

# DISCUSSION DRAFT - DO NOT RELEASE

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## Sustainable Defense Readiness and Environmental Protection Act (SDREPA)

### Sec. \_\_\_\_ Congressional Findings and declaration of purposes and policy

#### (a) Findings

The Congress finds and declares that –

- (1) military readiness is essential to the security of the United States, to the protection of the lives and well-being of our citizens, and to the preservation of our freedoms, economic prosperity, and our national heritage;
- (2) a well-trained military is a principal component of military readiness;
- (3) to be well-trained and prepared, soldiers, sailors, Marines, and airmen must train in the same manner as they fight;
- (4) live fire training is an integral and necessary part of realistic military training;
- (5) military lands and training ranges (including land, sea and air training and operating areas) exist to ensure military preparedness by providing realistic training opportunities;
- (6) among the elements of our national heritage protected by the shield of military readiness is our nation's environment – our land, air, and water as well as the fish, wildlife, and plant species that inhabit them;
- (7) in addition to defending against foreign threats, the military acts as trustee, helping to protect the environment by its prudent and conscientious management of the natural resources of our military lands;
- (8) largely as a result of this stewardship, military lands present acceptable habitat for plants and wildlife, including protected species;
- (9) airspace used for military training and space vehicle testing, research, and development has been impacted by designation of new and the expansion of existing wildlife refuges, wilderness areas, national parks, national forests, marine sanctuaries, and other conservation and recreational designations;
- (10) public lands and waters, including, but not limited to, the National Park System units, National Forests, wilderness areas, and marine sanctuaries designated by federal legislation, frequently lie beneath airspace critical to providing training, testing, research, and development, for the Armed Forces of the United States and its allies;
- (11) continued use of the airspace over public lands and waters, including low-level training routes and special use airspace, is essential for military purposes and is not incompatible with the protection and proper management of the natural, environmental, cultural, and other resources and values of public lands.
- (12) in recent years, the expansion of state and federal environmental laws and regulations, along with population growth, economic development, increased land use, designation and expansion of conservation and recreational areas, and urban and suburban sprawl, among other factors,

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- have significantly restricted the military's access to and use of military lands and training ranges, and limited its ability to engage in live-fire training;
- (13) this phenomenon – known as “encroachment” – has markedly restricted the military's ability to train realistically and, unless checked, promises to produce further restrictions in the future;
  - (14) encroachment has already negatively affected military readiness and will continue to erode it unless this trend is reversed;
  - (15) in some cases, the application of certain environmental laws and regulations to military lands and training ranges threatens to thwart their primary mission as military training facilities and to convert them to nature preserves and wildlife refuges;
  - (16) national security requires that the military be able to train effectively, and not be impeded through the application of environmental laws and regulations that frustrate the use of military lands and training ranges for their intended purpose; and
  - (17) legislation is required to ensure that, when balancing between military and environmental considerations in determining the proper use of military lands and training ranges, military training and readiness receive appropriate consideration.

### **(b) Purposes**

The purposes of this chapter are to

- (1) protect the lives and well-being of citizens of the United States and to preserve their freedoms, economic prosperity, and national heritage by ensuring military readiness;
- (2) ensure military readiness by addressing problems created by encroachment on military lands, airspace, and training;
- (3) reaffirm the principle that military lands and airspace exist to ensure military preparedness;
- (4) shield military lands, airspace, and ranges, including land, sea, and air training and operating areas, from encroachment while ensuring that the Department of Defense remains mindful of its stewardship responsibilities;
- (5) establish the appropriate balance between military readiness and encroachment by according priority to military training and readiness; and
- (6) establish a framework to ensure long-term sustainability of military ranges.

### **(c) Policy**

It is the policy of the United States that –

- (1) Federal departments and agencies shall not place the conservation of public lands, or the preservation or recovery of endangered, threatened, or other protected species found on military lands, above the need to ensure that soldiers, sailors, airmen and Marines receive the greatest possible preparation for, and protection from, the hazards and rigor of combat through realistic training on military lands and in military airspace;

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- (2) Federal departments and agencies shall cooperate with State and local agencies to resolve conflicts between economic growth and development and national security; and
- (3) The Department of Defense should continue to engage in vigorous conservation practices consistent with its military mission.

### **Sec. \_\_\_\_ Definitions**

For purposes of this statute:

- (1) The term “military readiness activities” includes all training and operations that prepare the men and women of the U.S. military forces for combat, and testing of military equipment, vehicles, weapons, and sensors for proper operation or suitability for combat use.
- (2) The term “combat” or “combat use” includes all forms of armed conflict and operational employment and 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 and the Defense Components.
- (4) The term “Defense Components” means the Military Departments, the Military Services, and the combat support agencies as defined in 10 U.S.C. § 193.
- (5) The term “agency” means any Executive Department of the United States, or any component, officer, employee, or agent thereof.

### **Sec. \_\_\_\_ Military readiness and the conservation of protected species.**

#### **(a) Critical habitat for threatened and endangered species.**

- (1) Critical habitat, as defined under Section 3 of the Endangered Species Act, 16 U.S.C. 1532(5), shall not be designated on any lands, or other geographical areas, owned or controlled by the Department, or designated for its use, for which an Integrated Natural Resources Management Plan has been completed under subsection (a) of this section.
- (2) Nothing in this subsection shall eliminate the requirement for agency consultation under section 7(a)(2) of the Endangered Species Act, 16 U.S.C. 1538(a)(2).”

