

U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

June 13, 2018

The Honorable James N. Mattis
Secretary
U.S. Department of Defense
1000 Defense Pentagon
Washington, D.C. 20301

Dear Secretary Mattis:

The Committee on Natural Resources is continuing its oversight of the potential manipulation of tax-exempt 501(c) organizations by foreign entities to influence U.S. environmental and natural resources policy to the detriment of our national interests.¹ Specifically, we are interested in environmental litigation by U.S.-based 501(c) organizations against the Department of Defense (Department) and its negative impact on our national security. While some lawsuits represent sincere and justified concerns about the effect of federal actions on the environment, others may be maliciously filed to stop, restrict, delay, or impose additional costs on U.S. military activities. Military experts define, “[t]he environmental subset of lawfare [as] the use or misuse of environmental-protection laws and legal processes as a substitute for traditional military means to achieve objectives.”² Adequate infrastructure and training under real-life conditions for our warfighters is critical to military readiness.³ Given the emerging concerns about undue foreign influence in the United States, the Committee is investigating how foreign adversaries may use U.S.-based 501(c) organizations as knowing or unknowing proxies to engage in environmental lawfare.

In its push to become a global power, the People’s Republic of China has increased competition within the Asia-Pacific region over territorial disputes and natural resources, thereby creating a heightened risk of conflict.⁴ In response, the United States has sought deeper engagement in the Asia-Pacific region to guarantee that “international law and norms [are]

¹ Letter from Hon. Rob Bishop, Chairman, H. Comm. on Natural Resources and Hon. Bruce Westerman, Chairman, Subcomm. on Oversight and Investigations, to Rhea Suh, President, Natural Resources Defense Council (June 6, 2018) (on file with Committee).

² Michael T. Palmer and J. Michael Johnson, *Undersea Lawfare: Can the Navy Fall Victim to This Asymmetric Warfare Threat?*, 69 NAVAL WAR COLLEGE REV., 135, 138 (Winter 2016), available at <http://digital-commons.usnwc.edu/cgi/viewcontent.cgi?article=1122&context=nwc-review>.

³ *Winter v. NRDC*, 555 U.S. 7, 12-14 (2008).

⁴ CATHERINE A. THEOHARY, CONG. RESEARCH SERV., R45142, INFORMATION WARFARE: ISSUES FOR CONGRESS 3 (Mar. 5, 2018), available at <http://www.crs.gov/reports/pdf/R45142>.

respected . . . and that disagreements are resolved peacefully without threats or coercion.”⁵ China, however, opposes further United States involvement in the Asia-Pacific region⁶ through a combination of “intelligence operations, cyberspace operations, irregular warfare, lawfare, and foreign relations.”⁷

A glimpse into the seriousness of China’s intelligence operations in the United States was recently offered by the arrests of a former Defense Intelligence Agency case officer last week,⁸ and a former Central Intelligence Agency case officer earlier this year⁹ on charges of spying for China.¹⁰ A recent Chinese cyberspace operation was also disclosed last week, when the media reported that Chinese government hackers gained access to 614 gigabytes of highly classified information on a sensitive weapons project, “as well as signals and sensor data, submarine radio room information relating to cryptographic systems, and the Navy submarine development unit’s electronic warfare library.”¹¹ These latest acts of espionage are “part of China’s long-running effort to blunt the U.S. advantage in military technology and become the preeminent power in East Asia.”¹²

While China’s intelligence or cyberspace operations are more clearly identified when agents or attacks are uncovered as much as an overt act of irregular warfare, its employment of lawfare is inherently more difficult to detect. Some experts believe that China “masks its political motives behind laudable human-interest or cultural projects, blurring the battle line with its adversaries.”¹³ Other recent media reports also note that China’s strategy includes “co-opt[ing] American influencers in order to promote China’s narrative.”¹⁴ A logical extension and

⁵ Tom Donilon, *America is Back in the Pacific and will Uphold the Rules*, FINANCIAL TIMES, Nov. 27, 2011, <https://www.ft.com/content/4f3febac-1761-11e1-b00e-00144feabdc0>.

