NATURAL RESOURCES AND ENVIRONMENTAL AFFAIRS
Marine Corps Base
Camp Lejeune, North Carolina 28542

24 Dec 86
Date

From: Director
To: Charles
Subj: RCW Investigation Report

See Col Dazell's 23 Dec 86 ltr
+ 26 Jan 86 response due date:
Review + let's discuss:

V/R
John

File with
response dtd

UNITED STATES MARINE CORPS
Marine Corps Base
Camp Lejeune, North Carolina 28542-5001

6280/7
FAC
23 DEC 1986

From: Assistant Chief of Staff, Facilities, Marine Corps Base, Camp Lejeune
To: Director, Natural Resources and Environmental Affairs Division

Subj: INVESTIGATION TO INQUIRE INTO THE CIRCUMSTANCES CONNECTED WITH THE ALLEGED VIOLATION OF THE ENDANGERED SPECIES ACT SURROUNDING THE ENDANGERED RED-COCKADED WOODPECKER OCCURRING BETWEEN OCTOBER 1984 AND AUGUST 1986

Encl: (1) Second End on Maj Hull's InvesRpt of 31Oct 86 5800 SJA41
(2) Maj Hull's InvesRpt on subj

1. Enclosure (1) requires review of Base Orders and procedures to ensure that red-cockaded woodpecker habitats are safeguarded. Request you review enclosure (2) and provide comments and recommendations concerning implementation of the recommendations in the completed investigation. Provide to this office by 26 January 1987.

T. J. Dalzell
T. J. DALZELL

UNITED STATES MARINE CORPS
MARINE CORPS BASE
CAMP LEJEUNE, NORTH CAROLINA 28542-5001

IN REPLY REFER TO:

5800
SJA41

SECOND ENDORSEMENT on Maj J. E. Hull's Inves Rpt of 31Oct86

From: Commanding General, Marine Corps Base, Camp Lejeune
To: Files

Subj: INVESTIGATION TO INQUIRE INTO THE CIRCUMSTANCES CONNECTED WITH THE ALLEGED VIOLATION OF THE ENDANGERED SPECIES ACT SURROUNDING THE ENDANGERED RED-COCKADED WOODPECKER OCCURRING BETWEEN OCTOBER 1984 AND AUGUST 1986.

1. To files.

2. Finding of fact 9 is redesignated as Opinion 8, and as such is approved. Opinions 6 and 7 are disapproved. There is insufficient evidence to establish that endangered birds were killed or injured.

3. Subject to the foregoing, the proceedings, findings of fact, opinions and recommendations of the Investigating Officer are approved.

4. By copies hereof, the Assistant Chief of Staff, Facilities, and the Assistant Chief of Staff, Training, are directed to review the Base orders under their cognizance (BO 11015.3A and BO 11015.6, respectively) to set forth the following:

a. Specific assignments for responsibility and accountability, delineating specific procedures and duties to ensure that Red Cockaded Woodpecker habitats are safeguarded;

b. Specific inspections of each habitat by persons assigned to a specific billet, as well as the frequency of such inspections and the format and frequency of reports of the results of such inspections; and

c. Specific training requirements, topics, occasions, and frequency.

J. E. CASSITY

Copy to:
AC/S, Facilities
AC/S, Training
CO, HQBN
Maj J.E. Hull

Encl (1)

UNITED STATES MARINE CORPS
HEADQUARTERS BATTALION
MARINE CORPS BASE
CAMP LEJEUNE, NORTH CAROLINA 28542-5010

IN REPLY REFER TO:
31 October 1986

From: Major James E. Hull, 095 40 9708/4002 USMC
To: Commanding Officer, Headquarters Battalion, Marine Corps Base, Camp Lejeune

Subj: INVESTIGATION TO INQUIRY INTO THE CIRCUMSTANCES CONNCECTED WITH THE ALLEGED VIOLATION OF ENDANGERED SPECIES ACT SURROUNDING THE ENDANGERED RED-COCKADED WOODPECKER OCCURRING BETWEEN DECEMBER 1984 AND AUGUST 1986

Ref: (a) JAGMAN

Encl:
(1) CO HQBN MCB CLNC Appt ltr 5830 ADJ of 2 Oct 1986
(2) CO HQBN MCB CLNC ltr 5830 ADJ of 15 Oct 1986
(3) Maj J. E. Hull ltr 5830 RASC of 15 Oct 1986
(4) Chairman EE/IRB memo 5420/2 FAC OF 7 Sep 1984
(5) AC/S Facilities ltr 6280/7 FAC of 7 Nov 1984
(6) U.S. Dept. Int. ltr of 6 Dec 1984
(7) U.S. Dept. Int. ltr of 19 Nov 1984
(8) Background Corresp. Summary K-2 Impact Area
(9) Extract from 50 CFR, para. 17.11
(10) BO 11015.3A
(11) BO 11015.6
(12) BWILDMgr ltr 11015 NREAD of 4 Feb 1984
(13) Biological Opinion Report No. 8-86
(14) Dir, NREAD ltr 11015 NREAD of 9 Sep 1986
(15) CG MCB CLNC ltr 11015/2 NREAD of 24 Sep 1986
(16) Photos (6) of Dead RCW Cavity Trees
(17) Statement of Mr. W. G. Bostic, NREAD, Undated
(18) Statement of Maj J. E. Hull, 095 40 9708 USMC of 22 Oct 1986
(19) Statement of Capt R. Way, 265 88 7014 USMC of 23 Oct 1986
(20) Statement of MSgt D. L. Lecher, EOD Plt, 2d FSSG 8000 EOD of 24 Oct 1986
(21) Statement of Mr. C. D. Peterson, NREAD, 11015 NREAD of 20 Oct 1986
(22) Statement of Mr. J. I. Wooten, NREAD, 5200 NREAD of 24 Oct 1986
(23) Extract from USCA, Title 16, Chpt 35, Section 1538
(24) Extract from 50 CFR, para. 17.94
(25) U.S. Dept. Int. ltr of 1 Feb 1979

Preliminary Statement

1. In accordance with enclosures (1) and (2) and the reference, an informal investigation was conducted to inquire into the circumstances connected with the alleged violation of the Endangered Species Act of 1973 (amended), Public Law 93-205, occurring between December 1984 and August 1986. As described in

Encl (2)

enclosure (3), minor difficulties were encountered during the investigation due to, amongst other things, the seriousness of the incident, the complexity of the regulations, the lack of definitive records, and the timeframe in which the alleged violation occurred (between December 1984 and August 1986).

2. Prior to listing the "Findings of Fact", it is important to provide some additional background information relative to the circumstances surrounding the alleged violation of the Endangered Species Act as it affects the Red-Cockaded Woodpecker (RCW).

a. In 1984 Marine Corps Base (MCB) Camp Lejeune initiated a major project to clear the K-2 Impact Area of grown-up vegetation and trees. The clearing operation was designed to improve fields of vision thereby allowing better recognition of targets and adjustment of field artillery, resulting in a much improved use of the range.

b. Throughout the year several meetings were conducted to ensure that all aspects of the clearing operation were properly reviewed. These meetings, coupled with numerous letters and memorandums, documented the scope of the project and its affect on the environment (see enclosure (4)). A review of the applicable correspondence clearly showed that a colony of Red-Cockaded Woodpeckers were discovered in the "Buffer Zone" of the K-2 Impact Area. This review also showed that MCB Camp Lejeune initiated formal consultation with the U.S. Department of Interior, see enclosure (5), in regards to this project and its affect on the environment. Authorization to continue with the clearing operation was granted by the U.S. Department of Interior since the Red-Cockaded Woodpecker colony was located in the "Buffer Zone" (K-303 area) and would not be affected by the operation (see enclosures (6) and (7)). Enclosure (8) is a short synopsis of some of the correspondence reviewed clearly showing the effort expended by MCB personnel in respect to this operation throughout 1984.

c. The operation lasted from roughly September 1984 to April 1985 and involved the efforts of many Marine Corps commands, besides MCB Camp Lejeune, other military services and civilians as well.

Findings of Fact

1. The Red-Cockaded Woodpecker is identified as an endangered species and is protected under the Endangered Species Act of 1973 (amended) (see enclosure (9)).

2. Base Order 11015.3A, Endangered Species Protection Program, and Base Order 11015.6 Red-Cockaded Woodpecker (Picoides Borealis) Protection Programs/Measures, identify the Red-Cockaded Woodpecker as an endangered species and provide for its protection and the protection of its habitat (see enclosures (10) and (11)).

3. Red-Cockaded Woodpecker cavity trees existed in the "Buffer Zone" of the K-2 Impact Area (K-303) prior to the commencement of the K-2 Impact Area clearing operation (see enclosure (7)).

4. Unexploded ordnance was found at the base of four Red-Cockaded Woodpecker cavity trees in the K-2 Surface Danger Area (Buffer Zone) on 29 January 1985 (see enclosure (12)).

5. Destruction of three active cavity trees in the K-2 Surface Danger Area (K-303) was identified on 3 September 1986 by Marine Corps Base personnel (see enclosure (13)).

6. Two destroyed Red-Cockaded Woodpecker cavity trees in the K-2 Surface Danger Area (K-303) were identified on 15 August 1986 by North Carolina State University Researcher, Mr. John Hammond (see enclosure (14)).

7. U.S. Fish and Wildlife Service and Headquarters Marine Corps (Code LFL) were notified of the destruction of three (3) Red-Cockaded Woodpecker cavity trees (see enclosure (15)).

8. Verification that three (3) Red-Cockaded Woodpecker cavity trees were destroyed (see enclosures (16) and (17)).

9. A violation of Base Orders 11015.3A and 11015.6 occurred sometime between January 1985 and August 1986 (see enclosures (10) through (14)).

10. Insufficient evidence exists to determine exactly how or when the Red-Cockaded Woodpecker cavity trees were destroyed (see enclosures (18) and (19)).

11. Insufficient records exist to determine who or how the rounds at the base of the Red-Cockaded Woodpecker cavity trees were detonated since orders were verbal and involved individuals from many different commands (see enclosure (20)).

12. Verbal orders were given daily to Explosive Ordnance Demolition (EOD) personnel by MSgt Lecher (EOD) (see enclosre (21)).

13. On or about 30 January 1985, Mr. Bostic (NREAD) reported to Mr. Peterson that MSgt Lecher (EOD) intended to blow the found ordnance in place (see enclosure (21)).

14. Mr. Peterson stated that although he knew that it was reported that MSgt Lecher intended to blow the found ordnance in place, he never thought any damage would come to the trees (see enclosure (22)).

15. The U.S. Fish and Wildlife Service rendered a biological opinion which provides for the protection of the colony of Red-Cockaded Woodpecker found in the "Buffer Zone" of the K-2 Impact Area (K-303) (see enclosures (7) and (22)).

16. A decision to detonate ordnance found in the "Buffer Zone" of the K-2 Surface Danger Area (K-303) conflicts with the planned clearing operation since this area was specifically excluded from the operation (see enclosures (4) and (6)).

17. Endangered Species Act of 1973 (amended) prohibits the taking of Endangered Species (see enclosure (23)).

18. Endangered Species Act of 1973 (amended) prohibits agencies from taking actions which may adversely impact on Critical Habitats (see enclosure (24)).

19. Red-Cockaded Woodpecker cavity trees are not expressly designated as Critical Habitat; however, biological opinion states that destruction of the habitat threatens the continued existence of the Red-Cockaded Woodpecker (see enclosure (25)).

Opinions

1. That insufficient information and too many variables exist to categorically state that the Red-Cockaded Woodpecker cavity trees found in the K-2 Surface Danger Area (K-303) were destroyed, either directly or indirectly, as a result of the K-2 Impact Area clearing operation. However, based on all the evidence, both direct and circumstantial, I personally believe that they were.

2. That the general guidance and supervision provided to EOD personnel involved in the K-2 Impact Area clearing operation was insufficient to ensure adequate protection of any Red-Cockaded Woodpecker cavity trees.

3. That, although it may be normal procedure for EOD personnel to make decisions on their own regarding the destruction of found ordnance, the protection of endangered species and their habitat demands that special controls be implemented to ensure that they are protected (see enclosures (18) and (19)).

4. That a lack of supervision and follow-up existed during the K-2 Impact Area clearing operation relative to the protection of the known Red-Cockaded Woodpecker cavity trees. The PEA called for avoiding the Red-Cockaded Woodpecker cavity trees in total. However, at the end of the operation, neither EOD nor NREAD personnel surveyed the known cavity trees to see whether or not they were damaged during the operation. Had this occurred, steps may have been initiated to actually save two out of the three destroyed trees.

5. That efforts were not made to exhaust the options available relative to destruction of the ordnance found at the base of the Red-Cockaded Woodpecker cavity trees.

6. That destruction of the Red-Cockaded Woodpecker cavity trees may be considered an indirect taking of the Red-Cockaded Woodpecker and, therefore a violation of the Endangered Species Act.

7. That, at best, the destruction of the Red-Cockaded Woodpecker cavity trees is a violation of the spirit of the Endangered Species Act of 1973 (amended), at worst, it is a violation of the letter of the law.

Recommendations

1. That future projects which involve potential impacts on endangered species be closer supervised.

2. That specific controls and follow-up procedures be implemented to ensure that planned actions are indeed followed. This should include periodic reviews, conducted at regular intervals throughout the duration of the project, which includes NREAD personnel. If problem areas are detected they should be immediately surfaced to the Chief of Staff/Commanding General level for resolution.

3. That instruction be given to EOD, training, and operations personnel to ensure that they fully understand the Endangered Species Act and applicable Marine Corps and Base regulations as they apply to endangered species at Marine Corps Base, Camp Lejeune.

4. That periodic inspections of all known Red-Cockaded Woodpecker cavity trees be conducted at Marine Corps Base, Camp Lejeune, even if EOD escorts are required.

5. That no action be taken against the individuals involved due to:

   (1) the numerous variables and unknowns involved;

   (2) the inability to categorically state that the destruction of the Red-Cockaded Woodpecker cavity trees was the result of the K-2 Impact Area clearing operation;

(3) the inability to determine if any other action could have been taken to prevent the destruction of the trees; and

(4) the length of time between the actual destruction of the trees and their discovery, making clarification of the issues even more difficult.

James E. Hull
Major, U.S. Marine Corps

UNITED STATES MARINE CORPS
HEADQUARTERS BATTALION
MARINE CORPS BASE
CAMP LEJEUNE, NORTH CAROLINA 28542-5010

IN REPLY REFER TO:
5830
ADJ
2 OCT 1986

From: Commanding Officer, Headquarters Battalion, Marine Corps Base, Camp Lejeune
To: Major J. E. Hull 095 40 9708/4002 USMC

Subj: INVESTIGATION TO INQUIRE INTO THE CIRCUMSTANCES CONNECTED WITH THE ALLEGED VIOLATION OF ENDANGERED SPECIES ACT SURROUNDING THE ENDANGERED RED-COCKADED WOODPECKER OCCURRING BETWEEN DECEMBER 1985 AND AUGUST 1986

Ref: (a) JAGMAN

Encl: (1) AC/S Training and Operations ltr 11015 TRNG&OPS dtd 23Sep86

1. You are appointed to conduct an informal investigation, in accordance with chapter VI of reference (a), as soon hereafter as practicable, for the purpose of inquiring into all the circumstances connected with the subject matter.

2. You will conduct a thorough investigation into all the circumstances connected with the incident and report your findings of fact, opinions and recommendations as to the subject matter and responsibility for including any recommended administrative or disciplinary action.

