



## United States Department of the Interior

### FISH & WILDLIFE SERVICE

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OCT 27 2005

Mr. Christopher T. Penny, P.E.  
 Eastern Vieques Project Coordinator  
 Environmental Programs Branch (Caribbean Section)  
 Environmental Division  
 Department of the Navy  
 Naval Facilities Engineering Command, Atlantic  
 6506 Hampton Blvd  
 Norfolk, VA 23508-1278

Re: Eastern Vieques Wildlife Refuge, Vieques  
 Island, PR; Live Impact Area (LIA) Time  
 Critical Removal Action Involving  
 Munitions Clean-Up

Dear Mr. Penny:

Thank you for your letter of September 9, 2005, informing the Service regarding the conservation measures the Navy will implement for the munitions clean-up activities proposed for the LIA in Vieques, and establishing that these measures satisfy Endangered Species Act (ESA) requirements. We also thank you the opportunity you gave us to meet with you on October 4, 2005 to discuss the content of this letter, and the additional information provided during the meeting. Our comments are issued in accordance with the Endangered Species Act of 1973 (87 Stat. 884, as amended; 16 United States Code 1531 et seq.).

In the discussion presented in your letter and maps provided during our meeting you established three areas denominated Areas A, B and C. For ease of discussion we will also refer those areas by their denomination.

#### Area C

Based on the information provided, project description, habitat characteristics, proposed timing for the activities, and the studies you referenced we concur with your determination that that the proposed activities are not likely to adversely affect *Stahlia monosperma*, *Chamaecrista glandulosa* var. *mirabilis*, VI boa (*Epicrates monensis granti*), brown pelican (*Pelecanus occidentalis occidentalis*), Antillean manatee (*Trichechus manatus manatus*), and the roseate tern (*Sterna dougalii dougalii*).

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Also, we concur that work within the central area of the current 400 acres project area (excluding coastal areas and buffer zones) may commence.

#### Area A

Based on the information provided, Area A consists of potential least tern nesting habitat within the wetland areas of the westernmost 400 acres of the LIA. We concur with your determination that the species should not be currently present at the site. Nesting season finalized in late August, and we do not anticipate the species return to the area until next May. If activities are conducted outside of the nesting season, adverse effects to the individuals are not anticipated.

#### Area B

The Service does not concur that the currently proposed sea turtle conservation measures will minimize the possible adverse effects to the level that the anticipated direct and indirect effects are discountable, insignificant or completely beneficial. These three concepts define the not likely to adversely effect determination. Additionally, we do not agree that the implementation of these measures satisfies substantive requirements of the Endangered Species Act (ESA) for the proposed activities. We continue recommending the preparation of a Biological Assessment or Biological Evaluation for the project.

In our previous letter, dated May 17, 2005, we provided technical assistance on sea turtle biology, habitat characteristics, nesting seasons, and possible conservation measures to assist the Navy in avoiding possible harm or injury to federally-listed species. These measures consist of monitoring beaches every morning during nesting seasons, identifying and marking active nests, and avoiding any type of activities within or near the nest area. We recommended the establishment of buffer zones between nests and activities based on size of ordinances and anticipated craters. However, we informed the Navy that these measures do not eliminate all potential incidental take, and thus do not provide the Navy any exemption for take of these species. We encouraged the Navy to develop a Biological Assessment, Biological Evaluation or a consultation package to initiate formal consultation under Section 7 of the ESA.

The Service met with the Navy on July 13, 2005, and on August 3, 2005. We provided extensive technical assistance to the Navy and consultants regarding sea turtle issues and alternatives to address these issues. Additionally, we provided technical assistance regarding Section 7 under the impression that the Navy agreed to formally consult with the Service. In the August 3, 2005 meeting, we agreed that instead of delineating the entire coastline as sea turtle nesting habitat, sandy beaches and pocket beaches with 70 meters of set back were going to be identified in an aerial photo and visited for corroboration. Additional buffer zones were going to be identified also. Once the effect area was reduced to the nesting beaches and their correspondent buffer zones, the Navy was going to develop an initiation package for formal consultation.

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Alternatively, the Navy proposes the following measures:

1. Before the vegetation removal and UXO detection activities take place, the Navy will have qualified biologists surveying the beaches for suitable and unsuitable nesting sites to refine the 70 meter buffer zone.
2. Nesting beach sites will be marked and monitored before and after vegetation clearance.
3. There will be an effort to preserve sea grape shrubs where safety concerns will allow.
4. Before any blow in place activities occur, the biologists will coordinate with the UXO personnel to assess risk to sea turtle nesting sites and personnel.
5. If risk is identified, further considerations for on-site mitigation or transplanting of sea turtle eggs to a safer location will be undertaken. The on-site mitigation measures include daylight munitions removal or sandbagging nesting sites.

