American Lung Association * American Rivers * Center for Biological Diversity
Defenders of Wildlife * Earth Island Institute * Earthjustice
Endangered Species Coalition * Environmental Defense * Friends of the Earth
Fund for Animals * Greenpeace * Humane Society of the United States
Military Toxics Project * National Audubon Society * National Environmental Trust
National Wildlife Federation * Natural Resources Defense Council
Oceana * Physicians for Social Responsibility
Public Employees for Environmental Responsibility * Sierra Club * 20/20 Vision
U.S. Public Interest Research Group * The Wilderness Society * World Wildlife Fund

March 26, 2003
Re: Public Health and Environmental Law Exemptions in the FY 2004 Defense Authorization Bill

Dear Representative:

We strongly urge you to oppose any provisions in the Defense Authorization Bill for Fiscal Year 2004 that would exempt the Department of Defense (DOD) from landmark public health and environmental laws, including the Clean Air Act, the Resource Conservation and Recovery Act, Superfund (CERCLA), the Endangered Species Act, and the Marine Mammal Protection Act. We believe that no federal agency should be above the law – especially the laws that protect water, air, and the environment in and around military facilities and the health of the people who live on these bases and in the surrounding communities. For decades, the American people have supported these important public health and environmental laws and continue to do so today. Additional exemptions are not necessary. The Pentagon currently has the authority to use provisions in the laws or the Armed Forces Code to exempt military activities in the interest of national security or seek special relief for military readiness, and regulatory agencies already provide great latitude to the DOD to protect military training. DOD's proposed sweeping new exemptions would undermine the role of states that administer pollution control laws, and local communities that are directly impacted by DOD operations.

As it did last year, the Pentagon has again proposed sweeping and controversial exemptions from public health and environmental laws through a closed process that excludes states and state organizations, affected communities, and environmental and conservation organizations. DOD has also once again sought to avoid consideration of its proposals in the Senate and House committees which hold jurisdiction over the laws from which the military seeks exemption, by inserting the language into the National Defense Authorization Act. Controversial and unprecedented across the board exemptions from foundational laws, such as those proposed by DOD, should be fully debated in the committees of jurisdiction in a process involving all stakeholders.

While we understand the Department of Defense's need to prepare its forces to protect our country, additional exemptions are not necessary to accomplish this goal. Existing law already contains provisions providing for case-by-case waivers in the interest of national security. For example, section 7(j) of the Endangered Species Act allows the Secretary of Defense to secure an exemption from the law whenever the Secretary finds it necessary for reasons of national security. Title 10 U.S.C. 2014 specifically empowers the President to resolve any conflicts between the DOD and other executive agencies that effect training or readiness. Local, cooperative efforts including military staff, states, municipalities, environmental organizations, and affected communities have shown that innovative solutions based on local needs and conditions consistently accommodate military training and public health and environmental protections.

In1992, Congress expressed its commitment to holding the military to the same environmental standards that apply to every other American when it passed the Federal Facilities Compliance Act by a nearly unanimous vote. Exempting military operations and lands from fundamental public health and environmental laws will make the people who live near these exempted installations and the states that host them second class citizens, stripping them of protections provided at private sector facilities, and shifting the burden of habitat protection entirely to other federal agencies and the private sector.

America's landmark public health and environmental laws express our nation's commitment to preserve and protect our health and our natural heritage. Those laws should apply to everyone equally. DOD's proposed exemptions seek to cast aside both of these principles in favor of categorical and unnecessary exemptions that place one government agency above the law.

The language proposed by the Defense Department would:

- **Strip EPA and states of virtually any authority to protect public health and the environment from toxic contamination caused by military munitions under the Resource Conservation and Recovery Act (RCRA).** DOD's proposal would allow the military to leave unexploded and partially exploded munitions lying on ranges for years or decades, leaching toxic substances such as perchlorate, explosives, and heavy metals into groundwater, surface waters, or air. DOD's language would seemingly block the use of RCRA to require investigation and cleanup of toxic munitions contamination both on and off military ranges, even in the face of an imminent and substantial endangerment to human health. All military munitions – including chemical, biological, depleted uranium, and nuclear weapons – and the contamination they cause would apparently be exempted from RCRA.
- **Exempt toxic munitions contamination of groundwater, air, and soil at "operational" military ranges (a vague term which includes dozens of ranges that have been inactive for years or decades) from oversight under CERCLA (Superfund) until the contamination migrates off-range into surrounding communities.** States and EPA would be blocked from virtually any oversight of munitions contamination at hundreds of contaminated DOD sites not listed on the National Priority List. DOD's proposal would allow the Department to contaminate groundwater to any extent, without any independent oversight, until the contamination leaves DOD land, dramatically increasing cleanup costs and needlessly endangering public health.
- **Shift the entire burden for maintaining clean and healthy air under the Clean Air Act to other agencies, private industry, small businesses, and the public.** DOD seeks to become exempt from having to comply with our national public health air quality standards (the National Ambient Air Quality Standards, or NAAQS) for a broad range of activities. This means that those living in areas with military bases could breathe dirtier air, which could result in more premature deaths, asthma attacks, and other adverse health and environmental effects. DOD's proposal actually defines dirty air to be clean air, even though air quality is in reality dirty and unhealthy. It does this by allowing EPA to approve areas as if they had attained the Clean Air Act's health based standards, *even though these areas have not attained these health standards*, if the reason for the nonattainment is military air pollution.
- **Block any designation of critical habitat under the Endangered Species Act – a crucial safety net for species on the brink of extinction – on any lands owned or controlled by the military.** DOD's proposal would prevent the U.S. Fish and Wildlife Service or National Marine Fisheries Service from designating critical habitat on any DOD lands if an Integrated Natural Resources Management Plan has been developed pursuant to the Sikes Act that "addresses special management consideration or protection." This would do nothing to ensure that training activities

are designed in a manner that avoids unnecessary destruction of essential habitats. INRMPs have been shown to be inadequate for the protection of endangered species.

- **Undermine protections of marine mammals by drastically changing DoD's obligations under the Marine Mammal Protection Act.** The Pentagon's proposal would allow the DOD to harm marine mammals without review by changing the definition of "harassment," one of the underpinnings of the Marine Mammal Protection Act, to a vague and subjective definition based on DOD's own assessment of its activities. This would allow a range of military activities that disrupt and harm marine mammals to avoid analysis by wildlife officials. A second element of the DoD proposal would eliminate the requirement that any killing of marine mammals be limited to "small numbers" in a "specific geographic region." Finally, the proposal would create broad exemptions allowing the military to entirely bypass any requirement of the Marine Mammal Protection Act and endlessly renew the exemptions. The likely result of these dramatic changes would be far less protection for marine mammals, less mitigation and monitoring of impacts, less transparency, and even more public controversy and debate.

Existing laws already strike a proper balance between protection of public health and the environment and military readiness. Any concerns should be addressed through existing waiver provisions, advance planning between the Department of Defense and environmental agencies, and through the process of local cooperation and consultation that has been successful at many sites. Sweeping exemptions, such as those proposed by the Pentagon, will only harm public health and the environment and the credibility of federal agencies. We urge you to contact members of the Senate and House Armed Services Committees to voice your opposition to DOD's proposals, and oppose any language that grants DOD new broad exemptions from public health and environmental laws when the bill reaches the floor.

Sincerely,

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