3. Your attention is directed to Chapter VI of the reference. Additionally, assistance may be requested from the Civil Law Section, Office of the Staff Judge Advocate, extentions 5177/5675, for any difficulties that may arise during the course of your investigation. Enclosure (1) is provided as a detailed summary of subject matter.

4. You are directed to forward your completed report within ten working days from the date of this letter. If, for any reason, the report cannot be forwarded within that period, report in writing the basis for your delay and the estimated date of forwarding.

R C Lepley
R. C. LEPLEY

Enclosure (1)

UNITED STATES MARINE CORPS
MARINE CORPS BASE
CAMP LEJEUNE, NORTH CAROLINA 28542-5001

IN REPLY REFER TO:
11015
TRNG&OPS
23 Sep 86

From: Assistant Chief of Staff, Training and Operations
To: Commanding Officer, Headquarters Battalion

Subj: INVESTIGATION; REQUEST FOR

Encl: (1) Dir NREAD ltr 11015 NREAD dtd 9 Sep 86

1. As outlined in the enclosure a violation of Federal Law, The Endangered Species Act, as well as local directives, may have occurred. Accordingly an investigation is requested to determine if in fact a violation occurred and through other findings of facts and opinions, to make recommendations as to what action should be taken.

2. There are two factors which should be considered in selecting an investigating officer, first the complexities of the legislation which probably will dictate contact with federal agencies outside the Marine Corps, and second, the majority of EOD personnel who were assigned to this command in January 1985, particularly the two named in enclosures to the correspondence, have been transferred.

J. A. SPEICHER

Copy to:
AC/S, Fac

UNITED STATES MARINE CORPS
Marine Corps Base
Camp Lejeune, North Carolina 28542-5001

15 SEP 1986

11015
FAC
15 SEP 1986

FIRST ENDORSEMENT on Dir, NREA ltr 11015 NREAD of 9 Sep 1986

From: Assistant Chief of Staff, Facilities, Marine Corps Base, Camp Lejeune
To: Assistant Chief of Staff, Training & Operations

Subj: ENDANGERED RED-COCKADED WOODPECKER

1. Forwarded for action as appropriate. As this is a serious incident relative to an endangered species, we need to look into the circumstances in order to prevent further incidents. We will take action to notify the U. S. Fish and Wildlife Service.

T. J. Dalzell

T. J. DALZELL

UNITED STATES MARINE CORPS
Natural Resources and Environmental Affairs Division
Marine Corps Base
Camp Lejeune, North Carolina 28542

IN REPLY REFER TO:

11015
NREAD
9 Sep 86

From: Director, Natural Resources and Environmental Affairs Division, Marine Corps Base, Camp Lejeune
To: Assistant Chief of Staff, Training, Marine Corps Base, Camp Lejeune
Via: Assistant Chief of Staff, Facilities, Marine Corps Base, Camp Lejeune

Subj: ENDANGERED RED-COCKADED WOODPECKER

Encl: (1) Red-Cockaded Woodpecker Habitat Inspection Rept 8-86 dtd 3 Sep 86
(2) BWildMgr ltr 11015 NREAD of 4 Feb 85

1. A periodic inspection was recently conducted of endangered Red-Cockaded Woodpecker habitat in the K-2 Surface Danger Area by Base Training and Natural Resources personnel. A serious violation involving direct destruction of three active cavity trees was observed by the inspectors and is documented in enclosure (1). The violation is believed to have occurred in early 1985 as supported by enclosure (2).

2. Two of the dead cavity trees were discovered by Mr. John Hammond, N. C. State University Researcher; Mr. Julian Wooten, NREAD and MGySgt Barton, EOD; on 15 Aug 86 while attempting to locate the three Red-Cockaded Woodpeckers observed at the site in December 85. The remaining dead Red-Cockaded Woodpecker cavity tree was discovered on 3 Sep 86 by Messrs. Julian Wooten, Charles Peterson and Willie Bostic, NREAD, and SSgt McKenzie, EOD.

3. It is recommended that a JAG investigation be conducted and that the U. S. Fish and Wildlife Service be notified immediately relative to the violation.

Julian I. Wooten
JULIAN I. WOOTEN

VIOLATION TO REVISED RED-COCKADED WOODPECKER BIOLOGICAL OPINION REPORT NO. 8-86

This periodic inspection was conducted by Staff Sergeant McKenzie, Base Explosive Ordnance Disposal; Messrs Julian Wooten, Charles Peterson and Willie Bostic, Natural Resources and Environmental Affairs Division, on 3 September 1986.

1. K-2 Surface Danger Area, Grid 797353, Buffer Zone Habitat Area.

a. Destruction of three active cavity trees through the placement of explosive charges to detonate unexploded ordnance.

b. One of the trees was apparently blown down immediately and others have both died since the charges were detonated.

c. This colony site was inhabited by one clan of Red-Cockaded Woodpeckers consisting of at least three birds prior to destruction of the trees.

d. Natural Resources personnel have reason to believe that the explosive charges were detonated sometime on or about 30-31 January 1985.

11015
NREAD
4 Feb 1985

From: Base Wildlife Manager
To: MEMORANDUM FOR THE RECORD

Subj: SURFACE DANGER AREA AND SAFETY

1. Mr. Charles Peterson received a call from 1st Lieutenant Ben Redman, Explosive Ordnance Disposal Officer, on 28 January 1985 relative to clearing debris from around Red-Cockaded Woodpecker cavity trees and prescribed burning habitat in Surface Danger Areas (SDA). The marking of boundary lines around contiguous woodpecker habitat in the K-2 SDA was also discussed. Mr. Peterson informed 1st Lieutenant Redman that wildlife personnel would be available to clear debris/prescribed burn around cavity trees around the edge of the Q-10 (SDA) but would not be available to enter the K-2 (SDA). Further, that NREAD instructions had been to provide the necessary materials to Range Maintenance for marking contiguous habitat in the K-2 (SDA).

2. Mr. Peterson discussed the above conversation with Mr. Julian Wooten, Director, NREAD. Mr. Wooten requested that the Base Safety Officer be contacted concerning entry to safety danger areas as discussed. Mr. Peterson discussed entry to both SDA with Mr. R. J. Andrews, Base Safety Officer who informed him that it would be inappropriate for him to restrict the subject entry when heavy equipment operators were entering the SDA every day. Mr. Andrews further stated that the subject entry is authorized provided personnel are accompanied by EOD personnel.

3. Arrangements were made with 1st Sergeant Lecher, EOD to accompany Mr. Willie Bostic, Mr. Sam Poole, Mr. Clinton Bryant and Sergeant Darrell Bowers to the woodpecker cavity trees to clear debris/prescribed burn on 29 January 1985. A live heat round was discovered by Wildlife personnel at the base of each of the first four cavity trees visited. Each round was shown to 1st Sergeant Lecher who actually stepped over one round without seeing the same. The 1st Sergeant used a pocket knife to remove soil from around one round to identify it while Wildlife personnel were located nearby. All the Wildlife personnel were very nervous and upset with the discovery of the live ordnance.

4. Mr. Bostic was instructed to not enter the K-2 (SDA) in the future due to the likely possibility of the live ordnance hazard.

5. Mr. Bostic informed me that 1st Sergeant Lecher was planning to blow the live rounds in place during 30-31 January 1985. The above information was conveyed to Mr. Wooten and Mr. Andrews.

C. D. PETERSON

ENCLOSURE (2)

UNITED STATES MARINE CORPS
HEADQUARTERS BATTALION
MARINE CORPS BASE
CAMP LEJEUNE, NORTH CAROLINA 28542-5010

IN REPLY REFER TO:
5830
ADJ
15 OCT 1986

FIRST ENDORSEMENT on Maj J. E. Hull's ltr dtd 15 Oct 86

From: Commanding Officer, Headquarters Battalion, Marine Corps Base, Camp Lejeune
To: Major James E. Hull 095 40 9708/4002 USMC

Subj: INVESTIGATION TO INQUIRE INTO THE CIRCUMSTANCES CONNECTED WITH THE ALLEGED VIOLATION OF ENDANGERED SPECIES ACT SURROUNDING THE ENDANGERED RED-COCKADED WOODPECKER OCCURING BETWEEN DECEMBER 1984 AND AUGUST 1986

1. Returned approved. You are granted an extension on subject investigation until 3 November 1986.

S. L. SCHERER
By direction

ENCLOSURE (2)

15 October 1986

From: Major James E. Hull, 095 40 9708/4002 USMC
To: Commanding Officer, Headquarters Battalion, Marine Corps Base, Camp Lejeune

Subj: INVESTIGATION TO INQUIRY INTO THE CIRCUMSTANCES CONNECTED WITH THE ALLEGED VIOLATION OF ENDANGERED SPECIES ACT SURROUNDING THE ENDANGERED RED-COCKADED WOODPECKER OCCURING BETWEEN DECEMBER 1984 AND AUGUST 1986

Ref: (a) CO HQBN MCB appointing ltr 5830 ADJ of 2 Oct 1986
(b) FONCON btwn Major J. E. Hull (Investigating Officer) and Major C. E. Shepard (XO HQBN) of 15 Oct 1986

1. It is requested that the completion date of the subject investigation, as required by reference (a), be extended to 3 November 1986. As discussed during reference (b) several minor difficulties were encountered in the conduct of the investigation. These difficulties included the complexity of the regulations, the seriousness of the alleged violation, the lack of availability of personnel, the lack of written records, and the fact that the incident had allegedly occured somewhere between December 1984 and August 1986.

2. The additional time will enable me to review relative correspondence, regulations, and to interview personnel, including those who have since been transferred to other commands, familiar with the incident and the circumstances surrounding.

J. E. Hull
Major, USMC

Enclosure (3)

UNITED STATES MARINE CORPS
MARINE CORPS BASE
CAMP LEJEUNE, NORTH CAROLINA 28542

IN REPLY REFER TO

5420/2
FAC
7 SEP 1984

From: Chairman, Environmental Enhancement/Impact Review Board

Subj: ENVIRONMENTAL ENHANCEMENT/IMPACT REVIEW BOARD; MINUTES OF 14 AUGUST 1984

Ref: (a) BO 11015.2G

Encl: (1) Dir, NREA ltr 11000/4 NREAD of 23 Jul 84 (OMITTED)
(2) EOD Off ltr 11000 EOD of 26 Jul 84 (OMITTED)
(3) USACOE ltr SAWCO-EP of 6 Aug 84 (OMITTED)
(4) PEA - Improvement of K-2 Impact Area (Amended)
(5) PEA - 8th Engineer Support Battalion Parking Lot (OMITTED)

1. In accordance with the reference, a meeting of the subject Board took place at 1430, 14 August 1984, in the Conference Room of Building 1. The following personnel were in attendance:

Col M. G. Lilley, AC/S, Fac	Chairman
Col J. A. Speicher, AC/S, Trng	Guest
LtCol K. Steen, 10th Mar	Member(rep 2d MarDiv)
Maj R. G. Duvall, 2d LAVBn	Guest
Capt D. Cerveny, 2d FSSG(G-4)	Member
Capt M. D. Doman, OSJA	Guest
1stLt S. D. Glass, BFac	Guest
1stLt B. Redmond, RgContrO	Member
CWO-2 J. W. Howington, 8th Engr	Guest
MSgt D. L. Lecher, BEOD	Guest
Mr. R. E. Alexander, EnvEngr	Advisor
Mr. F. Cone, A/BMaintO	Member
Mr. C. D. Peterson, BWildlifeMgr	Advisor
Mr. B. L. Rouse, PubWks	Member
Mr. D. Sharpe, BEcologist	Advisor
Mr. E. P. Smith, BSaf	Advisor
Mr. J. Wooten, Dir, NREA	Advisor

2. Enclosures (1) and (2) were distributed for review by Board members. The Preliminary Environmental Assessments (PEA) listed in enclosures (4) and (5) were reviewed with disposition as follows.

a. PEA - Improvement of K-2 Impact Area. The proposed project was identified on an area map. Necessity for the project and proposed modifications were provided by LtCol Steen and Lt Redmond. Clearing the impact area will enable tactical units to gain maximum training on their weapons whereas now they are handicapped by limited visual observation. The project now covers approximately 900-1,000 acres which is larger than the project concurred with by the Environmental Board on 12 April 1984 and approved by the Commanding General. Consequently,

Enclosure (4)

enclosure (4) contains an amended PEA to reflect the larger project. The Board agreed to further amend enclosure (4) by these minutes to state that a 200-foot wide strip would be left undisturbed along the river shoreline to act as a screen for exploding ordnance, to ensure preservation of the river's edge, maintain the aesthetics along the river, and to reduce the potential of controversy. The option to later remove trees from this strip will require another PEA and be handled as a separate project. Additionally, the buffer is to be extended along the tributaries feeding into New River. The sale of timber was discussed and was not considered an environmental issue, therefore it will be settled separately. The following environmental issues were discussed:

(1) Erosion Control: Permanent grasses will be established to control erosion. Drainage ditches are planned to enable future maintenance by controlled burning. The U.S. Army Corps of Engineers representatives visited the base on 18 July 1984 to review the proposed clearing and drainage involved. By enclosure (3) the Corps of Engineers advised the project can proceed because the planned drainage is covered under a nationwide permit. Mr. Sharpe expressed concern for the effect that clearing the area and felling trees will have on stormwater runoff. Several miles of open ditches concerned him in that the ditches going across are on fairly steep land and will erode, thereby potentially discharging sediment into the sound. Further, he stated approval of a Sediment Control Plan by the State of North Carolina was required. Capt Doman stated he felt it was a matter of interpretation; the jurisdiction of the State Sediment Control Act excludes uniquely military projects and there is no requirement for approval by the State for a Sedimentation Control Plan.

(2) Endangered Species: The American Alligator is present in Whitehurst Creek and a Red-Cockaded Woodpecker nesting site has been found nearby on Range K-203, but outside boundaries of this proposed project. Mr. Wooten stated his position is that the presence of these endangered species requires formal consultation with the U.S. Fish and Wildlife Service. Mr. Wooten further stated no mention was made in the PEA of other game animals in that area and predicted the issue would become controversial. Col Speicher and Mr. Alexander disagreed. Capt Doman's legal opinion is the Endangered Species Act only requires consultation when "critical habitat" of an endangered species is affected. Because the Red-Cockaded Woodpecker habitat is outside the project area and has not been designated as critical habitat, the SJA advised the Base is not required to enter consultation.

(3) Archaeological: Mr. Wooten recommended the State be consulted since the project area was shown as being part of an archaeologically sensitive area based on computer predictions from a 1981 survey. The PEA states if evidence of historical significance/interest is found, construction will be suspended immediately pending further study.

Following a summation of issues by the Chairman, the Board agreed with the conclusion of the PEA that the proposed improvements for the K-2 Impact Area will not result in significant environmental impact provided the measures described herein are followed and a 200-foot strip along the river shoreline is left undisturbed. Further, the project is not considered controversial, thus, preparation of an Environmental Assessment per MCO 6280.5 is not required. The Board recommended approval of enclosure (4) as modified herein.

b. 8th Engineer Support Battalion Parking Lot: Additional parking space is urgently needed to store medium girder bridge components. Most of the area to be cleared, adjacent to FC-816, has only small scrub trees but there is a possibility of letting a contract to harvest the timber. The Board recommended approval of the project with the stipulation as many trees as possible be left as a buffer zone for future construction in that area. The project will not result in significant environmental impact, is not considered controversial, and an Environmental Assessment is not required. The Board recommended approval by the Commanding General.

