SEC. __. PROTECTION AGAINST MISUSE OF NAVAL SPECIAL WARFARE COMMAND INSIGNIA.

(a) IN GENERAL.—Chapter 663 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 7882. Protection against misuse of insignia of Naval Special Warfare Command

"(a) COVERED NAVAL SPECIAL WARFARE INSIGNIA DEFINED.—In this section, the term 'covered Naval Special Warfare insignia' means any of the following:

"(1) The Naval Special Warfare Insignia comprising or consisting of the design of an eagle holding an anchor, trident, and flint-lock pistol.

"(2) The Special Warfare Combatant Craft Crewman Insignia comprising or consisting of the design of the bow and superstructure of a Special Operations Craft on a crossed flint-lock pistol and enlisted cutlass, on a background of ocean swells.

"(3) Any colorable imitation of the insignia referred to in paragraphs (1) and (2), in a manner which could reasonably be interpreted or construed as conveying the false impression that an advertisement, solicitation, business activity, or product is in any manner approved, endorsed, sponsored, or authorized by, or associated with, the United States Government, the Department of Defense, or the Department of the Navy.

"(b) PROTECTION AGAINST MISUSE.—Subject to subsection (c), no person may use any covered Naval Special Warfare insignia in connection with any promotion, good, service, or other commercial activity when a particular use would be likely to suggest a

false affiliation, connection, or association with, endorsement by, or approval of, the United States, the Department of Defense, or the Department of the Navy.

"(c) EXCEPTION.—Subsection (b) shall not apply to the use of a covered Naval Special Warfare insignia for purposes such as criticism, comment, news reporting, analysis, research, or scholarship.

"(d) TREATMENT OF DISCLAIMERS.—Any determination of whether a person has violated this section shall be made without regard to any use of a disclaimer of affiliation, connection, or association with, endorsement by, or approval of the United States Government, the Department of Defense, the Department of the Navy, or any subordinate organization thereof to the extent consistent with international obligations of the United States.

"(e) ENFORCEMENT.—Whenever it appears to the Attorney General that any person is engaged in, or is about to engage in, an act or practice that constitutes or will constitute conduct prohibited by this section, the Attorney General may initiate a civil proceeding in a district court of the United States to enjoin such act or practice, and such court may take such injunctive or other action as is warranted to prevent the act, practice, or conduct.

"(f) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to limit the authority of the Secretary of the Navy to register any symbol**,** name, phrase, term, acronym, or abbreviation otherwise capable of registration under the provisions of the Act of July 5, 1946, popularly known as the Lanham Act or the Trademark Act of 1946 (15 U.S.C. 1051 et seq.).".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"7882. Protection against misuse of Naval Special Warfare Command insignia .".

Section-by-Section Analysis

This proposal would add a new section to chapter 663 of title 10, United States Code, to comprehensively protect the listed insignia used by the Department of the Navy, Naval Special Warfare Command, and organizations including Navy SEALs.

The Department of the Navy, Naval Special Warfare Command, and other organizations, including the Navy SEALs, make widespread use of their insignia. All such insignia, in various ways, identify organizations, personnel, operations, and equipment associated with Naval Special Warfare Command and its components. As such, they perform important public functions in identifying an official relationship with the Department of the Navy, Naval Special Warfare Command and its components. The unauthorized use of the subject insignia has the potential of confusing or misleading the public as to the nature of any connection between the Department of the Navy and its components and the activities of the unauthorized user.

This proposal specifically provides special protection to the Naval Special Warfare Command and its components, because these organizations within the Department of the Navy face a unique and immediate need for such special protection. The operational success of the SEALs throughout their history, and particularly in recent years, has subjected the SEALs to unwanted media and public attention. Numerous commercial entities have attempted to exploit the fame of the SEALs by selling SEALs-branded merchandise and services (which include the identified insignia), and even filing applications with the U.S. Patent and Trademark Office seeking registrations that include the Special Warfare Trident Insignia as well as other Naval Special Warfare Command names and abbreviations. In view of the recent proliferation of unauthorized uses of the insignia of Naval Special Warfare Command and the SEALs, the need for immediate protection is more acute.

Both Federal trademark law and similar State-enacted laws provide exclusivity in, and legal protections for, the use of symbols, words, and phrases that act as trademarks, service marks, and other types of marks. These laws primarily protect marks used “in commerce.” While both State governments and Federal agencies may claim ownership rights in trademarks, service marks, collective marks, and other types of marks, the public functions served by governments often vary considerably from traditional commerce. The need to provide protection against misuse of such insignia and names and to guard against confusion is, however, no less important.

Congress has long-recognized the unique challenges of protecting insignia and even the names of United States agencies and departments such as the Coast Guard (14 U.S.C. 639) the Central Intelligence Agency (50 U.S.C. 3513), the National Security Agency (50 U.S.C. 3613), the Defense Intelligence Agency (10 U.S.C. 425), and the National Aeronautics and Space Administration (51 U.S.C. 20141). Existing statutes provide only limited protection for military insignia (10 U.S.C. 771; 18 U.S.C. 701, 712; see also, 32 C.F.R. Part 507), although, in 1984, statutory protection similar to those described above was extended to the “seal, emblem, name, [and] initials of the United States Marine Corps” (10 U.S.C. 7881).

Subsection (a) of the proposal identifies insignia that have originated within, and have acquired special meaning related to, the Department of Navy, Naval Special Warfare Command, its components, and its personnel. A reasonable number of exceptions to this exclusivity would be recognized. The Department of the Navy would retain the ability to use and license all

exclusively-owned marks for any use covered by the Lanham Act, 15 U.S.C. 1051, et seq. and its existing authority under 10 U.S.C. 2260 to retain and expend the fees earned from such licensing would remain unchanged.

Subsection (b) would prohibit use of the marks identified in subsection (a) where such use would be likely to suggest a false affiliation, connection or association with, endorsement by, or approval of, the Department of the Navy.

Subsection (c) states explicit exceptions to the prohibition in subsection (b) for commentary and criticism.

Subsection (d) states that an outside party would not be able to use the identified marks merely by disclaiming approval, endorsement, or authorization.

Subsection (e) would assign enforcement responsibilities to the Attorney General.

Subsection (f) would provide that the proposed statute would not limit the ability of the Department of the Navy to seek any all other forms of relief provided under Federal, State, or common law. This subsection would preserve, among other remedies, traditional trademark and anti-counterfeiting claims available to the Department of the Navy.

Budget Implications: This proposal has no budgetary implications. The Department of the Navy already accepts royalties derived from the licensing of Department of the Navy trademarks in accordance with 10 U.S.C. 2260. Pursuant to 10 U.S.C. 2260, trademark royalties are used to pay the costs of operating the Department of the Navy trademark licensing program, which program necessarily includes protection and enforcement of trademarks.

RESOURCE REQUIREMENTS ($MILLIONS)									
		FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Total		0	0	0	0	N/A	N/A	N/A	N/A

Changes to Existing Law: This proposal would add a new section to title 10, United States Code. The proposed new section is set out in full in the legislative text at the beginning of the proposal.