⁶ Keith B. Richburg, *U.S. Pivot to Asia Makes China Nervous*, THE WASH. POST, Nov. 16, 2011, https://www.washingtonpost.com/world/asia_pacific/us-pivot-to-asia-makes-china-nervous/2011/11/15/gIQAsQpVRN_story.html?utm_term=.b71c65cfa0e8.

⁷ Theohary, *supra* note 4, at 11.

⁸ Press Release, Office of Public Affairs, U.S. Dep’t. of Justice, Former Defense Intelligence Officer Arrested for Attempted Espionage (June 4, 2018) (*available at* <https://www.justice.gov/opa/pr/former-defense-intelligence-officer-arrested-attempted-espionage>).

⁹ Press Release, Office of Public Affairs, U.S. Dep’t. of Justice, Former CIA Officer Arrested for Retaining Classified Information (Jan. 16, 2018) (*available at* <https://www.justice.gov/opa/pr/former-cia-officer-arrested-retaining-classified-information>).

¹⁰ Mike Ives, *U.S. Army Veteran Tried to Spy for China, Officials Say*, THE N.Y. TIMES, June 5, 2018, <https://www.nytimes.com/2018/06/05/world/asia/spy-arrest-china-ron-rockwell-hansen.html>; *see also* Adam Goldman, *Ex-C.I.A. Officer Indicted in Dismantling of U.S. Informant Network in China*, THE N.Y. TIMES, May 8, 2018, <https://www.nytimes.com/2018/05/08/us/politics/cia-china-jerry-lee-indictment.html>.

¹¹ Ellen Nakashima and Paul Sonne, *China Hacked a Navy Contractor and Secured a Trove of Highly Sensitive Data on Submarine Warfare*, THE WASH. POST, June 8, 2018, https://www.washingtonpost.com/world/national-security/china-hacked-a-navy-contractor-and-secured-a-trove-of-highly-sensitive-data-on-submarine-warfare/2018/06/08/6cc396fa-68e6-11e8-bea7-c8eb28bc52b1_story.html?utm_term=.b3715c95e361.

¹² *Id.*

¹³ Yi-Zheng Lian, *China has a Vast Influence Machine, and You Don’t Even Know it*, THE N.Y. TIMES, May 21, 2018, <https://www.nytimes.com/2018/05/21/opinion/china-overseas-intelligence-yang.html>.

¹⁴ Josh Rogin, *China’s Foreign Influence Operations are Causing Alarm in Washington*, THE WASH. POST, Dec. 10, 2017, https://www.washingtonpost.com/opinions/global-opinions/chinas-foreign-influencers-are-causing-alarm-in-washington/2017/12/10/98227264-dc58-11e7-b859-fb0995360725_story.html?noredirect=on&utm_term=.2995d9cd423c.

continuation of these strategies, conceivably includes the use of the American legal system to further erode U.S. military advantage, especially in the Asia-Pacific region.

Permanent military installations in Hawaii, Guam, Japan, and elsewhere are critical to U.S. security commitments in the Asia-Pacific region.¹⁵ Military infrastructure projects and training, however, are no more immune from environmental litigation and review than any other federal actions.¹⁶ Military actions in the Asia-Pacific region have triggered lawsuits by 501(c) organizations seeking to halt or restrict Department activities based on alleged violations of various state and federal environmental and natural resources laws.

