

September 21, 2000

Colonel Allan B. Carroll  
U.S. Army Corps of Engineers  
Norfolk District  
803 Front Street  
Norfolk, Virginia 23510-1096

Attn: Gerry Tracy  
Regulatory Branch

Re: Merle Roberts et al., Oscar Adams,  
and Randall Walbridge, Project No.  
00-V0258, 00-V1433, 00-V1413,  
Northampton County, Virginia

Dear Colonel Carroll:

This document transmits the U.S. Fish and Wildlife Service's biological opinion based on our review of the above referenced proposed shoreline stabilization located in Northampton County, Virginia and its effects on the northeastern beach tiger beetle (*Cicindela dorsalis dorsalis*), in accordance with section 7 of the Endangered Species Act (87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.). Your May 8, 2000 request for formal consultation for Merle Roberts et.al. was received on May 17, 2000. Your September 5, 2000 request for formal consultation for Randall Roberts and Oscar Adams was received on September 6, 2000. This biological opinion is based on information provided in the permit application, telephone conversations, field investigations, and other sources of information. A complete administrative record of this consultation is on file in this office.

#### I. CONSULTATION HISTORY

04/11/00      The Service participated in a site visit for Merle Roberts et al. with the Corps.

05/17/00      The Service received the Corps' request to initiate formal consultation for Merle Roberts et al.

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08/30/00 The Service participated in a site visit for Oscar Adams and Randall Roberts with the Corps.

09/06/00 The Service received the Corps' request to initiate formal consultation for Randall Roberts and Oscar Adams.

## II. BIOLOGICAL OPINION

### DESCRIPTION OF PROPOSED ACTION

The proposed projects are located along the Chesapeake Bay at the Smith Beach subdivision, at and west of S. R. 666 (at 16320, 16234, 16170, 16156, and 16148 Smith Beach Road), west of Eastville in Northampton County, Virginia (Figure 1). The stated purpose of the project is shoreline protection and beach preservation. Specific information on the proposed activities by each applicant is provided below (from south to north along the shoreline of Wilkins and Smith Beaches).

Oscar Adams (16320) - two 60-foot long low profile groins spaced 75 feet apart, extending approximately 45 feet channelward of the mean high water (MHW) (Figure 2).

Randall Walbridge (16234) - 150 linear feet of bulkhead landward of MHW; one 50-foot long low profile groin extending 40 feet channelward of MHW (Figure 3).

Kenneth Turner (16170) - 99 linear feet of bulkhead landward of MHW; one 71-foot long low profile groin extending approximately 45 feet channelward of the mean high water (MHW) (Figure 4).

Merle Roberts (16156) - one 60-foot long low profile groin extending approximately 45 feet channelward of the mean

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high  
water  
(MHW  
)  
(Figure  
4).

Granville Hogg (16148) - one 60-foot long low profile groin extending approximately 45 feet channel ward of the mean high water (MHW) (Figure 4).

The "action area" is defined as all areas to be affected directly or indirectly by the federal action and not merely the immediate area involved in the action. The Service has determined that the action area for this project is the applicants' properties between MLW and the landward edge of the beach, toe of the bank, or existing bulkhead.

#### STATUS OF THE SPECIES RANGEWIDE

This information on the northeastern beach tiger beetle was provided to the Corps in a biological opinion dated April 2, 1998 for permit application 97-1951-30.

#### ENVIRONMENTAL BASELINE (in the action area)

Status of the Species Within the Action Area - The proposed projects are located within the Wilkins Beach and Smith Beach sites. Adult tiger beetles were documented at these sites in 1989/1990 (Buhlman and Pague 1992). In 1999, Knisley and Hill documented adults at both sites and documented larvae at the Wilkins Beach site. Surveys for larvae were not conducted at Smith Beach. Knisley (1999) noted that the majority of the shoreline at these beaches were modified with groins and bulkheads. Numbers of beetles at Wilkins Beach were 1678 adults and 25 larvae. Adult numbers at Smith Beach were 307. Knisley (1998) conducted a survey at 16218 Smith Beach Road and the adjacent properties. Randall Walbridge is an adjacent property owner. Knisley determined that this site contained marginal to inappropriate habitat for the tiger beetle because of the narrow beach width and extensive shoreline stabilization at many other properties at Smith Beach including the adjacent lots. Knisley (1998) stated that the back beach consisted of a 15 to 20 foot high bluff that showed signs of

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recent erosion. Only one larval beetle was found during the survey of the proposed project site; no larvae were found on the two adjacent properties. Smith Beach has not been determined to be necessary for the recovery/survival and delisting of the tiger beetle.

Factors Affecting Species Habitat Within the Action Area - Beach erosion, from natural and anthropogenic modifications, affects the habitat at the project site. This area from Tankards Beach to Smith Beach has an erosion rate of 7 feet per year according to Athearn (1974). There are existing bulkheads and groins all along this section of the Chesapeake Bay shoreline.

### EFFECTS OF THE ACTION

Direct Effects - Direct impacts to the tiger beetle will result from the crushing of adult beetles, and subsequent injury or death, during construction from use/placement/stockpiling of equipment and materials on the beach, foot traffic, and vehicle use within the construction area. Construction will also result in temporary loss of habitat for adults through disruption of their daily activity patterns (*i.e.*, foraging, mating, basking, egg-laying). Larval tiger beetles will be directly affected through crushing, dislodging, and entombment, resulting in death or injury, during construction by use/placement/stockpiling of equipment and materials on the beach and heavy foot traffic and vehicle use within the construction area. Larval beetles will also be prevented from feeding during that time due to their sensitivity to vibrations, movements, and shadows, resulting in injury and potentially death. Existing habitat, for both larval and adult beetles, will be permanently lost within the footprint of the bulkhead/backfill and groins (between MLW and the bulkhead).

Interrelated and Interdependent Actions - An interrelated activity is an activity that is part of the proposed action and depends on the proposed action for its justification. An interdependent activity is an activity that has no independent utility apart from the action under consultation. No activities interrelated to and interdependent with the proposed action are known at this time.

Indirect Effects - Indirect effects are defined as those that are caused by the proposed action and are later in time, but still are reasonably certain to occur (50 CFR 402.02). The bulkhead will prevent larvae from being able to migrate landward as they mature, resulting in an inability to survive winter storms and erosion. In addition, the bulkhead will eliminate the natural sloughing and erosion of sand from the banks and, subsequently, the upland replenishment of sand to the beach. However, much of the sand supply for this beach is from offshore. Because this shoreline has already been significantly altered, it is not likely that construction of a bulkhead will result in loss of the existing beach. Groins are designed to capture sand from longshore movement. However, because this shoreline already has multiple groins which do not appear to be altering the distribution of sand, the addition of groins in this area is not likely to have a noticeable effect on the beach profile.

Future maintenance of the proposed shoreline stabilization structures may not require Corps' authorization. These activities may result in injury or death to adult and larval tiger beetles through

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heavy foot traffic on beach areas, use/stockpiling of heavy equipment, and stockpiling/placement of materials. Maintenance activities may also result in temporary or permanent habitat loss. These activities may result in further impacts to the tiger beetle population at this site.

### CUMULATIVE EFFECTS

Cumulative effects include the effects of future state, tribal, local, or private actions that are reasonably certain to occur in the action area considered in this biological opinion. Construction of shoreline stabilization structures (*e.g.*, riprap) landward of mean high water (MHW) may occur within the action area in the future and such activities would not require Corps authorization. This type of activity would adversely affect tiger beetles directly through death or injury during pre-construction and construction activities and temporary and permanent habitat loss. However, due to the existing beach stabilization structures, long-term impacts are expected to be minor.

### CONCLUSION

After reviewing the current status of northeastern beach tiger beetle throughout its range and in the action area, the environmental baseline for the action area, the effects of the proposed bulkheads and groins, and the cumulative effects, it is the Service's biological opinion that the issuance of a DOA permit for this project, as proposed, is not likely to jeopardize the continued existence of the northeastern beach tiger beetle. No critical habitat has been designated for this species, therefore, none will be affected.