3. The following correction should be made to the Environmental Board minutes of 6 August 1984. The cover sheet for enclosure (1), Construction of Tracked Vehicle Trail from Rhodes Point to TLZ Cardinal, gives the Natural Resources and Environmental Affairs Division (NREAD) credit for preparation of the PEA, which is incorrect. NREAD provided information for the PEA but did not prepare it. Also, the cover sheet makes reference to MCO P11000.8A which has been superseded by MCO P11000.9B.

4. The meeting adjourned at 1605. The next meeting will be held at the call of the Chairman.

M. G. LILLEY

Subj: ENVIRONMENTAL ENHANCEMENT/IMPACT REVIEW BOARD; MINUTES OF 14 AUGUST 1984

DISTRIBUTION:

(Members)	(Advisors)
Rep, 2d MarDiv(G-4)	Dir, NREA
Rep, 2d FSSG(G-4)	BEcologist
Rep, 6th MAB(G-4)	BWildlifeMgr
Rep, MCAS(H),NR(S-4)	BGameProtector
TFACO	SAFD
BMO	SJA
PWO	DPDO
	Ch,VetMedSvc
	Ch,Occup/PrevMed

	APPROVED	DISAPPROVED
CHIEF OF STAFF'S ~~ACTION~~: Recommended:		
K-2 Impact Area	7	
8th EngrSptBn Parking Lot	7	
COMMANDING GENERAL'S ACTION:		
K-2 Impact Area		
8th EngrSptBn Parking Lot		

UNITED STATES MARINE CORPS
MARINE CORPS BASE
CAMP LEJEUNE, NORTH CAROLINA 28542

IN REPLY REFER TO
11000
TRNG
11 Jul 1984

FIRST ENDORSEMENT on RCO ltr 11000 over EOD dtd 11 Jul 1984

From: Assistant Chief of Staff, Training, Marine Corps Base, Camp Lejeune
To: Assistant Chief of Staff, Facilities, Marine Corps Base, Camp Lejeune, North Carolina 28542

Subj: IMPROVEMENT OF K-2 IMPACT AREA

1. Forwarded concurring in the PEA as written.

2. As a matter of interest, additional EOD technicians from Marine Corps installations in South Carolina, Virginia and California have been requested to assist in the subject clearing operation from 5 September to 31 October 1984.

F. J. CIZERLE
By direction

Copy to:
RCO
EOD

UNITED STATES MARINE CORPS
Range Control
Marine Corps Base
Camp Lejeune, North Carolina 28542

IN REPLY REFER TO:

11000
EOD
11 July 84

From: Range Control Officer
To: Assistant Chief of Staff, Facilities
Via: Assistant Chief of Staff, Training

Subj: IMPROVEMENT OF K-2 IMPACT AREA

Ref: (a) AC/S, FAC ltr 6280 over FAC dtd 20JUN84

Encl: (1) Amended PEA for Improvement of K-2 Impact Area

1. In accordance with the recommendations of the reference concerning the project described at the enclosure, the PEA has been amended and is submitted herewith.

T. B. Howard
T. B. HOWARD

Copy to:
Range Maintenance
EOD

*AMENDED

PRELIMINARY ENVIRONMENTAL ASSESSMENT

FOR

RANGE K-2

1. Enclosure. Map showing proposed range.

2. Purpose and Need. The purpose of this proposed action is to provide the Marine Corps Base, Camp Lejeune, North Carolina with a range in the Verona Loop Area to teach Marines the skills necessary for combat situations.

*3. Project Description. The project consists of clearing trees and brush as indicated in the enclosure and landscaping of the range to establish permanent grasses for erosion control and the digging of drainage ditches to facilitate maintenance.

*4. Site Location. The site is located on enclosure (1). The location is currently part of the surface danger area for the K-2 Impact Area. This area has been used in the past for aerial bombardment and artillery. Because of a lack of observation due to tree growth the area has fallen to disuse. The reopening of this impact area will provide a quantum leap for the training of artillery batteries aboard Camp Lejeune.

*5. Range Characteristics. A common impact area is used for all types of mortars, artillery rounds, air delivered ordnance, and dragon missiles. Targets consist of those found in a realistic combat environment such as personnel, vehicle, aircraft, and material targets supplemented by surveyed natural terrain features.

6. Compliance with Environmental Requirements.

a. Air Quality: No emmissions are anticipated.

b. Land Quality: Erosion control measures will be included in the project design. Construction management will provide preventive measures to contain all sediment on site. Reseeding of disturbed areas and vegetative cover on the cleared area will be accomplished within 30 days of completion of construction.

c. Clean Water Act: No discharge of wastes to surface waters will occur during range development or subsequent use.

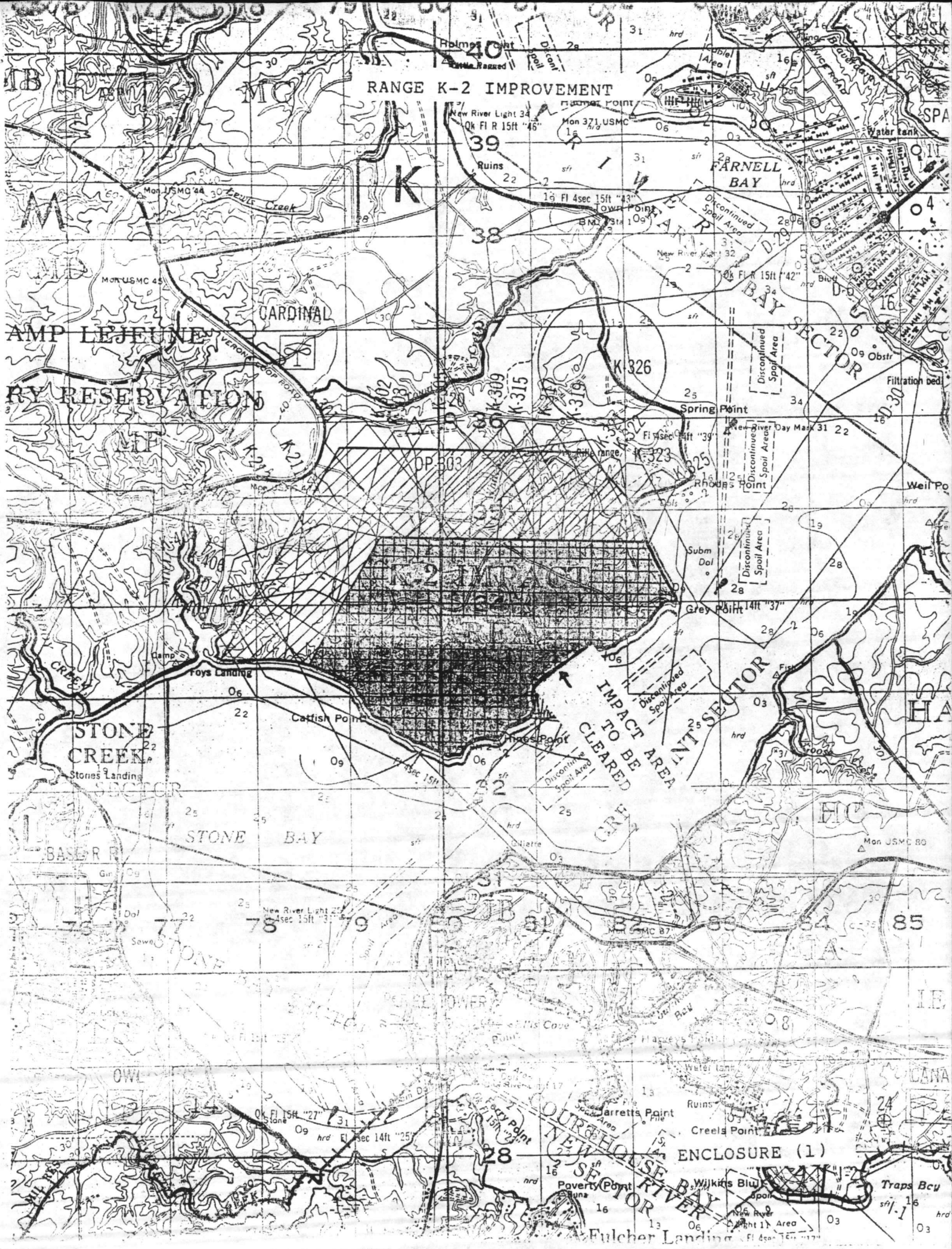
* d. National Historic Preservation Act: No significant cultural resources are located on the project site. However, in

view of the archeological sensitive area, during construction of this project extreme care will be exercised in watching for any indications of matters of historical interest/significance. In the event any evidence is found, construction will imediately be suspended pending further, detailed study and actions in accordance with appropriate directives.

*e. Executive Order 11990 Protection of Wetlands: Disturbance of wetlands will be avoided during clearing and earth moving except that approved by the U. S. Army Corps of Engineers and other agencies as required.

*f. Endangered Species Act: The impact of this project on the habitat of endangered species has been determined to be negligible. This statement is based on the determination that no endangered species are known to live in the area to be affected by clearing and earthwork. However, during construction of this project extreme care will be exercised in watching for any indications of endangered species or their habitat. In the event any evidence is found, construction will immediately be suspended pending further, detailed study and actions in accordance with appropriate directives.

7. Conclusion. The proposed improvements for the K-2 Impact Area will not result in significant environmental impact provided the measures described herein are followed. Further, the project is not considered controversial, thus, preparation of an Environmental Assessment per Marine Corps Order 6280.5 is not required.


RANGE K-2 IMPROVEMENT
FARNELL BAY
CARDINAL
CAMP LEJEUNE
RY RESERVATION
K-326
Spring Point
Rhodes Point
Grey Point
Foys Landing
Catfish Point
Hines Point
STONE CREEK
Stones Landing
STONE BAY
IMPACT AREA TO BE CLEARED
SECTOR
Jarretts Point
Creels Point
ENCLOSURE (1)
Poverty Point
Wilkins Blu
Traps Bay
Fulcher Landing
Water tank
Filtration bed
Discontinued Spoil Area
Rifle range
Ruins
Town Point
Lewis Creek
Holmes Point
Hammer Point
New River Light 34
New River Day Mark 31
Mon USMC 44
Mon USMC 45
Mon USMC 80
Mon USMC 87
Obstr
Subm Dol

-5001

6280/7
FAC

Mr. Warren T. Parker
Endangered Species Office
U.S. Fish and Wildlife Service
Flatiron Building, Room A-3
50 S. French Broad Avenue
Asheville, NC 28801

Dear Mr. Parker:

This letter requests formal consultation on the relationship between the Red-Cockaded Woodpecker (RCW) and range improvements at the K-2 impact area. This request follows your site review of October 26, 1984 during which an agreement was reached regarding the designation of foraging area for the colony.

[illegible] at least 125 acres, including the colony site has been [illegible] being managed for protection and enhancement of RCW habitat. Further, the remainder of the K-2 impact area is being aerially surveyed by wildlife personnel to confirm whether or not additional RCW colonies exist. The proposed RCW research project will include the colony site and foraging area of this colony to the extent that range safety policies allow.

We greatly appreciate your expeditious review of this project. Please feel free to contact me at FTS 676-3034 if further information is required.

Sincerely,

Blind Copy to:
AC/S, Arng
[illegible]
[illegible]

[illegible]

Enclosure (5)

FISH AND WILDLIFE SERVICE
ENDANGERED SPECIES FIELD STATION
100 OTIS STREET, ROOM 224
ASHEVILLE, NORTH CAROLINA 28801

December 6, 1984

Brigadier General L. H. Buehl
Commanding General
U. S. Marine Corps Base
Camp Lejeune, North Carolina 28542

Re: 4-2-85-077

Dear General Buehl:

This letter presents the Biological Opinion of the Fish and Wildlife Service concerning the effects of proposed range improvements at the K-2 Impact Area on the endangered red-cockaded woodpecker (Picoides borealis). It responds to Colonel M. G. Lilley's request for formal consultation dated November 7, 1984. This opinion does not address the requirements of environmental laws other than the Endangered Species Act. Log No. 4-2-85-077 has been assigned to this consultation; this number should be referenced in all future correspondence concerning this project.

Project Description

The K-2 Impact Area has been operational for many years. That portion of the area actually designated for impact of short range weapon systems as well as long-range artillery fire totals 1,597 acres. This is surrounded by a buffer zone that comprises some 1,181 acres. Predominate timber type throughout is mixed longleaf pine and hardwood and some essentially pure, open stands of longleaf pine.

Range refurbishment is necessitated by reduced visibility of target areas within the K-2 Impact Area. This has occurred due to growth of trees and understory vegetation. Trees and brush will be leveled by heavy equipment to provide visibility of target arrays at distances up to 3,000 meters from observation posts.

Consultation History

On September 26, 1984, Fish and Wildlife Service personnel accompanied Regional Director James Pulliam for a meeting with you and your staff regarding the G-10 Impact Area and its possible effect on adjacent colonies of red-cockaded woodpeckers. At this meeting we learned of the planned clearing of the K-2 Impact Area. Subsequent discussion revealed that an active colony of red-cockaded woodpeckers had only recently been discovered within the buffer of this impact area. In view of this "may affect" situation, formal consultation was initiated. On October 26, 1984, I visited Camp Lejeune and conducted an on-site inspection of the active woodpecker colony as well as adjacent habitat. By letter of November 19, 1984, I informed you of my findings and recommendations concerning the management of the colony site. Subsequent discussions with Mr. Julian Wooten indicate that

Enclosure (6)

Copy to: AC/S Trng & OPS

requested helicopter surveys were conducted and no new colonies of birds were located within the project area.

Biological Opinion

After careful review of all the information available for this project and based on the commitments made in Colonel Lilley's letter of November 7, 1984 concerning the dedication of 125 acres of selected habitat for foraging and colony site protection, it is my biological opinion that the planned clearing of the K-2 Impact Area is not likely to jeopardize the continued existence of the red-cockaded woodpecker.

In meeting the provisions for "incidental take" in Section 7(b)(4) of the Endangered Species Act, we have reviewed the biological information and other available information relative to this action. Based upon our review, incidental take is not authorized for the red-cockaded woodpecker during implementation of this activity.

If modifications or changes in planned operations for the clearing of the K-2 Impact Area are made which were not a part of this consultation, or other information reveals impacts of these actions which may affect listed species or critical habitat in a manner not previously considered, consultation must be reinitiated with this office.

We would like to express our appreciation to you and your entire staff for the assistance provided in this consultation process. I trust that the end results are an improvement of an already commendable program and an amicable and cooperative relationship between our offices.

Sincerely yours,

Warren T. Parker

Warren T. Parker
Field Supervisor

CC:
Director, FWS, OES, Washington, D.C.
Regional Director, FWS, Atlanta, Georgia (AFA/SE)
Field Supervisor, FWS, ES, Raleigh, N. C.

Copy to: AC/S Trng & O

United States Department of the Interior

FISH AND WILDLIFE SERVICE

ENDANGERED SPECIES FIELD STATION
100 OTIS STREET, ROOM 224
ASHEVILLE, NORTH CAROLINA 28801

November 19, 1984

Brigadier General L. H. Buehl
Commanding General
U. S. Marine Corps Base
Camp LeJeune, North Carolina 28542

Dear General Buehl:

On October 26, 1984, I visited Camp Lejeune in reference to endangered species concerns regarding the K-2 Impact Area and the Camp Lejeune-Cherry Point Railroad Improvement Project. A summary of my findings follows, but first I wish to express my thanks to you and your staff for the many courtesies extended to me during my visit.