For example, the impact on marine life from the U.S. Navy's use of active sonar and underwater explosives has been the subject of several lawsuits led by the Natural Resources Defense Council (NRDC) dating back to the 1990s.¹⁷ In an information paper provided to the Committee, the Navy stated that environmental litigation has "on various occasions unreasonably restricted Navy training and testing activities and do, on a daily basis, limit the time, place, and types of training and testing activities that Navy is able to conduct."¹⁸ Active sonar is the most effective means of detecting the ultra-quiet diesel electric submarines deployed by foreign navies, such as China's People's Liberation Army Navy.¹⁹ The U.S. Supreme Court determined that there has never been a "documented episode of harm to a marine mammal" caused by naval sonar.²⁰ Nevertheless, the lower courts continue to rule that active sonar may be a "contributing factor" to the beaching, stranding, and injuring of some marine mammals.²¹ These conclusions have led courts to enjoin or severely restrict naval training exercises.²² Most recently, on June 6, 2018, the NRDC appeared before the California Coastal Commission and successfully petitioned the Commission to reject the Navy's most recent proposed training plans for exercises off the Southern California coast.²³

¹⁵ Agence France Presse, *The U.S. has a Massive Military Presence in the Asia-Pacific. Here's What you Need to Know About it*, PRI: PUBLIC RADIO INTERNATIONAL, Aug. 11, 2017, <https://www.pri.org/stories/2017-08-11/us-has-massive-military-presence-asia-pacific-heres-what-you-need-know-about-it>.

¹⁶ See generally PHILLIP K. HOWARD, TWO YEARS NOT TEN YEARS: REDESIGNING INFRASTRUCTURE APPROVALS, COMMON GOOD (Sept. 2015) available at https://commongood.3cdn.net/c613b4cfda258a5fcb_e8m6b5t3x.pdf.

¹⁷ *NRDC v. Winter*, 518 F.3d 658 (9th Cir. 2008) reversed by *Winter v. NRDC*, 555 U.S. 7 (2008); *NRDC v. Pritzker*, 828 F.3d 1125 (9th Cir. 2016); *Ocean Mammal Inst. v. Gates*, 546 F. Supp. 2d 960 (D. Haw. 2008); *NRDC v. Evans*, 279 F. Supp. 2d 1129 (N.D. Cal. 2003); *NRDC v. U.S. Dep't of the Navy*, 857 F. Supp. 734 (C.D. Cal. 1994).

¹⁸ Information Paper from Dep't. of the Navy, to H. Comm. on Natural Resources, Subcomm. on Oversight and Investigations (Feb. 23, 2018) (on file with Committee).

¹⁹ *Id.*; see also RONALD O'ROURKE, CONG. RESEARCH SERV., RL33153, CHINA NAVAL MODERNIZATION: IMPLICATIONS FOR U.S. NAVY CAPABILITIES—BACKGROUND AND ISSUES FOR CONGRESS 11-18 (May 21, 2018), available at

<http://www.crs.gov/Reports/RL33153?source=search&guid=df66c868f359463abb01a9af4a8fa8f9&index=0>.

²⁰ *Winter v. NRDC*, 555 U.S. 7, 32 (2008).

²¹ Dep't. of the Navy, *supra* note 18.

²² *Ocean Mammal Inst. v. Gates*, 546 F. Supp. 2d 960, 964-965 (D. Haw. 2008).

²³ Jeannie Groeneveld, *California Coastal Commission Rejects Navy's Offshore Training Plans*, THE CORONADO TIMES, June 10, 2018, <https://coronadotimes.com/news/2018/06/10/california-coastal-commission-rejects-navys-offshore-training-plans/>.

In another example, the U.S. Army previously provided the Committee information highlighting the “extensive efforts at considerable cost [that] have been made to preserve, protect, and out-plant [endangered] species [on O’ahu, Hawaii].”²⁴ Dating back to 1998, the litigation activist group, Earthjustice, alleged that the Army violated the National Environmental Policy Act (NEPA) and filed suit to prevent planned live-fire exercises at the Makua Military Reservation (Makua) in O’ahu.²⁵ With the exception of a three-year period following the September 11, 2001 terrorist attacks,²⁶ repeated lawsuits by Earthjustice have prevented the Army from conducting live-fire exercises at Makua for at least 15 years of the last two decades.²⁷ Makua was described as a unique “space to allow a company of soldiers to maneuver through the terrain while firing their weapons and experiencing the thunderous impact of artillery and other weapons exploding near them.”²⁸ The then-25th Infantry Division’s Assistant Commander Brigadier General Karl Eikenberry remarked that “You don’t want to experience that sensation for the first time in combat, with all of the other stress you face.”²⁹

