

## DOD gets bird law altered in final authorization bill

The Defense authorization bill, [H.Rpt. 107-772](#), received much attention from conservationists and other groups this year when the Department of Defense proposed changes to several environmental laws. By the end of Congress' lame-duck session, only a change to the Migratory Bird Treaty Act entered the bill, but DOD's continued concerns about encroachment may lead to other requests.

DOD requested changes to the Endangered Species Act, MBTA and other laws in April, just days before the House Armed Services Military Readiness Subcommittee began its mark up of the bill. DOD felt the limitations these laws placed on land use and other activities adversely affected training missions at numerous military facilities.

In the request, DOD said it aimed to "ensure military readiness by addressing problems created by encroachment on military readiness activities and lands, marine areas and airspace reserved, withdrawn or designated for military use."

Drafts of the bill circulated in April included changes to the Resource Conservation and Recovery Act, Clean Air Act, Clean Water Act, Marine Mammal Protection Act, Noise Control Act and the Comprehensive Emergency Response, Compensation and Liability Act, which opponents viewed as meaning those laws would no longer apply to bombing ranges, air bases and training grounds or munitions and other materials related to such areas.

Defense authorization conferees -- and ultimately Congress -- only approved the change to the MBTA. The provision creates a one-year interim period where rules on incidental takings of migratory birds would not apply to military readiness activities. During the interim, the Interior Department is instructed to start designing regulations that exempt the Armed Forces from the incidental taking of migratory birds, and DOD must agree to the regulations before they take effect.

Conferees approved the agreement 12 November with the House quickly passing the report the same day and the Senate following on 13 November. President Bush is expected to sign the Defense Authorization bill into law later this year.

The House version of the bill, [H.R. 4546](#), that passed in May, included the MBTA change and an alteration to the Endangered Species Act that would allow the military to use an Integrated Natural Resources Management Plan instead of designating critical habitat for listed species. House Military Readiness Chairman Joel Hefley (R-Colo.) said the other changes needed more discussion before they could be added to the bill.

The original Senate bill, [S. 2514](#), which passed in June, did not include any of DOD's requested changes to laws, with Senate Armed Services Committee Chairman Carl Levin (D-Mich.) saying it was out of his panel's jurisdiction.

Some held the environmental provisions responsible for holding up the conference report, while others attribute it to President Bush's veto threat on the bill for a veteran's benefit issue. Critics of the legislation said they were not against military training per se, but rather objected to the blanket exemption DOD wanted and even argued that the laws already contain military exemptions.

An excerpt, as revised from an article by Suzanne Struglinski, a staff writer for the ***Environment & Energy Daily***