An on site inspection of the active red-cockaded woodpecker colony site that was recently found by your personnel clearly indicates that it is located wholly within a narrow zone of longleaf pine in the northwest quadrant of the K-2 buffer area adjacent to K-303. A helicopter overflight confirmed that sufficient pine foraging habitat is located to the north and west of the colony site. My recommendation is that this colony area be marked and protected and that sufficient adjacent foraging habitat be dedicated to provide for a total of about 125 acres for these birds. This will allow for the clearing of the K-2 Impact Area as planned and will also provide for the needs of this particular colony of woodpeckers. As mentioned during our earlier meeting, the red-cockaded woodpecker seems to do well in disturbed situations including impact areas, as long as foraging habitat is provided.

Assuming that no new colonies are found within the K-2 impact area, and assuming that the above-mentioned additional pine habitat is dedicated to this colony for foraging, then I do not perceive any endangered species conflicts with this range project.

An on-site review of the railroad from Camp Lejeune to near Havelock was made. This proved to be most informative. Upon my return to Asheville, I have had discussions with several biologists knowledgeable of this particular area and the American alligator and the following guidance has been developed:

A. The only area of genuine concern is a zone that begins approximately at mile marker 26 (road crossing that leads into Camp Brian), and runs back toward Camp Lejeune a distance of about six miles (see attached map).

B. Certain work within this 6-mile zone should be restricted to the period October 1 to December 15, and March 15 to June 15. The type work addressed in this case is the pulling of ditches and barrow pits. Work such as cutting survey lines and actually cutting trees within the right-of-way can be carried out at any time. Our concern is the disturbance of nesting alligators during the late summer period, and all alligators during the winter hibernation [illegible] operations.

Enclosur
(7)

If these stipulations are incorporated in the planning for this railroad improvement, then I can see no problems with this species.

These are my observations of the October field review. Since both of the referenced projects are "may affect" situations, you must initiate formal consultation with the Fish and Wildlife Service before either of the projects proceed. This is mandated by the provisions of the Endangered Species Act. The consultation process will essentially complete your requirements under the Act. If you will incorporate suggested modifications as outlined in this letter in your request for consultation, then we will simply issue a "no jeopardy" biological opinion. For file purposes, I suggest that a separate letter requesting formal consultation for each project be sent.

If you have any questions regarding my conclusions, please let me know. Again, I appreciate the courtesies extended during my recent visit, and your interest in endangered species.

Sincerely yours,

Warren T. Parker

Warren T. Parker
Field Supervisor

Background Correspondence Summary
K-2 Impact Area Clearing Operation
Red-Cockaded Woodpecker (RCW) Concerns

9 Apr 1984 - AC/S, FAC ltr to OSJA

- asked for legal review of proposed project.

12 Apr 1984 - OSJA ltr to AC/S, FAC

- states that Preliminary Environmental Assessment (PEA) sufficient for project
- states that RCW cavity trees are not critical habitat
- cavity trees only treated by Base and U.S. Fish and Wildlife Services as critical habitat.

23 Apr 1984 - MFR from M. J. Reardon

- states that Fish and Wildlife Service has determined that there is no critical habitat for RCW on board Camp Lejeune
- Base treats RCW cavity trees as critical habitat
- K-2 clearing operation will not include "buffer zone" where RCW cavity trees were discovered.

11 Jul 1984 - Amended PEA

18 Jul 1984 - MFR, EODO

- describes types of ordnance found in K-2 impact area
- based on physical sweeps, written records, plus corporate memory.

23 Jul 1984 - Memo Dir, NREAD

- stated that presence of RCW in K-2 area required formal consultation with USFWS
- Aware of colony in K-2 impact area.

23 Jul 1984 - Base Wildlife manager memo to Dir, NREAD

- five RCW trees found in area to be cleared.

26 Jul 1984 - EODO ltr to AC/S, Trng (Lt Redmon)

- states that RCW colony is on Range K-303 right flank and will not be affected by the clearing operation.

Enclosure (8)

6 Aug 1984 - ltr from Army COE regarding K-2 project

- discussed drainage reqmts
- states that Lt Redmon indicated that wooded area which has RCW cavities will be left undisturbed (K-303 range)
- addressed that this was discussed in meeting with Lt Redmon and MSgt Lecher both present
- commended MCB for its approach to project and concern for environment.

7 Aug 1984 - Dir, NREAD ltr to AC/S, Facilities

- recommends that a class be given to people involved in K-2 clearing operation on how to recognize RCW cavity trees
- handwritten note implies 15 out of 30 people trained by Mr. Peterson (NREAD).

9 Aug 1984 - CG, MCB ltr to Army COE

- drainage for K-2.

4 Sep 1984 - OIC Const. memo to AC/S, FAC

- too hazardous to sell timber
- range of dollars too great.

7 Sep 1984 - EE/IRB minutes meetings PEA K-2

- PEA estimate of project size (900-1000 acres)
- states RCW nesting site found
- OSJA stated that formal consultation not required since RCW colony was in buffer area.

23 Sep 1984 - AC/S, FAC ltr to U.S. Fish and Wildlife Service

- requests informal consultation on K-2 Impact Area Clearing Operation and RCW investigation.

7 Nov 1984 - Dir, NREAD ltr

- identifies 125 acres for protection of RCW
- includes map showing acres identified.

7 Nov 1984 - AC/S, FAC ltr to U.S. Fish and Wildlife Service

- requests formal consultation with regards to K-2 project and RCW colony.

19 Nov 1984 - U.S. Dept. of Interior ltr

- identified RCW colony (K-303 area)
- stated RCW do well in disturbed areas, such as impact areas, provided foraging habitat provided
- stated project can continue as defined.

29 Nov 1984 - CG, MCB ltr to U.S. Fish and Wildlife Service

- states request for consultation regarding K-2 area already initiated.

EXCERPT FROM 50 CFR

(iii) The nature of such holding (to establish that no commercial activity was involved).

(c) This section applies only to wildlife born on or prior to December 28, 1973. It does not apply to the progeny of any such wildlife born after December 28, 1973.

§ 17.5 Alaska natives.

(a) The provisions of Subpart C of this part relating to the importation or the taking of endangered wildlife, and any provision of Subpart D of this part relating to the importation or the taking of threatened wildlife, shall not apply to:

(1) Any Indian, Aleut, or Eskimo who is an Alaskan native and who resides in Alaska; or

(2) Any non-native permanent resident of an Alaskan native village who is primarily dependent upon the taking of wildlife for consumption or for the creation and sale of authentic native articles of handicrafts and clothing:

If the taking is primarily for subsistence purposes, and is not accomplished in a wasteful manner.

(b) Edible portions of endangered or threatened wildlife taken or imported pursuant to paragraph (a) of this section may be sold in native villages or towns in Alaska for native consumption within native villages and towns in Alaska.

(c) Non-edible by-products of endangered or threatened wildlife taken or imported pursuant to paragraph (a) of this section may be sold in interstate commerce when made into authentic native articles of handicrafts and clothing.

§ 17.6 State cooperative agreements. [Reserved]

§ 17.7 Raptor exemption.

(a) The prohibitions found in § 17.21 and 17.31 do not apply to any raptor [a live migratory bird of the Order *Falconiformes* or the Order *Strigiformes*, other than a bald eagle (*Haliaeetus leucocephalus*) or a golden eagle (*Aquila chrysaetos*)] legally held in captivity or in a controlled environment on November 10, 1978, or to any of its progeny, which is:

(1) Possessed and banded in compliance with the terms of a valid permit issued under Part 21 of this chapter; and

(2) Identified in the earliest applicable annual report required to be filed by a permittee under Part 21 of this chapter as in a permittee's possession on November 10, 1978, or as the progeny of such a raptor.

(b) This section does not apply to any raptor intentionally returned to the wild.

[48 FR 31607, July 8, 1983]

Subpart B—Lists

SOURCE: 48 FR 34182, July 27, 1983, unless otherwise noted.

§ 17.11 Endangered and threatened wildlife.

(a) The list in this section contains the names of all species of wildlife which have been determined by the Services to be Endangered or Threatened. It also contains the names of species of wildlife treated as Endangered or Threatened because they are sufficiently similar in appearance to Endangered or Threatened species (see § 17.50 *et seq.*).

(b) The columns entitled "Common Name," "Scientific Name," and "Vertebrate Population Where Endangered or Threatened" define the species of wildlife within the meaning of the Act. Thus, differently classified geographic populations of the same vertebrate subspecies or species shall be identified by their differing geographic boundaries, even though the other two columns are identical. The term "Entire" means that all populations throughout the present range of a vertebrate species are listed. Although common names are included, they cannot be relied upon for identification of any specimen, since they may vary greatly in local usage. The Services shall use the most recently accepted scientific name. In cases in which confusion might arise, a synonym(s) will be provided in parentheses. The Services shall rely to the extent practicable on the *International Code of Zoological Nomenclature.*

(c) In the "Status" column the following symbols are used: "E" for Endangered, "T" for Threatened, and "E [or T] (S/A)" for similarity of appearance species.

(d) The other data in the list are nonregulatory in nature and are provided for the information of the reader. In the annual revision and compilation of this title, the following information may be amended without public notice: the spelling of species' names, historical range, footnotes, references to certain other applicable portions of this title, synonyms, and more current names. In any of these revised entries, neither the species, as defined in paragraph (b) of this section, nor its status may be changed without following the procedures of Part 424 of this title.

(e) The "historic range" indicates the known general distribution of the species or subspecies as reported in the current scientific literature. The present distribution may be greatly reduced from this historic range. This column does not imply any limitation on the application of the prohibitions in the Act or implementing rules. Such prohibitions apply to all individuals of the species, wherever found.

(f)(1) A footnote to the FEDERAL REGISTER publication(s) listing or reclassifying a species is indicated under the column "When listed." Footnote numbers to §§ 17.11 and 17.12 are in the same numerical sequence, since plants and animals may be listed in the same FEDERAL REGISTER document. That document, at least since 1973, includes a statement indicating the basis for the listing, as well as the effective date(s) of said listing.

(2) The "Special rules" and "Critical habitat" columns provide a cross reference to other sections in Parts 17, 222, 226, or 227. The "Special rules" column will also be used to cite the special rules that describe experimental populations and determine if they are essential or nonessential. Separate listing will be made for experimental populations, and the status column will include the following symbols: "XE" for an essential experimental population and "XN" for a nonessential experimental population. The term "NA" (not applicable) appearing in either of these two columns indicates that there are no special rules and/or critical habitat for that particular species. However, all other appropriate rules in Parts 17, 217 through 227, and 402 still apply to that species. In addition, there may be other rules in this title that relate to such wildlife, e.g., port-of-entry requirements. It is not intended that the references in the "Special rules" column list all the regulations of the two Services which might apply to the species or to the regulations of other Federal agencies or State or local governments.

(g) The listing of a particular taxon includes all lower taxonomic units. For example, the genus *Hylobates* (gibbons) is listed as Endangered throughout its entire range (China, India, and SE Asia); consequently, all species, subspecies, and populations of that genus are considered listed as Endangered for the purposes of the Act. In 1978 (43 FR 6230-6233) the species *Haliaeetus leucocephalus* (bald eagle) was listed as Threatened in "USA (WA, OR, MN, WI, MI)" rather than its entire population; thus, all individuals of the bald eagle found in those five States are considered listed as Threatened for the purposes of the Act.

(h) The "List of Endangered and Threatened Wildlife" is provided below:

Tinamou, solitary	*Tinamus solitarius*	West Indies: Martinique	do	E	6	NA	NA
Trembler, Martinique (thrasher)	*Cinclocerthia ruficauda gutturalis*	Australia					
Wanderer, plain	*Pedionomus torquatus*						
Warbler (wood), Kirtland's	*Dendroica kirtlandii*	U.S.A. (principally MI), Canada, West Indies: Bahama Islands.	do	E	1, 3	NA	NA
Warbler (willow), nightingale wood	*Acrocephalus luscinia*	Western Pacific Ocean	U.S.A. (Mariana Islands).	E	3, 4	NA	NA
Warbler (willow), Rodriques	*Bebrornis rodericanus*	Mauritius (Rodrigues Islands)	Entire	E	3	NA	NA
Warbler (wood), Semper's	*Leucopeza semperi*	West Indies: St. Lucia	do	E	3	NA	NA
Warbler (willow), Seychelles	*Bebrornis sechellensis*	Indian Ocean: Seychelles Island	do	E	3	NA	NA
Whipbird, Western	*Psophodes nigrogularis*	Australia	do	E	3	NA	NA
White-eye, bridled	*Zosterops conspicillata conspicillata*	Western Pacific Ocean: U.S.A. (Guam)	do	E	156	NA	NA
White-eye, Norfolk Island	*Zosterops albogularis*	Indian Ocean: Norfolk Islands	do	E	15	NA	NA
White-eye, Ponape greater	*Rukia longirostra (=sanfordi)*	West Pacific Ocean: U.S.A. (Caroline Islands).	do	E	3	NA	NA
White-eye, Seychelles	*Zosterops modesta*	Indian Ocean: Seychelles	do	E	3	NA	NA
Woodpecker, imperial	*Campephilus imperialis*	Mexico	do	E	3	NA	NA
Woodpecker, ivory-billed	*Campephilus principalis*	U.S.A. (southcentral and southeastern), Cuba.	do	E	1, 3	NA	NA
Woodpecker, red-cockaded	*Picoides (=Dendrocopos) borealis*	U.S.A. (southcentral and southeastern)	do	E	2	NA	NA
Woodpecker, Tristram's	*Dryocopus javensis richardsi*	Korea	do	E	3	NA	NA
Wren, Guadeloupe house	*Troglodytes aedon guadeloupensis*	West Indies: Guadeloupe	do	E	3	NA	NA
Wren, St. Lucia house	*Troglodytes aedon mesoleucus*	West Indies: St. Lucia	do	E	3	NA	NA
REPTILES							
Alligator, American	*Alligator mississippiensis*	Southeastern U.S.A	Wherever found in wild except those areas where listed as threatened as set forth below.	E	1, 11, 51, 60, 113, 134	NA	NA
Do	do	do	U.S.A. (FL and certain areas of GA and SC, as set forth in 17.42(a)(1)).	T	20, 47, 51, 60, 134	NA	17.42(a)
Do	do	do	U.S.A. (LA and TX)	T(S/A)	11, 47, 51, 60, 113, 134	NA	17.42(a)
Do	do	do	In captivity wherever found.	T(S/A)	11, 47,51	NA	17.42(a)
Alligator, Chinese	*Alligator sinensis*	China	Entire	E	15	NA	NA
Anole, Culebra Island giant	*Anolis roosevelti*	U.S.A. (PR: Culebra Island)	do	E	25	17.95(c)	NA
Boa, Jamaican	*Epicrates subflavus*	Jamaica	do	E	3	NA	NA
Boa, Mona	*Epicrates monensis monensis*	U.S.A. (PR)	do	T	33	17.95(c)	NA
Boa, Puerto Rico	*Epicrates inornatus*	do	do	E	2	NA	NA
Boa, Round Island [no common name]	*Casarea dussumieri*	Indian Ocean: Mauritius	do	E	88	NA	NA
Boa, Round Island [no common name]	*Bolyeria multocarinata*	do	do	E	88	NA	NA

UNITED STATES MARINE CORPS
Marine Corps Base
Camp Lejeune, North Carolina 28542

BO 11015.3A
MAINT/DP/mp
10 FEB 1981

BASE ORDER 11015.3A

From: Commanding General
To: Distribution List

Subj: Endangered Species Protection Program

Ref: (a) MCO 11015.4B
(b) Pub Law 93-205E Endangered Species Act of 1973 as amended in 1978
(c) MCO P11000.8A
(d) Natural Resources Management Plan, Camp Lejeune, North Carolina
(e) BO 11015.6
(f) BO 11015.7
(g) BO 11000.1

Encl: (1) List of Endangered and Threatened Species Present at Camp Lejeune

1. Purpose. To set forth regulations that will ensure the protection of endangered and threatened species hereafter referred to as listed species in accordance with applicable local, state and federal laws.