In 2003, the Center for Biological Diversity (CBD) led a coalition of environmental groups³⁰ to legally prevent the relocation of U.S. Marine Corps (USMC) Air Station Futenma in Okinawa, Japan, to a less densely populated area. The plan to relocate the air station was devised upon agreement by the United States and Japan that the current location posed various challenges, including those to the health and safety of Japanese citizens in surrounding areas. CBD, however, filed suit that the new location would violate the National Historic Preservation Act (NHPA) based on the alleged adverse effects the new location would have on the Okinawa dugong, a marine mammal.³¹ CBD argued that dugongs are “associated with traditional Okinawan creation mythology, sometimes being considered the progenitor of the local people.”³² Despite the Japanese environmental review concluding there would be no adverse impact to the Okinawa dugong, the CBD claimed that by virtue of the dugong’s cultural significance under Japanese law, it is “equivalent” to being listed in the U.S. National Register of Historic Places, and therefore protected under the NHPA.³³ As of the date of this letter, relocation of the base

²⁴ Letter from Eugene Collins, Dep. Assistant Sec. of the Army, Environment, Safety, and Occupational Health, to H. Comm. on Natural Resources, Subcomm. on Oversight and Investigations Staff (Mar. 1, 2018) (on file with Committee).

²⁵ Press Release, Earthjustice, Citizens and Army Settle Lawsuit (Sept. 27, 1999) (*available at* <https://earthjustice.org/news/press/1999/citizens-and-army-settle-lawsuit>).

²⁶ Gregg K. Kakesako, *Tragedy in New York Lifts Makua Impasse*, STAR BULLETIN, Oct. 5, 2001, <http://archives.starbulletin.com/2001/10/05/news/story2.html>.

²⁷ William Cole, *Army Ends Live-Fire Training at Makua*, HONOLULU STAR ADVERTISER, Jan. 13, 2011, <http://www.staradvertiser.com/2011/01/13/hawaii-news/army-ends-live-fire-training-at-makua/>.

²⁸ Steven Lee Myers, *Army Faces Fierce Fight On Historic Hawaii Valley*, THE N.Y. TIMES, Apr. 1, 2001, <https://www.nytimes.com/2001/04/01/us/army-faces-fierce-fight-on-historic-hawaii-valley.html>.

²⁹ *Id.*

³⁰ Other named plaintiffs include: Okinawa Dugong (Dugong dugon), Center for Biological Diversity, Turtle Island Restoration Network, Japan Environmental Lawyers Federation, Save The Dugong Foundation, Dugong Network Okinawa, Committee Against Heliport Construction, Save Life Society, Anna Koshiishi, Takuma Higashionna, and Yoshikazu Makishi.

³¹ *Ctr. For Biological Diversity v. Mattis*, 868 F.3d 803 (9th Cir. 2017).

³² First Supplemental Complaint for Declaratory and Injunctive Relief at 9, *Center for Biological v. Mattis*, 868 F.3d 803 (9th Cir. 2017), *available at*

https://earthjustice.org/sites/default/files/files/Final_Supplemental_Complaint_with_Exhibits.pdf

³³ *Ctr. for Biological Diversity v. Mattis*, 868 F.3d at 811-813.

has not commenced even in the midst of growing political support in Japan.³⁴ Notably, the U.S. Ambassador to Japan previously expressed the necessity of relocating the base to “maintain[] [military] readiness, which is critical at a time like this when the North Korean regime is putting so much pressure on national security in the region.”³⁵