We believe that measures 1 and 2 should be expanded and clarified. In Measure 1, the Navy proposes to survey beaches for suitability of nesting sites to refine the 70 meter buffer zone. It is not clear to us if the Navy will survey the coastal areas for presence/absence of suitable nesting habitat for each of the species, or, if the Navy will survey the beaches to identify nesting activities. If the proposed action is to identify suitable nesting habitat, the criteria to define habitat for each species should be established. Additionally, in our previous letters and meetings, we explained that the 70 meters constitute the hawksbill sea turtle nesting habitat, and an additional buffer zone should be established based on the size of the ordinances and anticipated crater.

Measure 2 specifies that nesting beaches will be monitored before and after vegetation removal. Based on our interpretation, the Navy is proposing to implement a sea turtle nesting monitoring program. If this is the case, it is important to specify the timing of the surveys (when are going to start and at what time will be conducted), frequency of surveys, methodology to identify nests versus false crawls or nesting attempts, and qualifications and experience of personnel conducting the monitoring program. It is important that any sea turtle monitoring program be in place at least 75 days prior to initiation of any activity. Attached please find information that may assist you developing the monitoring plan.

Regarding Measure 3, we would like to know what criteria will be utilized to decide whether to remove sea grapes.

We do not believe that Measures 4 and 5, as currently proposed, constitute effective measures to protect sea turtles in the LIA. The approach of assessing the risk of blowing in place a specific ordinance on a sea turtle nest left in place, may result in possible adverse effects to nests. The proposed on-site mitigation or transplanting the nest left in

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place may result in increased mortality of embryos or hatchlings inside the nest. Furthermore, we do not understand the effectiveness of the proposed on-site mitigation measures (daylight removal and sandbagging) to protect active nests left in place. Transplanting of nests cannot be conducted if the nest was not deposited the night before and if the relocation is not conducted before 9:00 am. We believe that this approach may impose high risk to sea turtles because: 1) the size of the crater may be underestimated, 2) the effects of vibration to the nest siphon or chamber may be underestimated, 3) old but active nests not identified by biologists may be adversely affected, 4) embryos or hatchlings may be adversely affected by transplanting old nest (more than 12 hours of being deposited), and 5) egg chamber within the nest site may not be found.

If it is the interest of the Navy to develop a sea turtle nesting monitoring plan and nest relocation program, we recommend contracting a qualified and experienced biologist to develop and implement such plan. The personnel conducting the program will need an endangered species permit from the Puerto Rico Department and Natural and Environmental Resources. We would like to review the plan and the qualifications of the personnel conducting the program.

Extensive and intensive monitoring of sea turtle nesting activities and relocation of nests the morning after they are deposited, when conducted by qualified and experienced personnel, are measures that the Service has recommended for projects with small number of nests to reduce the possibility of destroying nests by a one-time action. These programs have incorporated additional measures to avoid disturbance from machinery, vehicles, physical barriers, lights and other activities. We believe that these measures may be effective to protect leatherback and green sea turtle nests from blow in place activities since they nest in open sand and do not depend on the sea grapes as nesting habitat. The implementation of such programs by qualified personnel have resulted in the finding of "not likely to adversely affect" in other projects. However, the endangered hawksbill sea turtle does not nest in open sand. This species nests below sea grape, crawls underneath the vegetation to nest, and its nests are smaller, more difficult to identify and depend on the shade of the vegetation to incubate eggs. We believe that monitoring and relocating nests during the activities are not sufficient to minimize possible adverse effects to the species. Once the vegetation is removed and project ends, nesting habitat may not be available within the LIA. Alternatives to minimize possible adverse effects to the species habitat should be explored.

As we have indicated in our previous correspondence, and expressed in our meetings, we continue to strongly recommend that the U.S. Navy develop a Biological Assessment or Biological Evaluation and initiates formal Section 7 consultation for the endangered sea turtles. We continue to disagree that the measures you presented in the September 9, 2005 letter regarding sea turtles satisfy substantive requirements of the ESA, and we believe that are not enough to result in a "not likely to adversely affect" determination. Attached please find a copy of the section titled "EPA CERCLA Compliance with Other Laws Manual: Part II. Clean Act and Other Environmental Status and State Requirements" where EPA explains the ESA review procedures. The information provided in this manual and the procedures provided are very consistent with the

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technical assistance we have provided the Navy and consultants regarding section 7 consultation process. It is established that if a determination is made during informal consultation that an endangered or threatened species is present and may be impacted by site activities a Biological Assessment will be necessary. Through formal consultation, we can provide the Navy with a Biological Opinion and an Incidental Take Statement.

If you have any questions, please call Marelisa Rivera at 787-851-7297 extension 231.

Sincerely yours,



Edwin E. Muñiz  
Field Supervisor  
Caribbean Field Office

Enclosure

**U.S. Fish and Wildlife Service  
Caribbean Field Office**

# Fax

**From: Marelisa Rivera  
Fish and Wildlife Biologist  
Endangered Species Division  
Caribbean Field Office  
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**To:** 11/29/05  
**Date:** Susana Smebbe  
**No. Pages:** 6  
**Re:** Letter - 10/27/05

**Comments:** Attached please find copy of the  
letter. Please call me. We need  
to talk about the project, particularly  
the field work currently going on.  
Thanks  
Maulson