2. Cancellation. BO 11015.3

3. Background

a. Marine Corps Base, because of the protective and security nature of its lands, has provided vital sanctuaries for listed species in the past. Enactment of new legislation in the National interest is the basis for affirmative programs that ensure protection of listed species and their habitats.

b. Reference (a) promulgates Marine Corps policy for the protection of listed species in compliance with reference (b). Long range planning for the management of listed species is contained in references (c) and (d). Specific guidelines for training use of the habitats of several listed species are contained in references (e) and (f). Reference (g) contains guidelines for assessing environmental considerations and factors involving listed species.

c. Enclosure (1) contains identified listed species presently occurring on these lands pursuant to reference (b).

4. Policy. It is the continuing policy of this Command to actively participate in planning and programming actions which will ensure the protection of listed species on Marine Corps Base lands.

5. Responsibility. [redacted] Natural Resources and Environmental Affairs Branch Director is responsible to the Base Maintenance Officer for staff reporting of events which may have favorable or unfavorable impact on endangered species and their habitat.

6. Program Guidelines. Marine Corps Base will actively carry out a program to protect and enhance all current listed species. Cognizant personnel in this command shall:

a. Identify to the extent feasible, areas of habitat controlled by the activity which may be regarded as critical, as defined in enclosure (4), page 874, paragraph 402.02 of reference (b).

b. Delineate the boundaries of the habitat areas on maps to be included in the activity master plan and natural resources management plan, and provide one copy of each to the Commandant of the Marine Corps (Code LFF).

c. Make every effort to provide the information obtained on the identified habitat areas to the Fish and Wildlife Service and National Marine Fisheries Service within the timeframe cited in enclosure (3) of reference (b) for their use in determining whether or not the areas should be classified as critical pursuant to reference (b). Extension of the timeframe, if needed, shall be coordinated with the Regional Director, Fish and Wildlife Service.

d. Provide the Commandant of the Marine Corps (Code LFF) with two copies of the information submitted to the Fish and Wildlife Service, as required by paragraph 6c, preceding.

e. Protect the habitat areas identified in accordance with paragraphs 6a and 6b, preceding, and consult with the representatives of the Fish and Wildlife Service and National Marine Fisheries service prior to modifying these areas.

f. Develop a positive program for the protection and enhancement of activity areas designated by the Fish and Wildlife Service and National Marine Fisheries Service as critical habitat, and determine authorized and unauthorized use of such habitat.

g. Initiate consultation with the Fish and Wildlife Service and National Marine Fisheries Service in accordance with the procedures outlined in enclosure (4) of reference (a) when a planned activity or program has been identified that may affect (favorably or unfavorably) listed species or their habitat. (See definition of "Activities or programs", in enclosure (4), paragraph 402.02 of reference (a)).

h. Environmental assessments shall be in accordance with reference (g) for any action which may affect listed species or their habitats and shall be prepared by the action sponsor. The documents shall contain the final biological opinion of the Fish and Wildlife Service and/or the National Marine Fisheries Service obtained through the consultation process.

i. [redacted]. Initial contacts shall include the Regional Office of the Fish and Wildlife Service and the ~~North Carolina~~ Wildlife Resources Commission. Liaison will also include contact with listed species recovery teams, private organizations and individuals, as applicable, to assist with identification of listed species and their critical habitats.

j. Should it be determined that training is being degraded to the extent that it is affecting combat readiness, documentation to support this assessment should be forwarded to this headquarters (Attention: Assistant Chief of Staff, Training). An examination of assimilated data will then be conducted to determine if a request for a National Security Exemption to the Endangered Species Act is warranted.

7. Action. [redacted]. Perso[redacted] command are expected to fully cooperate in the program at all levels. With the enactment of this subject legislation, [redacted]

8. Applicability. Having received the concurrence of the Commanding Generals, 2d Marine Division, FMF, and 2d Force Service Support Group (Rein), FMF, Atlantic, and the Commanding Officers of the Marine Corps Air Station (Helicopter), New River, Naval Regional Dental Center and the Naval Regional Medical Center, this Order is applicable to those Commands.

M. R. FRIDELL
Chief of Staff

DISTRIBUTION: A

LIST OF ENDANGERED AND THREATENED SPECIES PRESENT AT CAMP LEJEUNE

SPECIES	PREFERRED HABITAT	PROJECTS INVOLVED	STATUS
Caretta caretta Atlantic Loggerhead	Warm ocean water. Frequent nesting along Onslow Beach.	Marking, protecting nest sites from predation. Inventory and tagging.	Threatened
Chelonia mydas Atlantic Green Turtle	Shoal waters with submarine vegetation.	Nesting in 1980	Threatened
Lepidochelys kempi Atlantic Ridley	Shallow coastal waters, observed in Intracoastal Waterway.	Tagged juvenile	Endangered
Dermochelys coriacea Atlantic Leatherback	Open sea waters along the coast.	Awaiting nesting activity on beach.	Endangered
Eretomochelys imbricata Atlantic Hawksbill	Reefs and shallow coastal waters		Endangered
Alligator mississippiensis - American Alligator	Salt marshes, tidal streams and estuaries	Inventory, protection of marshlands.	Endangered
[redacted]	[redacted]	[redacted]	[redacted]
Pelecanus occidentalis Brown Pelican	Coastal fringe along beach and inlets. Summer migrant.	Photography	Endangered
Dionaea muscipula Venus' Fly Trap	Wet margins of open savannahs		Threatened*
Sarracenia flava Yellow Pitcher Plant	Wet bogs, ditches and savannahs		Threatened*
Sarracenia rubra Sweet Pitcher Plant	Shrub bogs and savannahs		Threatened*
Sarracenia minor Hooded Pitcher Plant	Wet bogs, ditches and savannahs		Threatened*
Sarracenia purpurea Pitcher Plant; Fly-trap	Wet bogs and savannahs		Threatened*

*Species on the North Carolina List of Endangered Plants (Chapter 41 NC General Statutes)

ENCLOSURE (1)

UNITED STATES MARINE CORPS
MARINE CORPS BASE
CAMP LEJEUNE, NORTH CAROLINA 28542

IN REPLY REFER TO
BO 11015.6
TRNG/JSC/cs
7 JUN 1979

BASE ORDER 11015.6

From: Commanding General
To: Distribution List

Subj: Red-Cockaded Woodpecker (Picoides Borealis) Protection Program/Measures

Ref: (a) Public Law 93-205, Endangered Species Act of 1973 (NOTAL)
(b) MCO 11015.4
(c) BO 11015.3

Encl: (1) Overlay of Red-Cockaded Woodpecker Restricted Areas
(2) Example of Tree Markings Depicting Contiguous Habitat Boundary
(3) Example of Sign Depicting Contiguous Habitat Boundary
(4) Example of Tree Markings Depicting the Colony Buffer Zone Boundary
(5) Example of Sign Depicting the Colony Buffer Zone Boundary

1. Purpose. To set forth regulations and establish responsibilities to ensure the conservation of the red-cockaded woodpecker aboard Camp Lejeune.

2. Background

a. The red-cockaded woodpecker is an endangered species listed in the Federal Register of Endangered Species and is present in Camp Lejeune locations as shown on enclosure (1).

b. In accordance with reference (a), it is unlawful for any person(s) subject to the jurisdiction of the United States to harass, harm, or capture any endangered species within the United States. Further, it is unlawful for any person(s) to violate any regulation promulgated for the protection of any such species.

c. The following actions violate reference (a) and guidelines concerning the red-cockaded woodpecker and its habitat:

(1) Cutting of pine trees for field fortifications.

(2) Damaging pines in any way with a motor vehicle.

(3) Killing pines, including cavity trees, by root damage from tracked vehicles.

(4) Girdling of pines by the attachment of communication wire.

(5) Disturbing soil by digging field fortification and trash pits.

(6) Disturbing soil and plants by tracked vehicles traversing general forest areas away from established roads and trails.

(7) Destroying or removing signs that delineate restricted areas.

(8) Damaging pines, including cavity trees, by climbing trees to implace wire, tree top antennas, etc.

d. References (b) and (c) promulgate Marine Corps and Marine Corps Base policy for the conservation of endangered and threatened species in compliance with reference (a).

3. Definitions of Terms

a. Cavity Tree - A tree containing one or more red-cockaded woodpecker cavities.

b. Colony - The area prescribed by an aggregation of start holes and roost, nest and old cavities used by a clan.

c. Habitat - The place or site where plants or animals naturally or normally live and grow.

d. Contiguous Habitat - Continuous acres of pine forest including the colony, support stands, breeding territory, seasonal foraging area or other definable units (approximately 100 contiguous acres).

e. Marked Boundary - An estimated line marked along the periphery of contiguous red-cockaded woodpecker habitats. Examples of marking are shown on enclosures (2) and (3).

f. Buffer Zone - Area extending 200 feet outward from each nesting/cavity tree. Examples of marking are shown on enclosures (4) and (5).

4. Action. Commanders and officers-in-charge will ensure strict compliance with the following regulations:

a. Within the contiguous habitats of the red-cockaded woodpecker (marked by one white stripe painted on trees and signs stating "Restricted Area Endangered Species" (Enclosures (2) and (3)):

PROHIBITED ACTIVITIES

(1) Movement/introduction of tracked vehicles except on existing/designated trails. The establishment of any new trails must be approved by Base Natural Resources Department (NRD), prior to use.

(2) Artillery firing (gun positions) within 200 meters of a cavity tree.

(3) Cutting of woody vegetation except in areas designated by NRD.

AUTHORIZED ACTIVITIES

(1) Movement/introduction of wheeled vehicles.

(2) Establishment of command posts at sites approved/designated by NRD.

(3) Establishment of bivouacs.

(4) Judicious digging/excavation which does not cause root damage.

(5) Use of tracked vehicles on existing/designated trails.

(6) LVTC-7 entry into command post sites which have been predesignated.

(7) Designation of new trails after approval of NRD.

b. Within the red-cockaded woodpecker colony buffer zone (marked by two white stripes painted on trees and signs depicting a woodpecker and stating "Endangered Species Buffer Zone" enclosures (4) and (5)):

PROHIBITED ACTIVITIES

(1) Tracked and wheeled vehicle movement/operations except on established/designated trails.

(2) Establishment of bivouacs.

(3) Establishment of CP's.

(4) Digging/excavation.

(5) Cutting woody vegetation.

(6) Artillery firing (gun positions).

AUTHORIZED ACTIVITIES

(1) Unrestricted movement by foot troops.

(2) Tracked and wheeled vehicle operations on established/designated trails.

(3) Blank small arms firing.

c. Weekly inspections will be conducted under the cognizance of the Base Training Facilities Officer and supported by a NRD representative to determine if violations have occurred and, if so, to report them to the Assistant Chief of Staff, Training.

d. Commanders will conduct a continuous education/information program to ensure all personnel are aware of the contents of this Order.

5. Violations. Violations of this Order that are observed or noted should be reported to the Assistant Chief of Staff, Training, Marine Corps Base. In accordance with section 11 of reference (a), such violations are prosecutable under Article 92, Uniform Code of Military Justice, and reports of the violations will be forwarded to the appropriate commanding officer for disposition.

6. Notice. A copy of this Order shall be made available to commanding officers or officers-in-charge of units who use areas inhabited by the red-cockaded woodpecker. The contents of this Order shall also be made known to the military members using such areas.

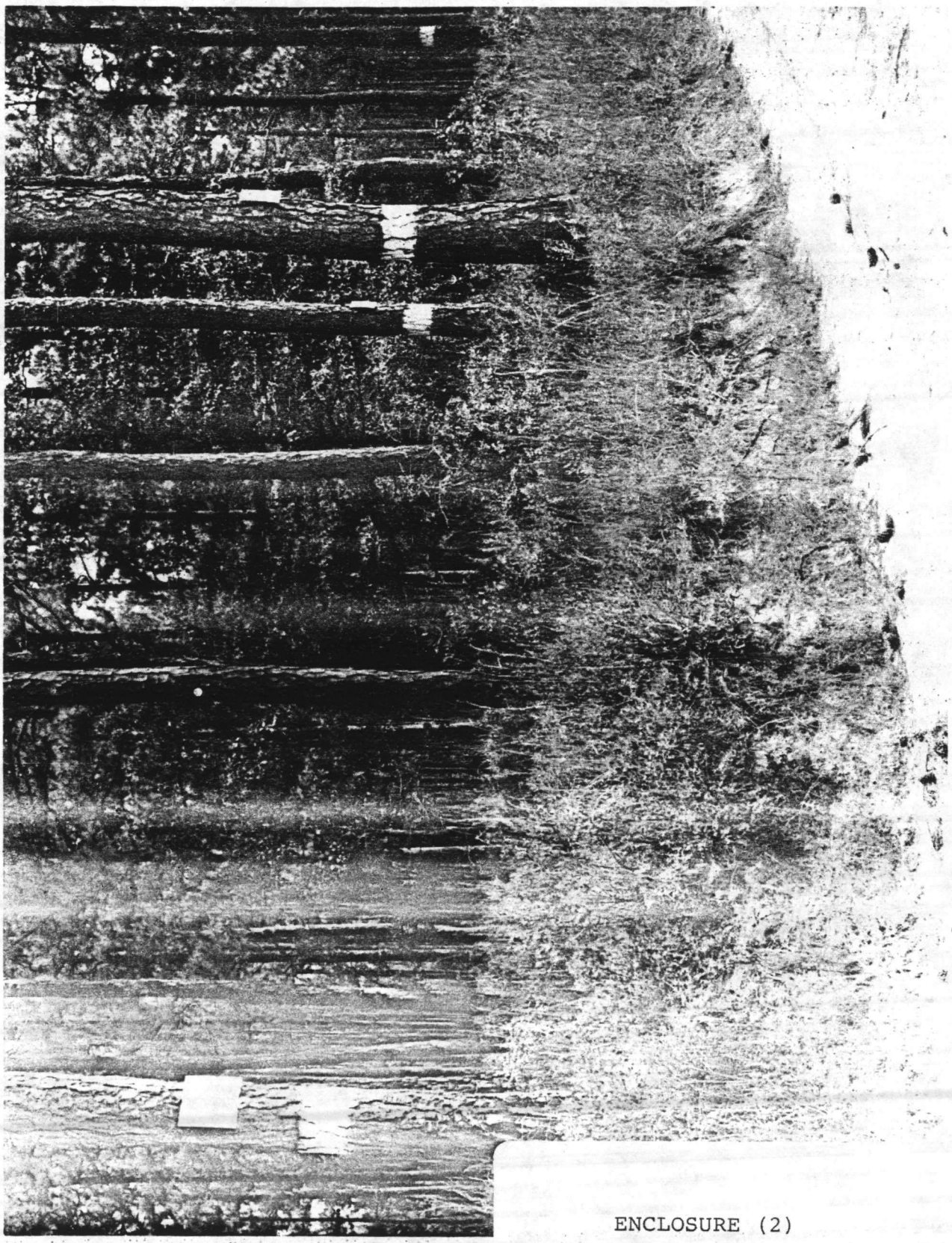
7. Applicability. Having received the concurrence of the Commanding Generals, 2d Marine Division, FMF; 2d Force Service Support Group (Rein), FMF, and the Commanding Officers of Naval Regional Medical Center, and Naval Regional Dental Center, this Order is applicable to those commands. Since the Commander,

Marine Corps Air Bases East likewise concurs, it is further applicable to the Marine Corps Air Station (H) New River, Jacksonville, North Carolina.

