



DEPUTY SECRETARY OF DEFENSE
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WASHINGTON, DC 20301-1010

MAR 7 2003

MEMORANDUM FOR THE SECRETARY OF THE ARMY
THE SECRETARY OF THE NAVY
THE SECRETARY OF THE AIR FORCE

SUBJECT: Consideration of Requests for Use of Existing Exemptions Under
Federal Environmental Laws

I commend each of you for your Department's work to protect the air, land, and water resources entrusted to your management. As a direct result of your stewardship, Defense lands exhibit a remarkable degree of biological diversity. Yet, as you know, in a growing number of cases environmental regulation and litigation threaten to limit our continued ability to use these lands and airspace for necessary military training and testing. To date, the Department has worked to protect our military readiness activities without exercising the national security exemption provisions available in many environmental statutes. While I believe we should be commended for our past restraint in this regard, I believe it is time for us to give greater consideration to requesting such exemptions in cases where environmental requirements threaten our continued ability to properly train and equip the men and women of the Armed Forces.

Seven environmental laws authorize the President to exempt Federal agencies from certain legal requirements if he determines it to be in the "paramount interest of the United States": §313(a) of the Clean Water Act; §6001(a) of the Resource Conservation and Recovery Act; §118(b) of the Clean Air Act; §4(b) of the Noise Control Act; §1447(a) of the Public Health Service Act (Safe Drinking Water Act); §106(d)(3) of the Marine Protection, Research, and Sanctuaries Act; and §307(c)(1)(B) of the Coastal Zone Management Act. In addition, two laws authorize the President to exempt the Department of Defense from certain requirements if he determines that doing so is "necessary" for reasons of "national security": §120(j)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act; and §22 of the Toxic Substances Control Act. Similarly, §7(j) of the Endangered Species Act authorizes the Secretary of Defense to direct the Endangered Species Committee to exempt Department of Defense actions that are before the Committee from certain requirements when he finds that such an exemption is "necessary for reasons of national security."

Timely information is needed concerning any proposed environmental restrictions that you believe threaten in a substantial way your ability to ensure the military preparedness of the Armed Forces for which you are responsible. I hereby direct you develop procedures that will ensure that any such cases are brought to DoD's attention sufficiently early in the regulatory or judicial process that the Secretary may act to request (or, in the case of the Endangered Species Act, direct) an appropriately tailored exemption before military preparedness is affected. Any such request from you shall be forwarded to the Deputy Under Secretaries of Defense for Readiness and for Installations and Environment, and shall include the following information:

- Identification of the particular environmental restriction that poses the threat to military preparedness, with documentation of the legal issue involved and background information relating to the condition of the natural resource;
- How the particular military training, testing or operational activity would be compromised were the environmental restriction to be imposed. This should include the specific training, testing or operational requirements being affected, and quantification of the impact on readiness;
- Why the military training, testing or operational activity cannot be modified, relocated or rescheduled to avoid the conflict without compromising effectiveness, including quantification of why any alternatives would fail to satisfy the readiness requirement;
- What reasonably practicable efforts have been taken or may be undertaken to mitigate the environmental consequences of proceeding with the planned military training or testing activity; and
- Whether the requested exemption is necessary only for a specified period of time or indefinitely.

It may be that in certain circumstances the time-sensitivity of the request will limit the ability to fully elaborate the above information in the initial request. In such circumstances, the request should be accompanied by the fullest presentation consistent with the exigency of the request, together with a brief explanation of the exigency itself. Full documentation should still be submitted as soon as possible thereafter.

This memorandum is not intended to signal a diminished commitment to the environmental programs that ensure that the natural resources entrusted to our care will remain healthy and available for use by future generations. Any decision to

seek a statutory exemption will remain a high hurdle. Exemption requests will be approved only when the statutory exemption offers a significant measure of relief for the circumstances and the exemption is obtainable in time to meet mission needs.

However, we cannot lose sight of the fact that these testing, training and other military areas and resources have been entrusted to our care—first and foremost—to provide for the realistic training and testing necessary to ensure that our Armed Forces are the best-trained and best-equipped in the world. In the vast majority of cases, we have demonstrated that we are able both to comply with environmental requirements and to conduct necessary military training and testing. In those exceptional cases where we cannot and the law permits us to do so, we owe it to our young men and women to request an appropriate exemption.

A handwritten signature in cursive script, reading "Paul Wolfowitz". The signature is written in dark ink and is centered on the page.