

1 has been determined to be environmentally preferable or made
2 with recovered material.

3 (b) ASSESSMENT OF TRAINING AND EDUCATION.—The
4 Secretary of Defense shall assess the need to establish a pro-
5 gram, or enhance existing programs, for training and educating
6 Department of Defense procurement officials to ensure that
7 they are aware of any Department requirements, preferences,
8 or goals for the procurement of environmentally preferable pro-
9 curement items or procurement items made with recovered ma-
10 terial.

11 (c) REPORTING REQUIREMENT.—Not later than March 1,
12 2004, and each March 1 thereafter through 2007, the Sec-
13 retary of Defense shall submit to the Committee on Armed
14 Services of the Senate and the Committee on Armed Services
15 of the House of Representatives a report detailing the results
16 obtained from the tracking system developed under subsection
17 (a).

18 (d) RELATION TO OTHER LAWS.—Nothing in this section
19 shall be construed to alter the requirements of the Solid Waste
20 Disposal Act (40 U.S.C. 6901 et seq.).

21 (e) DEFINITIONS.—In this section:

22 (1) The term “environmentally preferable”, in the case
23 of a procurement item, means that the item has a lesser
24 or reduced effect on human health and the environment
25 when compared with competing products that serve the
26 same purpose. The comparison may consider raw materials
27 acquisition, production, manufacturing, packaging, distribu-
28 tion, reuse, operation, maintenance, or disposal of the prod-
29 uct.

30 (2) The terms “procurement item” and “recovered
31 material” have the meanings given such terms in section
32 1004 of the Solid Waste Disposal Act (40 U.S.C. 6903).

33 **SEC. 315. INCIDENTAL TAKING OF MIGRATORY BIRDS**
34 **DURING MILITARY READINESS ACTIVITIES.**

35 (a) INTERIM AUTHORITY FOR INCIDENTAL TAKINGS.—
36 During the period described in subsection (c), section 2 of the
37 Migratory Bird Treaty Act (16 U.S.C. 703) shall not apply to

1 the incidental taking of a migratory bird by a member of the
2 Armed Forces during a military readiness activity authorized
3 by the Secretary of Defense or the Secretary of the military de-
4 partment concerned.

5 (b) IDENTIFICATION OF MEASURES TO MINIMIZE IMPACT
6 OF ACTIVITIES.—During the periods described in subsections
7 (c) and (d), the Secretary of Defense shall, in consultation with
8 the Secretary of the Interior, identify measures—

9 (1) to minimize and mitigate, to the extent practicable,
10 any adverse impacts of authorized military readiness activi-
11 ties on affected species of migratory birds; and

12 (2) to monitor the impacts of such military readiness
13 activities on affected species of migratory birds.

14 (c) PERIOD OF APPLICATION FOR INTERIM AUTHORITY.—
15 The period described in this subsection is the period beginning
16 on the date of the enactment of this Act and ending on the
17 date on which the Secretary of the Interior publishes in the
18 Federal Register a notice that—

19 (1) regulations authorizing the incidental taking of mi-
20 gratory birds by members of the Armed Forces have been
21 prescribed in accordance with the requirements of sub-
22 section (d);

23 (2) all legal challenges to the regulations and to the
24 manner of their promulgation (if any) have been exhausted
25 as provided in subsection (e); and

26 (3) the regulations have taken effect.

27 (d) INCIDENTAL TAKINGS AFTER INTERIM PERIOD.—(1)
28 Not later than the expiration of the one-year period beginning
29 on the date of the enactment of this Act, the Secretary of the
30 Interior shall exercise the authority of that Secretary under
31 section 3(a) of the Migratory Bird Treaty Act (16 U.S.C.
32 704(a)) to prescribe regulations to exempt the Armed Forces
33 for the incidental taking of migratory birds during military
34 readiness activities authorized by the Secretary of Defense or
35 the Secretary of the military department concerned.

1 (2) *The Secretary of the Interior shall exercise authority*
2 *under paragraph (1) with the concurrence of the Secretary of*
3 *Defense.*

4 (e) **LIMITATION ON JUDICIAL REVIEW.**—An action seeking
5 judicial review of regulations prescribed pursuant to this sec-
6 tion or of the manner of their promulgation must be filed in
7 the appropriate Federal court by not later than the expiration
8 of the 120-day period beginning on the date on which such reg-
9 ulations are published in the Federal Register. Upon the expi-
10 ration of such period and the exhaustion of any legal challenges
11 to the regulations pursuant to any action filed in such period,
12 there shall be no further judicial review of such regulations or
13 of the manner of their promulgation.

14 (f) **MILITARY READINESS ACTIVITY.**—(1) In this section
15 the term “military readiness activity” includes—

16 (A) all training and operations of the Armed Forces
17 that relate to combat; and

18 (B) the adequate and realistic testing of military
19 equipment, vehicles, weapons, and sensors for proper oper-
20 ation and suitability for combat use.

21 (2) The term does not include—

22 (A) the routine operation of installation operating sup-
23 port functions, such as administrative offices, military ex-
24 changes, commissaries, water treatment facilities, storage
25 facilities, schools, housing, motor pools, laundries, morale,
26 welfare, and recreation activities, shops, and mess halls;

27 (B) the operation of industrial activities; or

28 (C) the construction or demolition of facilities used for
29 a purpose described in subparagraph (A) or (B).

30 **Subtitle C—Commissaries and Non-**
31 **appropriated Fund Instrumental-**
32 **ities**

33 **SEC. 321. AUTHORITY FOR EACH MILITARY DEPART-**
34 **MENT TO PROVIDE BASE OPERATING SUP-**
35 **SUPPORT TO FISHER HOUSES.**

36 Section 2493(f) of title 10, United States Code, is amend-
37 ed to read as follows: