

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: Robert Huether et al., Project No. 99-
V2338-30, 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 installation of a bulkhead and groins 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 9, 2000 request for formal consultation was received on May 17, 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

- 03/14/00 The Service participated in a site visit.
- 05/17/00 The Service received the Corps' request to initiate formal consultation.

II. BIOLOGICAL OPINION

DESCRIPTION OF PROPOSED ACTION

This project is located along the Chesapeake Bay, at properties 4233 (H. Gutterman), 4261 (R. Huether), 4265 (J. Beirsdorf), and 4263 Beach Lane Road (B. Gladden), off and west of Route 183, southwest of Jamesville, Northampton County, Virginia (Figure 1). The applicants propose to construct 400 linear feet of bulkhead with backfill, landward of mean high water (MHW), and four 47-foot low profile groins, spaced 100 feet apart. The southern-most groin will have a 16-foot T-head spur. The bulkhead will tie into an existing bulkhead on the south in a straight alignment to P. Duvall's lot and on the north with a 30 degree angle section connecting to D. Bird's lot (Figure 2). The groins will extend approximately 37 feet channelward of the MHW. There are existing groins to the north and south. The stated purpose of the project is shoreline protection and beach preservation/creation.

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' property between MLW and the landward edge of the beach or toe of the bank.

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

Status of the Species Within the Action Area - Knisley and Hill (1999) documented 546 adults at a site named Silver-Downings Beach. The proposed project is located within the northern portion of this site. In the 1999 survey, Knisley did not document larvae at Silver-Downings Beach. Knisley (1999) indicated that larval numbers were low compared to adult numbers throughout the Eastern Shore study area despite the fact that conditions seemed adequate for surveying. Significant erosion had occurred from recent storms, which may have reduced larval activity. The cause of low larval numbers remains unclear at this point. From 1994-1996, Knisley documented adults and larvae at a site named Silver Beach North, which includes this project site (Knisley 1997). In Roble (1996), a maximum count of 3755 adults was documented in 1994 along Silver Beach.

Factors Affecting Species Habitat Within the Action Area - Beach erosion, from natural and anthropogenic modifications, affects the habitat at the project site. This area north of Downings Beach has an erosion rate of 5 feet per year according to Athearn (1974). There are existing bulkheads, riprap revetments, 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, groins (between MLW and the bulkhead), and spur.

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 construction of the bulkhead will cut off the existing sand supply to the beach now occurring from erosion of the upland bank. This will cause an increase in reflected wave energy off of the bulkhead and could cause accelerated erosion of the beach. The groins are designed to capture sand from longshore movement. Net sand transport is to the south. Each groin will trap sand on its north side, while starving sand on its south side, alternately building/eroding beach. There will be seasonal and yearly differences in amounts and distribution of sand between the groins. Because the property to the south has been stabilized, additional impacts to this property are not expected.

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. Future federal actions that are unrelated to the proposed action are not considered in this section because they require separate consultation pursuant to section 7 of the ESA. The Service is not aware of any cumulative effects at this time.

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 bulkhead 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.

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 22,000 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 new groins is anticipated to be approximately 10 feet wide by 47 feet long (groin length) for each groin (4), and 10 feet wide by 16 feet long (spur), for a total of 2,040 square feet.

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 bulkhead, groins, or spur between June 1 and September 15 of any year if any beach exists between MLW and the toe of the bulkhead.
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
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 2,040 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 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, 400 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

Enclosures

LITERATURE CITED

Athearn, W.D. et. al. 1974. Shoreline situation report Northampton County. Special report No. 54. Virginia Institute for Marine Science.

Knisley, C.B. 1997. Distribution and abundance of the northeastern beach tiger beetle, *Cicindela dorsalis dorsalis*, in relation to shoreline modifications, in Virginia. Report to Virginia Department of Agriculture and Consumer Affairs. Richmond, VA.

Knisley, C.B. and J. Hill. 1999. A survey of the eastern shore of Virginia for the northeastern beach tiger beetle, *Cicindela dorsalis dorsalis*, 1999.

Roble, S.M. 1996. Distribution, abundance and conservation status of the northeastern beach tiger beetle (*Cicindela dorsalis dorsalis*) in Virginia: 1995 summary report. Natural Heritage Technical Report 96-4. Virginia Department of Conservation and Recreation, Division of Natural Heritage. Richmond. 20 pp.

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bcc:

ARD-ES, Region 5

Endangered Species Coordinator, Region 5

Endangered Species Biologists, CBFO, NJFO, NEFO

Law Enforcement, Yorktown

Law Enforcement, Richmond

(Attn: Senior Resident Agent)

DNH, Richmond

(Attn: Tom Smith)

VDACS, Richmond

(Attn: Keith Tigner)