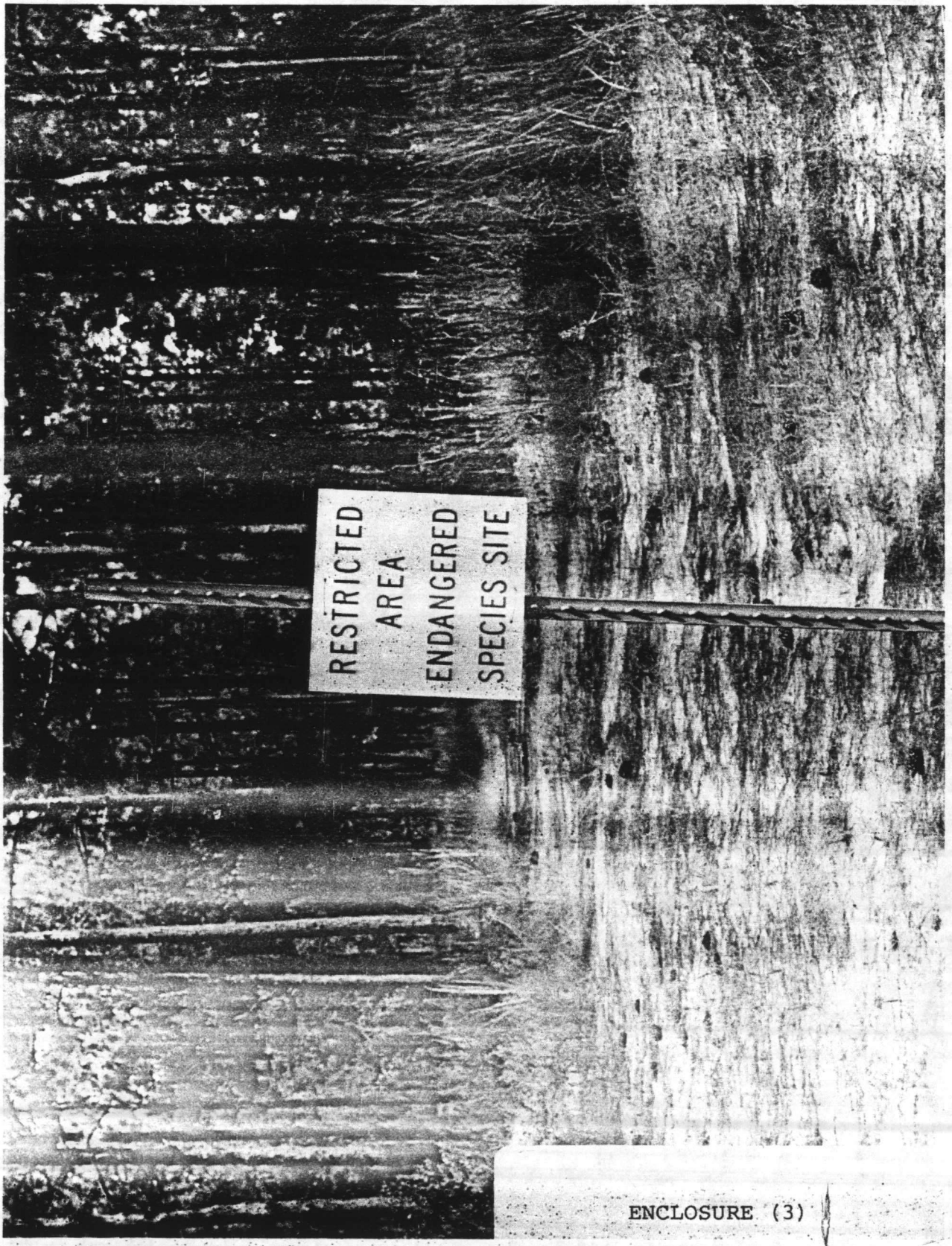
D B Barker
D. B. BARKER

DISTRIBUTION: A

BO 11015.6
7 JUN 1979



ENCLOSURE (2)



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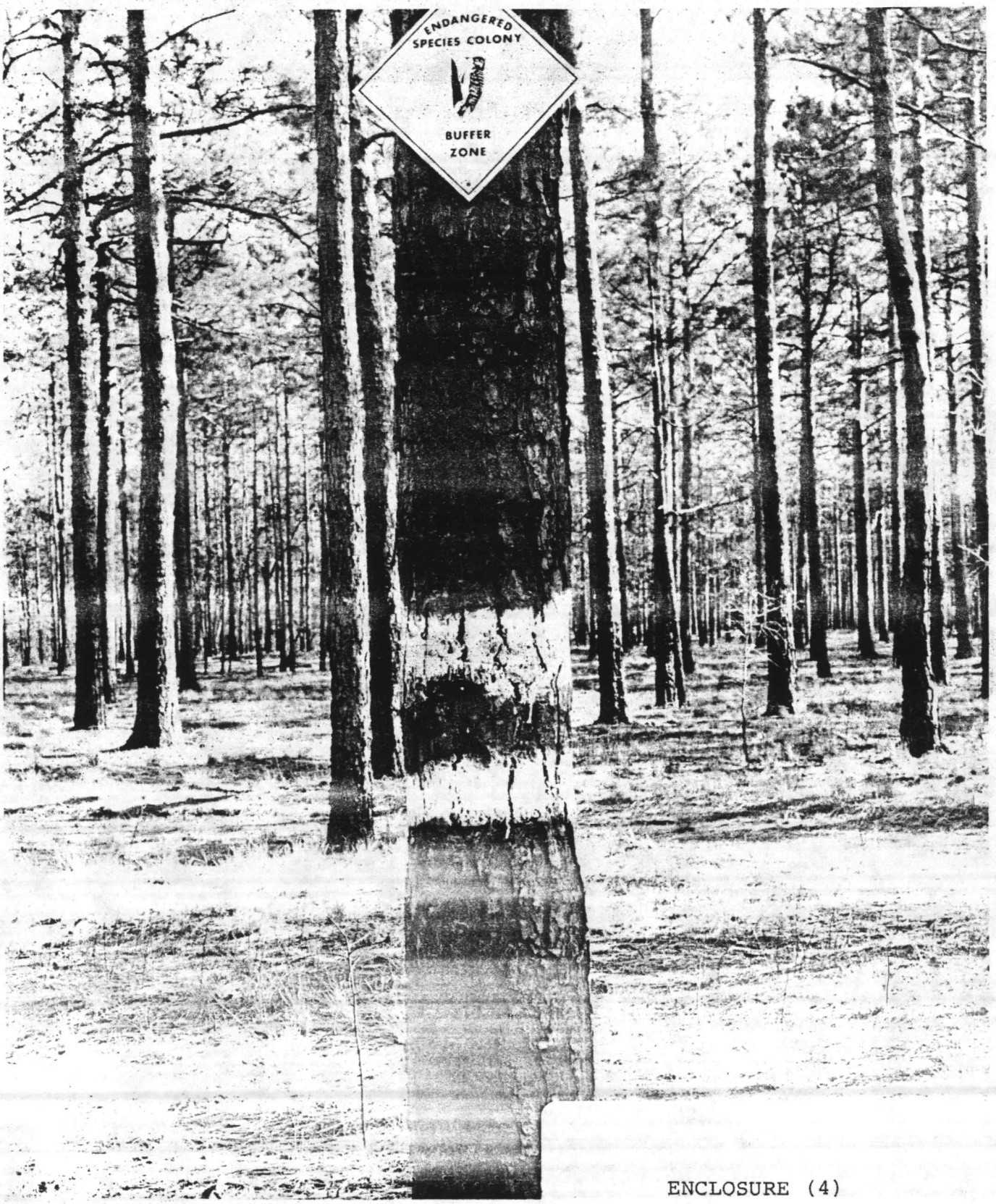
BO 11015.6
7 JUN 1979



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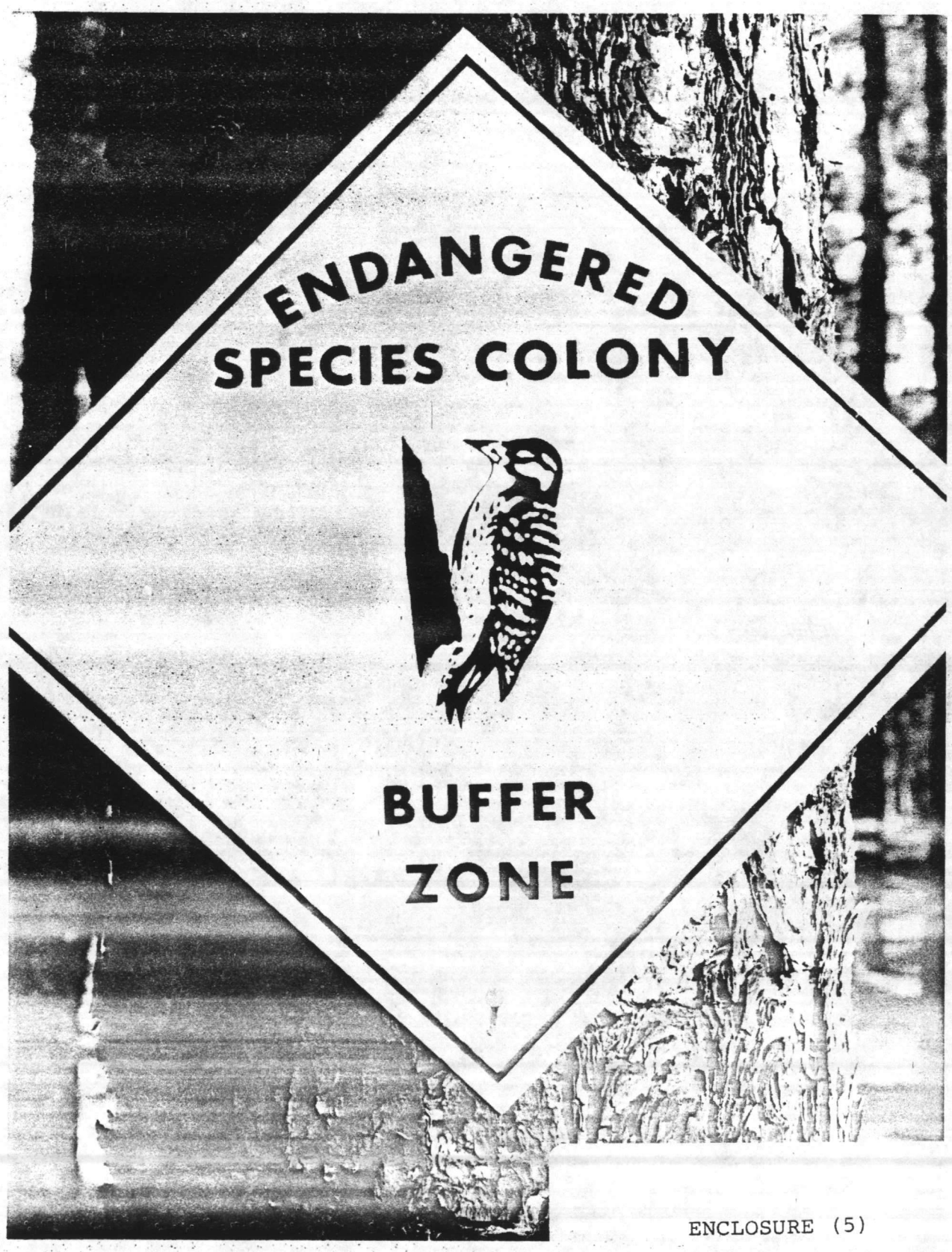
BO 11015.6
7 JUN 1979



ENCLOSURE (5)

11015
NREAD
4 Feb 1985

From: Base Wildlife Manager
To: MEMORANDUM FOR THE RECORD

Subj: SURFACE DANGER AREA AND SAFETY

1. Mr. Charles Peterson received a call from 1st Lieutenant Ben Redman, Explosive Ordnance Disposal Officer, on 28 January 1985 relative to clearing debris from around Red-Cockaded Woodpecker cavity trees and prescribed burning habitat in Surface Danger Areas (SDA). The marking of boundary lines around contiguous woodpecker habitat in the K-2 SDA was also discussed. Mr. Peterson informed 1st Lieutenant Redman that wildlife personnel would be available to clear debris/prescribed burn around cavity trees around the edge of the G-10 (SDA) but would not be available to enter the K-2 (SDA). Further, that NREAD instructions had been to provide the necessary materials to Range Maintenance for marking contiguous habitat in the K-2 (SDA).

2. Mr. Peterson discussed the above conversation with Mr. Julian Wooten, Director, NREAD. Mr. Wooten requested that the Base Safety Officer be contacted concerning entry to safety danger areas as discussed. Mr. Peterson discussed entry to both SDA with Mr. R. J. Andrews, Base Safety Officer who informed him that it would be inappropriate for him to restrict the subject entry when heavy equipment operators were entering the SDA every day. Mr. Andrews further stated that the subject entry is authorized provided personnel are accompanied by EOD personnel.

3. Arrangements were made with 1st Sergeant Lecher, EOD to accompany Mr. Willie Bostic, Mr. Sam Poole, Mr. Clinton Bryant and Sergeant Darrell Bowers to the woodpecker cavity trees to clear debris/prescribed burn on 29 January 1985. A live heat round was discovered by Wildlife personnel at the base of each of the first four cavity trees visited. Each round was shown to 1st Sergeant Lecher who actually stepped over one round without seeing the same. The 1st Sergeant used a pocket knife to remove soil from around one round to identify it while Wildlife personnel were located nearby. All the Wildlife personnel were very nervous and upset with the discovery of the live ordnance.

4. Mr. Bostic was instructed to not enter the K-2 (SDA) in the future due to the likely possibility of the live ordnance heat.

5. Mr. Bostic informed me that 1st Sergeant Lecher was planning to blow the live rounds in place during 30-31 January 1985. The above information was conveyed to Mr. Wooten and Mr. Andrews.

C. D. PETERSON

Enclosure (12)

VIOLATION TO REVISED RED-COCKADED WOODPECKER BIOLOGICAL OPINION REPORT NO. 8-86

This periodic inspection was conducted by Staff Sergeant McKenzie, Base Explosive Ordnance Disposal; Messrs Julian Wooten, Charles Peterson and Willie Bostic, Natural Resources and Environmental Affairs Division, on 3 September 1986.

1. K-2 Surface Danger Area, Grid 797353, Buffer Zone Habitat Area.

a. Destruction of three active cavity trees through the placement of explosive charges to detonate unexploded ordnance.

b. One of the trees was apparently blown down immediately and others have both died since the charges were detonated.

c. This colony site was inhabited by one clan of Red-Cockaded Woodpeckers consisting of at least three birds prior to destruction of the trees.

d. Natural Resources personnel have reason to believe that the explosive charges were detonated sometime on or about 30-31 January 1985.