As part of U.S. efforts to address the on-going issues in Okinawa, the USMC attempted to relocate thousands of U.S. marines from Japan to Guam.³⁶ After years of negotiations between the United States and Japan, an agreement was finalized in 2012 to redeploy 5,000 marines from Okinawa to Guam with the relocation of related training activities from Okinawa to the Northern Mariana Islands of Tinian and Pagan.³⁷ In 2016, Earthjustice represented a coalition of environmental groups, including the CBD, to sue the USMC for its proposed redeployment to Guam. Earthjustice claimed that the USMC violated NEPA because it failed to consider “all the impacts associated with the relocation and training” in a single environmental impact statement (EIS), and failed to consider other locations for stationing and training the marines.³⁸ While litigation is pending, the Department is enjoined from transferring the marines currently based in Okinawa until a second EIS is completed.³⁹ The Department expects to complete the draft of the second EIS in late 2018 or early 2019.⁴⁰ Continued litigation seems inevitable as Earthjustice has repeatedly accused the Department of failing to fully disclose the impact of training exercises.⁴¹

These lawsuits represent a mere snapshot of the scores of serious legal challenges that impede our nation’s military readiness. For our foreign adversaries, such lawsuits may serve as an inexpensive tool or a military windfall which reduce U.S. defense capabilities. Accordingly, environmental groups that bring such lawsuits may be knowingly or vulnerable to unwittingly

³⁴ Reuters Staff, *Japan’s PM Vows to Proceed with U.S. Base Relocation in Okinawa After Poll*, REUTERS, Feb. 4, 2018, <https://www.reuters.com/article/us-japan-usa-okinawa/japans-pm-vows-to-proceed-with-u-s-base-relocation-in-okinawa-after-poll-idUSKBN1FP03J>.

³⁵ Tyler Hlavac, *Futenma relocation for dealing with N. Korea threat, Hagerty says*, STARS AND STRIPES, Nov. 17, 2017, <https://www.stripes.com/news/futenma-relocation-necessary-for-dealing-with-n-korean-threats-hagerty-says-1.498291>.

³⁶ Press Release, U.S.- Japanese Sec. Consultative Comm., *Toward a More Robust Alliance and Greater Shared Responsibilities* (Oct. 3, 2013) (available at <https://www.defense.gov/Portals/1/Documents/pubs/U.S.-Japan-Joint-Statement-of-the-Security-Consultative-Committee.pdf>).

³⁷ STEVE ISELIN, RECORD OF DECISION FOR THE FINAL SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT FOR GUAM AND COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS MILITARY RELOCATION, DEP’T. OF THE NAVY, U.S. DEP’T. OF DEFENSE 3 (Aug. 8, 2015), available at <http://guammarines.s3.amazonaws.com/static/20150828%20-%20ROD%20with%20Signature%20-%20FINAL.pdf>.

³⁸ *Tinian Women’s Ass’n. v. U.S. Dep’t. of the Navy*, No. 16-cv-00022 (D. N. Mar. I. Oct. 13, 2017).

³⁹ Kent Miller, *Plans to Move Marines to Guam, Train Them in Northern Marianas, Hits Snag*, MARINE CORPS TIMES, Oct. 14, 2017, <https://www.marinecorpstimes.com/news/your-marine-corps/2017/10/14/plans-to-move-marines-to-guam-train-them-in-northern-marianas-hits-snog/>.

⁴⁰ Status of Revised Draft EIS, CNMI Joint Military Training EIS/OEIS, <http://www.cnmijointmilitarytrainingeis.com/announcements/26> (last visited Jun. 12, 2018).

