laws must allow

the Department of Defense to do this. Regulatory agencies need to better understand and give due consideration to Defense training and readiness requirements when it is within the law to do so. There is a real need to better clarify and eliminate ambiguity in environmental laws, without exempting Department of Defense from compliance. There is also an ongoing need for the Department of Defense to dialogue and partner with environmental regulatory agencies, in order to properly balance National Defense requirements with conservation initiatives. We think the Navy's track record as a steward of the ocean environment is worthy of praise. That may not always have been so, but it is today. Finally, we look to the Commission to recognize our responsibility to realistically train America's sons and daughters for combat, and to support the requirement for viable, unfettered range facilities to accomplish that mandate.