UNITED STATES MARINE CORPS
Natural Resources and Environmental Affairs Division
Marine Corps Base
Camp Lejeune, North Carolina 28542

IN REPLY REFER TO:

11015
NREAD
9 Sep 86

From: Director, Natural Resources and Environmental Affairs Division, Marine Corps Base, Camp Lejeune
To: Assistant Chief of Staff, Training, Marine Corps Base, Camp Lejeune
Via: Assistant Chief of Staff, Facilities, Marine Corps Base, Camp Lejeune

Subj: ENDANGERED RED-COCKADED WOODPECKER

Encl: (1) Red-Cockaded Woodpecker Habitat Inspection Rept 8-86 dtd 3 Sep 86
(2) BWildMgr ltr 11015 NREAD of 4 Feb 85

1. A periodic inspection was recently conducted of endangered Red-Cockaded Woodpecker habitat in the K-2 Surface Danger Area by Base Training and Natural Resources personnel. A serious violation involving direct destruction of three active cavity trees was observed by the inspectors and is documented in enclosure (1). The violation is believed to have occurred in early 1985 as supported by enclosure (2).

2. Two of the dead cavity trees were discovered by Mr. John Hammond, N. C. State University Researcher; Mr. Julian Wooten, NREAD and MGySgt Barton, EOD; on 15 Aug 86 while attempting to locate the three Red-Cockaded Woodpeckers observed at the site in December 85. The remaining dead Red-Cockaded Woodpecker cavity tree was discovered on 3 Sep 86 by Messrs. Julian Wooten, Charles Peterson and Willie Bostic, NREAD, and SSgt McKenzie, EOD.

3. It is recommended that a JAG investigation be conducted and that the U. S. Fish and Wildlife Service be notified immediately relative to the violation.

Julian I. Wooten
JULIAN I. WOOTEN

Enclosure (14)

11015/2
NREAD
24 SEP 1986

From: Commanding General, Marine Corps Base, Camp Lejeune
To: Commandant of the Marine Corps (Code LFL)

Subj: ENDANGERED SPECIES HABITAT

1. The purpose of this letter is to report findings of a recent periodic inspection of the endangered Red-Cockaded Woodpecker habitat in the K-2 Surface Danger Area, Marine Corps Base, Camp Lejeune. It appears that three active cavity trees have been destroyed through the placement of explosive charges used to detonate unexploded ordnance in the impact area. Two of the dead cavity trees were discovered on 15 August 1986 and one was discovered on 3 September 1986. Woodpeckers previously located in this colony site have not been sighted and are assumed to have abandoned the site altogether. An investigation has been initiated into the circumstances surrounding the destruction of the three cavity trees.

2. Marine Corps Base personnel first reported the incident to the Asheville Area Office, U.S. Fish and Wildlife Service (USFWS) on 10 September 1986 in accordance with applicable biological opinions dated February and June of 1979. During the reporting process, base personnel were referred to USFWS Law Enforcement Offices in Raleigh and Washington, North Carolina.

3. Mr. J. I. Wooten, Director, Natural Resources and Environmental Affairs Division, discussed this incident with Mr. Marlo Acock, Headquarters, U. S. Marine Corps, Natural Resources Office by telephone on 11 September 1986 relative to possible reporting requirements. Mr. Acock advised that although there were no formal reporting requirements, it would be appropriate to forward a report. For further information, you may contact Mr. J. I. Wooten, Director, Natural Resources and Environmental Affairs Division at AV 484-5003/2195 or commercial (919) 451-5003.

T. J. DALZELL
By direction

Copy to:
AC/S, Trng&Ops
SJA

Writer/Typist C.O. Peterson / S. Tricarosder
Date Typed Sep 22, 1986
Word Processor Number 11015/2

Enclosure (15)

Enclosure (16)

Enclosure (16)

Enclosure (16)

Enclosure (16)

Enclosure (16)

Enclosure (16)

STATEMENT OF WILLIE BOSTIC
K-2 SURFACE DANGER AREA
RED-COCKADED WOODPECKER VIOLATION

I, Willie Bostic, am employed as a Biological Technician (Wildlife) by the Natural Resources and Environmental Affairs Division, (NREAD), Assistant Chief of Staff, Marine Corps Base, Camp Lejeune.

On January 30, 1985, Sam Poole, NREAD, Sgt Bowers, NREAD, and myself met with MSGT Lecher, EOD at the K-305 Range to prescribe burn - clear debris from Red-Cockaded Woodpecker cavity trees in the K-2 Surface Danger Area. Five (5) trees located at the colony site were checked and live 80mm rounds were found at the base of the first four (4) cavity trees. MSGT Lecher informed me that EOD would comb the area and detonate the ordnance. In my opinion, MSGT Lecher was aware of why we went into the area, and the protection we were trying to give to the Red-Cockaded Woodpecker and its habitat.

I returned to the K-2 Surface Danger Area with Mr. Charles Peterson, NREAD, Mr. Julian Wooten, NREAD, and SSGT McKenzie, EOD, on Aug 15, 1986. It appeared that three (3) active trees were destroyed by explosive charges used to detonate unexploded ordnance in the K-2 Impact Area. This particular area's boundry was marked approximately two weeks before we found the ordnance on January 30, 1985.

WILLIE G. BOSTIC

Willie G. Bostic

Enclosure (17)

STATEMENT OF WILLIE BOSTIC
K-2 SURFACE DANGER AREA
RED-COCKADED WOODPECKER VIOLATION

I, Willie Bostic, am employed as a Biological Technician (Wildlife) by the Natural Resources and Environmental Affairs Division, (NREAD), Assistant Chief of Staff, Marine Corps Base, Camp Lejeune.

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I returned to the K-2 Surface Danger Area with Mr. Charles Peterson, NREAD, Mr. Julian Wooten, NREAD, and SSGT McKenzie, EOD, on Aug 15, 1986. It appeared that three (3) active trees were destroyed by explosive charges used to detonate unexploded ordnance in the K-2 Impact Area. This particular area's boundry was marked approximately two weeks before we found the ordnance on January 30, 1985.

WILLIE G. BOSTIC

Willie G. Bostic

22 October 1986

MEMORANDUM FOR THE RECORD

Subj: Red Cockaded Woodpecker (RCW) Investigation

1. This is a summary of a telephone conversation between myself, Major J. E. Hull, 095 40 9708 USMC, MCB Camp Lejeune, and Captain Redmon, 3d EOD Plt, 3d Supply BN, 3d Force Service Support Group (3d FSSG), Okinawa, Japan (autovon 622-4611) on 22 October 1986 between approximately 1920 and 2000 local time. This written summary is based on memory and notes taken during the conversation. To the best of my belief this written summary, although not a word for word translation, accurately covers the major issues discussed.

2. I informed Captain Redmon that I was appointed as an investigating officer, and that I was charged with investigating a reported violation of the Endangered Species Act, specifically the destruction of several Red Cockaded Woodpecker (RCW) cavity trees in the K-2 Surface Danger Area (SDA). I asked Captain Redmon if he recalled discussing the RCW cavity trees in question with Natural Resources Environmental Affairs Division (NREAD) personnel. Captain Redmon informed me that he had discovered the trees himself and that he had contracted NREAD personnel to let them know of the trees. I asked Captain Redmon what guidance he provided to his NCOIC in the clearing operation. Captain Redmon indicated that he told him to clear the area and that safety to personnel took precedence over other considerations. Captain Redmon also stated that the RCW issue, relative to the K-2 impact clearing operation, was discussed on several occasions at Environmental Enhancement/Impact Review Board meetings. The guidance/general tone of these meetings according to Captain Redmon was that the environment was always a concern but that safety to personnel was always the primary consideration.

3. I asked Captain Redmon how the assignment of work to EOD personnel was done. Captain Redmon stated that the work was assigned on a day by day basis primarily through verbal orders given by his NCOIC. I asked Captain Redmon if special instructions were given to the personnel who were going to detonate the ordnance found at the base of the cavity trees. Captain Redmon indicated that he did not know but that EOD personnel were routinely allowed to make on-site decisions regarding the proper method of removing/detonating ordnance in the field. He also stated that it was normal procedure for EOD personnel to detonate ordnance found in an impact area where it lay. He went on to say that it would be impossible to

predict at this point whether EOD personnel in the field had other alternatives available to them which would have been more prudent to use (i.e., resulting in no damage to the RCW cavity trees). He stated that the location of the rounds, their placement, their type, the type of fuse, the time of detonation, as well as many other factors, must be taken into consideration when determining how to best clear/detonate found ordnance. Captain Redmon further stated that it would be impossible to predict the extent of damage done to the trees if ordnance was detonated nearby.

4. Captain Redmon stated that he did not recall any RCW cavity trees being destroyed, and that he and others walked the K-2 impact area after the clearing operation and did not notice any destroyed cavity trees. He questioned whether the trees could have been destroyed from artillery fire after the range reopened, or if their destruction could be definitely tied to the K-2 impact area clearing operation. Captain Redmon also went on to state that he and his personnel worked between 60-70 hours each week for the duration of the operation, which lasted roughly from September 1984 to May 1985.

J. E. Hull
Major, USMC

23 OCT 1986

Memorandum for the Record

I, Captain Ralph Way 265 88 7014/2305, aware of my rights under Article 31 of the UCMJ, make the following statement of my own free will.

Presently, I am assigned as the Marine Corps Base Explosive Ordnance Disposal (EOD) Officer. I am school trained, and have served in EOD billets for the past 15 years.

In late September, 1986, I was made aware of possible violations of the federal law protecting endangered species, by MGySgt M.S. Barton III 252 64 5864/2336, NCOIC of the MCB EOD Team. The alleged violations took place in a marked endangered species site in the K-2 impact area, sometime in January 1985.

During the time in question, I was the Commanding Officer of Ammunition Company, 2d Sup Bn., 2d FSSG (REIN). Although not personally involved, EOD personnel assigned to my company did participate in range operations with the MCB EOD Team, and I was briefed on a regular basis of their progress. I was aware of the fact that there were duds in the endangered species site.

During an EOD support mission in Sept 1986, MGySgt M.S. Barton III showed me a site where an explosive charge had been detonated next to a tree that had housed some endangered birds. It was evident to me that the charge had cut some of the tree's roots and possibly contributed to the tree dying.

On 17 Oct 1986, I met with Major Hull, the investigating officer. During this interview I was questioned in regards to EOD policies and procedures dealing with duds. I told him that EOD procedures are provided in EOD series publications, but due to unusual circumstances a technician must be allowed to make an on site decision as to what course of action to take. That action will always be one that minimizes the hazards of personal danger to the technician, except in specific cases that constitute a grave and immediate threat. The criterion for assigning a category to an EOD response call is given in Marine Corps Order 3571.2e, Pg 3. para 7e. Based on that order, disposal of dud ordnance in an impact area will normally be assigned a category "C". Since I have no personal knowledge of instructions or guidance given but the former EOD Officer or Base Natural Resources personnel; the following is only my opinion of what should have taken place:

Since the area in question contained wildlife that was endangered, EOD and Natural resources personnel should have discussed the possible results of a disposal by detonation procedure in the area of the trees. Steps probably could have been taken to reduce damage to the trees or a remote means of removing the ordnance could have been employed. Presently, any procedures or operations performed by EOD that may result in damage to the environment or wildlife is discussed with Base Natural Resources personnel first to ensure that the safest and most efficient course of action for all concerned, is pursued.

On 22 Oct 1986, I escorted the investigating officer, Major Hull and Natural Resources Personnel into the surface hazard area, adjacent to Range K-303, the site of the alleged environmental violations. I viewed (3) trees that had sustained damage from explosions. All three trees shows evidence of

detonations occurring either next to or within several feet of the tree's base. While in my opinion no living thing can stand within the initial blast of an explosion, and come out undamaged, I can not determine to what extent damage would occur. This conclusion, this based on experience, because of the uncertain results of explosions occurring under conditions that are not monitored or controlled to assess damage.

In my opinion, the detonations did cause damage to the trees in question, but whether or not these explosions caused the trees to die can not be determined with the available evidence.

Ralph Way

Ralph Way
Captain, U. S. Marine Corps

8000
EOD
24 Oct 86

MEMORANDUM FOR THE RECORD

From: MSgt D. L. Lecher, Explosive Ordnance Demolition Platoon, 2d Force Service Support Group, Camp Lejeune
To: Major J. E. Hull, Marine Corps Base, Camp Lejeune

Subj: K-2 IMPACT AREA CLEARANCE

Encl: (1) EOD ltr 8027 dtd 18 Jul 84

1. The scope of work that was conducted in the K-2 was to clear 2000 plus acres of all dud ordnance and trees that had overgrown and restricted the ability to train.

2. The clearance operation started about 4 September 1984 with the guidance to clear all found dud ordnance located within the K-2 impact area so that bulldozers could start their clearing of trees. The following units provided the required bulldozers: Base Heavy Equipment Section, 8th Engineer Battalion, Marine Wing Engineer Squadron, Cherry Point, 2nd Combat Engineer Battalion. 2nd CEB also provided engineers qualified for demo to blow down trees that bulldozers could not push over.

3. As operations increased, additional EOD personnel were required to support the mission. The personnel came from the U. S. Army, U. S. Air Force and Marine Corps teams and platoons located all over the country. The complete operation had a large number of people, not only military but civilians in support, with from 8-15 bulldozers operating on an average day. During the operation, personnel worked 10-12 hours per day, 5-6 days per week, in all types of weather. Guidance provided to sweep teams that were clearing areas for bulldozers was to detonate the rounds and move to other assigned areas. During the operation there were from 25 to 40 personnel within the area daily. Part of the EOD personnel were used as ground safety for the bulldozers to recheck and clear any ordnance missed by earlier sweep teams. The K-2 clearing and improvement operations were completed about 15 April 1985 with over 2000 different explosive rounds destroyed. The enclosure shows the wide type of ordnance used in the area.

4. Having been asked in retrospect what the EOD sweep teams could have done differently. After some hard thought, the answers would remain as it was done. Heat rounds are not recommended to be moved and the area is an impact area, no special consideration would have to have been made.

5. Reference has been made to paragraph 7.e of MCO 3571.2E, as to placing categories on incidents which do not pertain to range sweeps, but to combat resources.

Enclosure (20)

Subj: K-2 IMPACT AREA CLEARANCE

6. On 22 October, Major Hull, Captain Way, Mr. Bostic, Mr. Henry surveyed the site where the heat rounds were disposed of. Inspection of the "shot holes" showed a variation indepth which is normal, for no two identical shots will leave the same residue or holes the same depth.

D. L. LECHER
MSgt, U. S. Marine Corps

UNITED STATES MARINE CORPS
Range Control
Marine Corps Base
Camp Lejeune, North Carolina 28542

IN REPLY REFER TO:
EOD
8027
18 July 1984

MEMORANDUM FOR THE RECORD

From: Explosive Ordnance Disposal Officer
To: Assistant Chief of Staff, Training
Via: Range Control Officer

Subj: Historical Summary of Ordnance Used in K-2 Impact Area

1. A review of all available historical data, both written and in corporate memory, on dud producing ordnance used in the K-2 Impact Area and associated ranges has been conducted. The results are as follows:

a. K-2. No known written records are available. EOD surveys have found evidence of:

1) 100 lb. to 500 lb. old style general purpose high explosive bombs dating from the 1950s.
2) 2.75" rockets.
3) 20mm HEI.
4) 250 lb. water-sand filled practice bombs.
5) 3.5" rockets.
6) 60mm mortars.
7) 81mm mortars.
8) 4.2" mortars.
9) 57mm HE.
10) 75mm HE.
11) 105mm projectiles.
12) 155mm projectiles.
13) 8" projectiles.
14) Dragon missile.

b. K-211.