⁴¹ Steve Limtiaco, *Opponents Say Navy Knew CNMI Training Plans Were Inadequate*, PACIFIC DAILY NEWS, Jan. 23, 2018, <https://www.guampdn.com/story/news/2018/01/23/opponents-say-navy-knew-cnmi-training-plans-were-inadequate/1056470001/?from=new-cookie>; see also Ferdie De La Torre, *Two-Thirds of Tinian will be Blanketed with Ammo*, SAIPAN TRIBUNE, June 4, 2018, <https://www.saipantribune.com/index.php/two-thirds-of-tinian-will-be-blanketed-with-ammo/>.

serving as proxies for our foreign adversaries. Experts believe that proxy environmental organizations can “achieve significant leverage, building on the infrastructure, strategic communications, and other achievements of the scores of legitimate groups.”⁴² Moreover, “from the adversary’s viewpoint, [proxy environmental organizations] could perform as self-funded, self-sufficient, and perpetual ‘launch and forget’ weapons.”⁴³

To assist the Committee in its oversight, please produce the following documents and information as soon as possible, but no later than 5:00 p.m. on June 27, 2018:

1. All documents, including, but not limited to, internal memoranda, reports, research papers, and assessments, referring or relating to U.S.-based 501(c) organizations engaged in environmental litigation against the Department or any of its subordinate service branches and agencies while acting as potential proxies, knowingly or unknowingly for foreign entities;
2. Documents sufficient to identify foreign entities directly or indirectly attempting to use U.S.-based 501(c) organizations as knowing or unknowing proxies in environmental litigation against the Department or any of its subordinate service branches and agencies; and
3. A document sufficient to list all litigation, including pending litigation, involving a cause of action arising out of U.S. environmental laws against the Department or any of its subordinate service branches and agencies that impact operations in the U.S. Indo-Pacific Command Area of Responsibility since November 17, 2011 to present. For each case, include the following accompanying information:
 - a. The captioned name and case number of the legal action;
 - b. The names of all parties to the legal action, including the names of any interveners to the action;
 - c. The statute(s) under which the action was brought;
 - d. The date the case was initiated; and
 - e. The date the case was closed or settled.

In addition, please provide a briefing to Committee staff on this matter no later than July 5, 2018.

⁴² Palmer and Johnson, *supra* note 2, at 138.

⁴³ *Id.*

The Honorable James N. Mattis

June 13, 2018

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Please deliver your response to room 1324 of the Longworth House Office Building. The Committee prefers if possible, to receive your response in electronic format. An attachment contains additional instructions for responding to the Committee's request.

Please contact Sang Yi and John Strom of the Oversight and Investigations Subcommittee staff at (202) 225-7107 with any questions about this request. Thank you for your attention to this matter.

Sincerely,



Rob Bishop
Chairman



Bruce Westerman
Chairman
Subcommittee on
Oversight and Investigations

Enclosure

For Immediate Release
June 13, 2018

Contact:

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Keith Rushing, Earthjustice, (202) 667-4500 x5236, krushing@earthjustice.org

Earthjustice Response to House Committee on Natural Resources Letter to Department of Defense

SAN FRANCISCO—The Following is a statement by **Earthjustice President Trip Van Noppen** in response to a [letter written by House Republicans](#) to Defense Secretary Jim Mattis. The letter was sent by members of the House Committee on Natural Resources claiming that lawsuits filed against the Pentagon by environmental advocacy groups in the U.S. may be unwittingly helping foreign powers.

“This letter is a blatant attempt to turn attention away from the Trump administration’s campaign to undermine environmental and health protections and reward corporate polluters.

Evoking national security is a red herring the Committee is using to call into question the work of Earthjustice and others to advance public health and environmental safeguards. Earthjustice holds the U.S. military and government agencies accountable to *U.S. law* established by the *U.S. Congress*, and those legal actions have been repeatedly upheld by *U.S. courts*. To suggest we are promoting foreign interests is absurd.

Since the House Committee on Natural Resources is so interested in investigating wrongdoing, we suggest members turn their attention instead to EPA Administrator Scott Pruitt who has not only utterly failed to protect our nation’s natural resources, but is under more than 15 federal investigations for misconduct in Office.

This letter is nothing more than a petty witch hunt against the most effective environmental organizations. Period, end of story.”

Earthjustice is a non-profit public interest law organization dedicated to protecting the magnificent places, natural resources, and wildlife of this earth, and to defending the right of all people to a healthy environment. Earthjustice.org