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### III. INCIDENTAL TAKE STATEMENT

Sections 9 of the ESA and federal regulation pursuant to section 4(d) of the ESA prohibit the take of endangered and threatened species, respectively, without a special exemption. Take is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct. Harm is further defined by the Service to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns such as breeding, feeding, or sheltering. Harass is defined by the Service as intentional or negligent actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns, which include, but are not limited to, breeding, feeding, or sheltering. Incidental take is defined as take that is incidental to, and not the purpose of, the carrying out an otherwise lawful activity. Under the terms of section 7(b)(4) and section 7(o)(2), taking that is incidental to and not intended as part of the agency action is not considered to be prohibited taking under the ESA provided that such taking is in compliance with the terms and conditions of this incidental take statement.

The measures described below are nondiscretionary, and must be undertaken by the Corps so that they become binding conditions of any grant or permit issued to the applicant, as appropriate, for the exemption in action 7(o)(2) to apply. The Corps has a continuing duty to regulate the activity covered by this incidental take statement. If the Corps (1) fails to assume and implement the terms and conditions or (2) fails to require the applicant to adhere to the terms and conditions of the incidental take statement through enforceable terms that are added to the permit or grant document, the protective coverage of section 7(o)(2) may lapse. To monitor the impact of incidental take, the Corps must report the progress of the action and its impact on the species to the Service as specified in the incidental take statement.

#### AMOUNT OR EXTENT OF TAKE

The Service anticipates that any beetles (adult or larvae) that are killed during project construction, stockpiling of equipment and materials, and habitat loss will be difficult to observe or locate due to their coloring, small body size, and tendency for larvae to remain beneath the surface. This incidental take statement anticipates the taking of northeastern beach tiger beetles between the landward edge of the beach and MLW on the applicants' properties, a total area of approximately 18,615 square feet. Most of the impacts are expected to occur within the construction area of the groins resulting from construction activities, stockpiling of materials and equipment, habitat alteration (modifications to the beach profile, width, and distribution and amount of sand), and temporary and permanent habitat loss. The construction area for the six new groins is anticipated to be approximately 10 feet wide by 60 feet long (groin length) for four groins, 10 feet wide by 71 feet for one groin, and 10 feet wide by 50 feet for one groins, for a total of 3,610 square feet.

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### REASONABLE AND PRUDENT MEASURES

The Service believes the following reasonable and prudent measures are necessary and appropriate to minimize take of the northeastern beach tiger beetle:

- o Construction activities must be conducted when adult beetles are not present.
- o Human activity, materials, and equipment on the beach must be minimized to reduce the impact to adult and larval tiger beetles.

### TERMS AND CONDITIONS

To be exempt from the prohibitions of section 9 of the ESA, the Corps must comply with the following terms and conditions, which implement the reasonable and prudent measures described above and outline required reporting/monitoring requirements. Monitoring is not required for this project because the anticipated take is minimal. These terms and conditions are nondiscretionary.

1. No construction, earth-moving, or placement of materials or equipment will occur on the beach between June 1 and September 15 of any year.
2. No maintenance of the bulkheads or groins between June 1 and September 15 of any year if any beach exists between MLW and the toe of the bulkhead/concrete wall.
3. Materials will be transported to the beach only on an as-needed basis.
4. No ground disturbance or use of vehicles or heavy equipment will occur on the beach outside of the applicants' property boundaries.
5. No use of vehicles or refueling of equipment on the beach.
6. No use of pesticides on the beach.
7. The applicant is required to notify the Service before initiation of construction and upon completion of the project at the address given below. All additional information to be sent to the Service should be sent to the following address:

Virginia Field Office  
U.S. Fish and Wildlife Service  
6669 Short Lane  
Gloucester, Virginia 23061  
Phone (804) 693-6694

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Fax (804) 693-9032

8. Care must be taken in handling any dead specimens of northeastern beach tiger beetle that are found in the project area to preserve biological material in the best possible state. In conjunction with the preservation of any dead specimens, the finder has the responsibility to ensure that evidence intrinsic to determining the cause of death of the specimen is not unnecessarily disturbed. The finding of dead specimens does not imply enforcement proceedings pursuant to the ESA. The reporting of dead specimens is required to enable the Service to determine if take is reached or exceeded and to ensure that the terms and conditions are appropriate and effective. Upon locating a dead specimen, notify the Service at the address provided.