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### **(b) Migratory Birds**

When the Department or any other agency takes any action the purpose of which is to take any migratory bird, any part, nest, or eggs of any such bird, or any product, whether or not manufactured, which consists, or is composed in whole or part, of any such bird or any part, nest, or egg thereof, included in the terms of the conventions described in section 703 of Title 16 of the United States Code, the Department or agency shall be subject to, and comply with, such regulations governing the taking of migratory birds, parts, nests, or eggs as shall be promulgated by the Secretary of the Interior under section 704 of that title, in the same manner and to the same extent as any nongovernmental entity. For purposes of this section and section 703 of Title 16, an action taken by the Department or any other agency that is within the scope of the agency's legal authority, such as military readiness activities are for the Department, and that incidentally results in the taking of migratory birds, or parts, nests, or eggs of any such birds, is not an action the purpose of which is to take such birds, parts, nests, or eggs, and shall not require a permit from the Secretary of the Interior. This section shall apply to any requirement whether substantive or procedural (including any record keeping or reporting requirement, any requirement respecting permits and other requirement whatsoever) for actions the purpose of which is to take any migratory bird, bird part, nest, or eggs.

### **(c) Marine mammals**

For purposes of chapter 31 of title 16 of the United States Code, harassment is any act of the Department or any person that:

- (1) injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild; or
- (2) disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavior 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
- (3) is directed toward a specific individual, group, or stock of marine mammals in the wild that is likely to disturb the specific individual, group, or stock of marine mammals by disrupting behavior, including, but not limited to migration, surfacing, nursing, breeding, feeding or sheltering.

### **Sec. \_\_\_\_ Noise.**

For purposes Section 4 of the Noise Control Act, 42 U.S.C. § 4903, "environmental noise" shall not include noise caused by military readiness

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activities involving military weapons or equipment designed for combat use. The Department shall minimize environmental noise caused by military readiness activities involving military weapons or equipment designed for combat use to the extent practical and necessary without diminishment of military training or other capabilities, as determined by the Department.

### **Sec. \_\_\_\_ Conformity with State Implementation Plans for air quality.**

In all cases in which the requirements of Clean Air Act Subsection 176(c), 42 U.S.C. 7506(c) 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” the quantity of emissions that are caused by the military readiness activities;
- (2) promptly notify the state air quality planning agency for the affected area of such emission estimates; and
- (3) cooperate with the State for the purpose of ensuring that military readiness activities conform to the applicable State Implementation Plan within five years of the date new activities begin.

### **Sec. \_\_\_\_ Discharges of munitions and military equipment to waters of the United States.**

For purposes of the Federal Water Pollution Control Act, as amended by the Clean Water Act, the term “dredged or fill material,” as used in section 404, 33 U.S.C. 1344, and the definition of “pollutant” in section 502(6), 33 U.S.C. 1362(6), do not include explosives, munitions, munitions fragments or constituents thereof, or military weaponry and equipment discharged to water for a purpose other than disposal, provided such discharge occurs pursuant to an authorized Federal or State program. Explosives, munitions, munitions fragments or constituents thereof, and military equipment or weaponry, when used for its intended purpose, including during testing and training, is not discharged for the purpose of disposal and does not constitute dredged or fill material. The Department of Defense shall minimize discharges of such material to waters of the United States to the extent practical and necessary without diminishment of military training or other capabilities, as determined by the Department.

### **Sec. \_\_\_\_ Range management and restoration.**

#### **(a) Definition of solid waste.**

The term “solid waste,” as used in the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.*, does not include explosives, munitions, munition fragments, or constituents thereof that are or have been deposited and remain on an

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operational military range incident to their normal and expected use unless such used or fired material:

- (1) is removed from the range for reclamation, treatment, or disposal, treatment prior to disposal, or storage prior to or in lieu of reclamation, treatment, disposal, or treatment prior to disposal;
- (2) is recovered, collected, and then disposed of by burial or landfilling;
- (3) lands off-range and is not promptly rendered safe and/or retrieved; or,
- (4) migrates off range, requires a response under 42 U.S.C. § 9601, *et.seq.*, and is not addressed thereunder.

### **(b) Definition of release.**

The term “release,” as used in the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.*, shall not include the presence, on a military range, of any explosives, munitions, munitions fragments, or constituents thereof that are or have been deposited incident to its normal and expected use, unless such range has been closed, or unless and only to the extent that explosives, munitions, munitions fragments or constituents migrate off-range and require a response under 42 U.S.C. § 9601 *et seq.*

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### **Sec. \_\_\_\_ . Military Overflight And Special Use Airspace Designations Over Public Lands**

- (a) **Overflights.** No designation or management of public lands or waters as national parks, wilderness areas, wildlife refuges, national forests, national monuments, marine sanctuaries or reserves, or other conservation or recreational areas shall preclude existing, modification of existing, or establishment of new military overflights, including low-level overflights of military aircraft, weapons, missiles, rockets, space vehicles or any other military air vehicle, conducted to support military readiness activities.
- (b) **Special Use Airspace.** No designation of public lands or waters as national parks, wilderness areas, wildlife refuges, national forests, national monuments, marine sanctuaries or reserves, or other conservation or recreational areas shall preclude the use of existing, establishment of new, or the modification of existing, units of special use airspace or military training routes utilized to support military readiness activities.

### **Sec. \_\_\_\_ . Exemption from certain environmental laws during war or declared national emergency.**

The President, during time of war or a declared national emergency, may exempt any action undertaken by the Department of Defense and its components from compliance with any requirement of the Marine Mammal Protection Act, 16 U.S.C. 1361 et seq., and the Coastal Zone Management Act, 16 U.S.C. § 1451 et seq., if the Secretary of Defense determines that such an exemption is necessary for reasons of national security. 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 upon the Secretary of Defense making a new determination. Exemptions granted under this section shall terminate no more than 180 days after the end of the war or declared national emergency. The President shall submit to the Congress, during the period of the war or national emergency, an annual report on all exemptions granted under this section, together with the reasons for granting such exemptions.