The Service believes that a small number of individuals within an area measuring approximately 3,610 square feet will be incidentally taken as a result of the proposed action. Due to the variability in numbers of adults and larvae from year to year, it is difficult to quantify incidental take, however, we anticipate a small reduction in the numbers of adults using the beach zone and a small reduction in larval numbers. The reasonable and prudent measures, with their implementing terms and conditions, are designed to minimize the impact of incidental take that might otherwise result from the proposed action. If, during the course of the action, this level of incidental take is exceeded, such incidental take represents new information requiring reinitiation of consultation and review of the reasonable and prudent measures. The Corps must immediately provide an explanation of the causes of the take, and review with the Service the need for possible modification of the reasonable and prudent measures and the terms and conditions.

#### IV. CONSERVATION RECOMMENDATIONS

Section 7(a)(1) of the ESA directs federal agencies to utilize their authorities to further the purposes of the ESA by carrying out conservation programs for the benefit of endangered and threatened species. Conservation recommendations are discretionary agency activities to further minimize or avoid adverse effects of a proposed action on listed species or critical habitat, to help implement recovery plans, or to develop information.

Due to the amount of shoreline stabilization/alteration taking place along the shoreline of the Chesapeake Bay, the Service recommends that mitigation for adverse impacts to and loss of northeastern beach tiger beetle habitat be undertaken. As the Corps continues to issue permits for shoreline alteration, the amount of habitat available for the continued existence of this species is decreasing. For recovery and delisting of the tiger beetle within the Chesapeake Bay of Maryland and Virginia, at least 26 populations must be permanently protected at extant sites (U.S. Fish and Wildlife Service 1994).

The Service is concerned that in the near future, projects proposed in areas critical to the continued

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existence of the tiger beetle will result in jeopardy to the species. Therefore, the Service recommends that the Corps require mitigation for this project. Alteration of tiger beetle sites that support more than 500 adult beetles should be mitigated at a ratio of 3:1. Areas that support less than 500 adult beetles should be mitigated at a ratio of 2:1. All other areas should be mitigated at a ratio of 1:1. As the Service receives additional information on the location and status of tiger beetles, the relative importance of a given tiger beetle site may change.

Because the proposed project is located in an area already significantly altered by shoreline stabilization structures and anticipated take is minimal, compensation of 1:1 is recommended. That is, 470.5 linear feet of shoreline with an appropriate upland buffer should be permanently protected via a permanent conservation easement. The Service will be glad to work with the Corps and the applicant to locate and preserve such an area.

For the Service to be kept informed of actions minimizing or avoiding adverse effects or benefitting listed species or their habitats, the Service requests notification of the implementation of any conservation recommendations.

#### V. REINITIATION NOTICE

This concludes formal consultation on the action(s) outlined in the request. As provided in 50 CFR § 402.16, reinitiation of formal consultation is required where discretionary federal agency involvement or control over the action has been retained (or is authorized by law) and if: (1) the amount or extent of incidental take is exceeded; (2) new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in this opinion; (3) the action is subsequently modified in a manner that causes an effect to the listed species or critical habitat not considered in this opinion; or (4) a new species is listed or critical habitat designated that may be affected by the action. In instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease pending reinitiation.

The Service appreciates this opportunity to work with the Corps in fulfilling our mutual responsibilities under the ESA. If you have any questions, please contact Kim Marbain of this office at (804) 693-6694, extension 126.

Sincerely,

Karen L. Mayne  
Supervisor  
Virginia Field Office

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Enclosures