1) 40mm HE
2) 40mm practice.
3) 40mm illumination.
4) 40mm CS.

c. K-301.

1) 66mm LAAW.
2) 66mm flame.
3) 3.5" HEAT.
4) 3.5" practice.
5) 3.5" WP.
6) 40mm HE.
7) 40mm practice.
8) 40mm illumination.
9) 81mm illumination.
10) 35mm Sub-Cal LAAW.

Enclosure (1)

d. K-303.
   1) 60mm mortars.
   2) 81mm montars.
   3) 3.5" HEAT.
   4) 3.5" WP.
   5) 3.5" practice.
   6) 40mm HE.
   7) 40mm practice.
   8) 40mm illumination.
   9) 40mm CS.
   10) Dragon missile.

e. K-305.
   1) 60mm mortars.
   2) 81mm mortars.
   3) 3.5" HEAT.
   4) 3.5" practice.
   5) 3.5" WP.
   6) 40mm HE.
   7) 40mm practice.
   8) 40mm illumination.
   9) 40mm CS.
   10) 66mm LAAW.
   11) 66mm flame.
   12) 35mm Sub-Cal LAAW.
   13) 57mm projectiles.
   14) 75mm projectiles.
   15) Dragon missiles.
   16) 4.2" mortars.

f. K-323.
   1) 40mm HE.
   2) 40mm practice.
   3) 40mm illumination.
   4) 40mm CS.
   5) 3.5" HEAT.
   6) 3.5" practice.
   7) 3.5" WP.
   8) 40mm smoke.

g. K-325.
   1) 40mm HE.
   2) 40mm practice.
   3) 40mm illumination.
   4) 40mm CS.
   5) 40mm smoke.
   6) 3.5" HEAT.
   7) 3.5" practice.
   8) 3.5" WP.
   9) 35mm Sub-Cal LAAW.
   10) 83mm SMAW.
   11) 83mm SMAW practice.
   12) 66mm LAAW.
   13) 66mm flame.
   14) 81mm mortars.
   15) 2.75" practice rockets.

2. EOD sweeps have not been conducted in the K-2 Impact Area since the early 1960's because there has not been a requirement to maintain the impact area or replace targets. The K-2 Impact Area was used for aerial bombardment and indirect artillery firing in the 1950's. No known records exist indicating the type of ordnance used during the 1950's in the K-2 Impact Area. Regular EOD sweeps are conducted of the K-200, 300 and 400 series ranges and records have been maintained since 1975.

H. B. Redmond Jr

H. B. REDMOND JR.

UNITED STATES MARINE CORPS
Natural Resources and Environmental Affairs Division
Marine Corps Base
Camp Lejeune, North Carolina 28542

IN REPLY REFER TO:
11015
NREAD
20 Oct 86

From: Supervisory Biological Wildlife Technician
To: Major James Hull, Investigation Officer

Subj: ENDANGERED RED-COCKADED WOODPECKER VIOLATION

Encl: (1) 11015/NREAD/ltr of 9 Sep 86
(2) Excerpts Wildlife Manager Log Book
(3) 12550/CPD ltr of 4 Mar 85
(4) USFWS ltr of 1 Feb 79
(5) USFWS ltr of 10 Jun 79

1. I am employed as Supervisory Biological Wildlife Technician by the Natural Resources and Environmental Affairs Division, Assistant Chief of Staff, Facilities, Marine Corps Base, Camp Lejeune. The purpose of my position is to direct with minimum supervision, operational management type programs covering the full range of fish and wildlife conservation implementing National, DOD and Marine Corps policy and directives for Marine Corps Base, Camp Lejeune, North Carolina. Services are of a technical nature and involve substantial planning and budgeting which is goal oriented to overall above mentioned policy. Goal oriented technical services include biological monitoring, review of training impact assesstments in terms of mission support and mangement of game, nongame, threatened and endangered species. For the last decade, much of my work has involved the management of nationally listed threatened and endangered species, in particular the Red-Cockaded Woodpecker.

2. Natural Resources and Training Facilities personnel have been involved in conducting weekly inspections of Red-Cockaded Woodpecker habitat in the Tank Mechanized Training Area. Periodic inspections have been conducted infrequently in Surface Danger Areas during maintenance work around cavity trees prior to prescribed burning operations with Explosive Ordnance Disposal Unit Support. All personnel involved in the inspections have had general knowledge or were instructed in protective measures for Red-Cockaded Woodpecker habitat. The facts involving the Endangered Red-Cockaded Woodpecker Violation contained in enclosure (1) are supported relative to time, safety procedures and the actual work operation by enclosures (2) and (3). Work operations were initiated to protect Red-Cockaded Woodpecker cavity trees within the K-2 Surface Danger Area in accordance with the management guidelines of the biological opinions rendered by the U. S. Fish and Wildlife Service as contained in enclosures (4) and (5). All Natural Resources personnel and 1st Sgt Lecher were aware that the purpose of entering the K-2 Surface Danger Area was to protect all the cavity trees by clearing woody debris from and around the base of each individual tree prior to prescribe burning the area. When Mr. Bostic informed me that 1st Sgt Lecher was planning to blow the live rounds in place during 30 - 31 January 1985, I assumed that his task as action sponsor would be satisfactorily accomplished

Subj: ENDANGERED RED-COCKADED WOODPECKER VIOLATION

due to his position and experience with explosives. Never in the slighest way did I anticipate that detonating the explosives would in any way damage the trees, particularily since the EOD person involved was aware of the Base effort to protect Red-Cockaded Woodpecker cavity trees. The first and only time that I have ever visitied the cavity trees in the K-2 Surface Danger Area, was on 15 August 1986.

3. Base regulations for protecting cavity trees, buffer zones and contiguous habitat of the Red-Cockaded Woodpecker were in effect in 1985. The regulations have been updated since that time, however, the regulations have always provided for the protection of cavity trees from impacts involving military training and other land use operations. Anytime I am aware of a similar situation about to develop, appropriate steps will be taken to provide supporting information and recommendations to any personnel involved for the purpose of protecting cavity trees.

C. D. Peterson

C. D. PETERSON

11015
NREAD
9 Sep 86

From: Director, Natural Resources and Environmental Affairs Division, Marine Corps Base, Camp Lejeune
To: Assistant Chief of Staff, Training, Marine Corps Base, Camp Lejeune
Via: Assistant Chief of Staff, Facilities, Marine Corps Base, Camp Lejeune

Subj: ENDANGERED RED-COCKADED WOODPECKER

Encl: (1) Red-Cockaded Woodpecker Habitat Inspection Rept 8-86 dtd 3 Sep 86
(2) BWildMgr ltr 11015 NREAD of 4 Feb 85

1. A periodic inspection was recently conducted of endangered Red-Cockaded Woodpecker habitat in the K-2 Surface Danger Area by Base Training and Natural Resources personnel. A serious violation involving direct destruction of three active cavity trees was observed by the inspectors and is documented in enclosure (1). The violation is believed to have occurred in early 1985 as supported by enclosure (2).

2. Two of the dead cavity trees were discovered by Mr. John Hammond, N. C. State University Researcher; Mr. Julian Wooten, NREAD and MGySgt Barton, EOD; on 15 Aug 86 while attempting to locate the three Red-Cockaded Woodpeckers observed at the site in December 85. The remaining dead Red-Cockaded Woodpecker cavity tree was discovered on 3 Sep 86 by Messrs. Julian Wooten, Charles Peterson and Willie Bostic, NREAD, and SSgt McKenzie, EOD.

3. It is recommended that a JAG investigation be conducted and that the U. S. Fish and Wildlife Service be notified immediately relative to the violation.

JULIAN I. WOOTEN

Enclosure (1)

VIOLATION TO REVISED RED-COCKADED WOODPECKER BIOLOGICAL OPINION REPORT NO. 8-86

This periodic inspection was conducted by Staff Sergeant McKenzie, Base Explosive Ordnance Disposal; Messrs Julian Wooten, Charles Peterson and Willie Bostic, Natural Resources and Environmental Affairs Division, on 3 September 1986.

1. K-2 Surface Danger Area, Grid 797353, Buffer Zone Habitat Area.

a. Destruction of three active cavity trees through the placement of explosive charges to detonate unexploded ordnance.

b. One of the trees was apparently blown down immediately and others have both died since the charges were detonated.

c. This colony site was inhabited by one clan of Red-Cockaded Woodpeckers consisting of at least three birds prior to destruction of the trees.

d. Natural Resources personnel have reason to believe that the explosive charges were detonated sometime on or about 30-31 January 1985.

11015
NREAD
4 Feb 1985

From: Base Wildlife Manager
To: MEMORANDUM FOR THE RECORD

Subj: SURFACE DANGER AREA AND SAFETY

1. Mr. Charles Peterson received a call from 1st Lieutenant Ben Redman, Explosive Ordnance Disposal Officer, on 28 January 1985 relative to clearing debris from around Red-Cockaded Woodpecker cavity trees and prescribed burning habitat in Surface Danger Areas (SDA). The marking of boundary lines around contiguous woodpecker habitat in the K-2 SDA was also discussed. Mr. Peterson informed 1st Lieutenant Redman that wildlife personnel would be available to clear debris/prescribed burn around cavity trees around the edge of the Q-10 (SDA) but would not be available to enter the K-2 (SDA). Further, that NREAD instructions had been to provide the necessary materials to Range Maintenance for marking contiguous habitat in the K-2 (SDA).

2. Mr. Peterson discussed the above conversation with Mr. Julian Wooten, Director, NREAD. Mr. Wooten requested that the Base Safety Officer be contacted concerning entry to safety danger areas as discussed. Mr. Peterson discussed entry to both SDA with Mr. R. J. Andrews, Base Safety Officer who informed him that it would be inappropriate for him to restrict the subject entry when heavy equipment operators were entering the SDA every day. Mr. Andrews further stated that the subject entry is authorized provided personnel are accompanied by EOD personnel.

3. Arrangements were made with 1st Sergeant Lecher, EOD to accompany Mr. Willie Bostic, Mr. Sam Poole, Mr. Clinton Bryant and Sergeant Darrell Bowers to the woodpecker cavity trees to clear debris/prescribed burn on 29 January 1985. A live heat round was discovered by Wildlife personnel at the base of each of the first four cavity trees visited. Each round was shown to 1st Sergeant Lecher who actually stepped over one round without seeing the same. The 1st Sergeant used a pocket knife to remove soil from around one round to identify it while Wildlife personnel were located nearby. All the Wildlife personnel were very nervous and upset with the discovery of the live ordnance.

4. Mr. Bostic was instructed to not enter the K-2 (SDA) in the future due to the likely possibility of the live ordnance hazard.

5. Mr. Bostic informed me that 1st Sergeant Lecher was planning to blow the live rounds in place during 30-31 January 1985. The above information was conveyed to Mr, Wooten and Mr. Andrews.

C. D. PETERSON

ENCLOSURE (3)

EXCERPTS FROM LOG BOOK MAINTAINED BY CHARLES D. PETERSON, WILDLIFE MANAGER, GS-11, MARINE CORPS BASE, CAMP LEJEUNE, NC

28 January 1985 (Monday)

Recovered lower portion of Julian Oseney at Jarrett's Point with plastic. Boats conducted periodic inspection of RCW habitat in Verna Area. Prepared update BO 11015.3B (ES). Prepared routine correspondence. Also, prepared memo for staffing to AC/S Lilley on rubble deposited a Town Point historical marker. Call from Lt Redmon relative to marking RCW habitat in K-2 SD Area/ Burning RCW there and in G-10 Surface Danger Area. Informed him that agreement was for us to furnish paint, brushes, signs. That Training was supposed to work. That we would burn around RCW cavity trees when occupied by EOD personnel around G-10. Redmon asked about K-2 SDA. Told him that I would inform later. Talked with supervisor and Base Safety officer Andrews this date. Andrews authorized provided EOD reps were present when entering K-2 SDA.

Enclosure (2)

Reporter. 5655.1607
JPAO

29 January 1985 (Tuesday) telephone 637-3000

Bostic took paint, sign, brushes and bucket to Range Maintenance - 1st Sgt Moore for marking habitat in K-2 SDA. Bostic assisted Training in conducting RCW weekly inspections. Coordinated burning around woodpecker habitat in K-2 SDA with 1st Sgt. Lecher, EOD to be conducted tomorrow morning 0930. Bostic, Poole, Bowers, laborers begin planting autumn olive this date. Called Lejeune Segundo schools reference to response on letter from Mike Jackson who is supposed to get word to call me back. Hope Middleton, Reporter for JPAO came by for interview. Needed help in article on Blue herons which was provided. Suggested she do article on live-trapping wild turkey.

30 January 1985 (Wednesday)

Bostic, Poole and Bowers met 1st Sgt Lecher, EOD at K305 Range to prescribe burn-clear debris from RCW cavity trees in K-2 Impact Danger Area. Five trees located at cavity site were checked. Live 80mm rounds found at base of first four cavity trees - fifth tree was clear. All rounds found by wildlife personnel who showed five rounds to 1st Sgt Lecher. Lecher dug one round out with his pocket knife while wildlife personnel were nearby, crew did no burning. I informed Bostic and Crew to never enter area in future even that Base Safety had authorized on previous day when EOD representative was present. Notified supervisor and NREAD Safety officer.

UNITED STATES MARINE CORPS
Marine Corps Base
Camp Lejeune, North Carolina 28542-5001

IN REPLY REFER TO:
12550
CPD
4 Mar 85

From: Commanding General, Marine Corps Base, Camp Lejeune
To: Director, Natural Resources and Environmental Affairs Division, Marine Corps Base, Camp Lejeune

Subj: PAY DIFFERENTIALS IRREGULAR INTERMITTENT HAZARDOUS DUTY

Ref: (a) Director, NREAD ltr 12000 dtd 28 Feb 85
(b) FPM Supplement 990-2, Book 550. S9-5

1. The work situation described in reference (a) has been reviewed by the Classification Staff. As a result of this review, it is concluded that the work situation discussed warrants payment for hazardous duty for Explosives and Incendiary Materials as described in reference (b). General Schedule employees are the only category of employees authorized payment under this approval.

2. The category "Explosives and Incendiary Materials" is payable for all hours in a pay status at the rate of 25% of base pay. An employee is entitled to payment of the hazardous duty pay for all hours of a shift for exposure to the work situation discussed at any time during an assigned shift.

HOSEA HORNE, JR.
By direction

Copy to:
Civilian Payroll

Enclosure (3)

12000
NREAD
28 Feb 1985

From: Director, Natural Resources and Environmental Affairs Division, Marine Corps Base, Camp Lejeune
To: Civilian Personnel Officer (Attn: Classification Division) Marine Corps Base, Camp Lejeune

Subj: ENVIRONMENTAL HAZARDOUS DIFFERENTIAL

Encl: (1) Base Wildlife Manager Memo 11015 NREAD of 4 Feb 1985

1. Fish and Wildlife personnel, Natural Resources and Environmental Affairs Division engaged in the management of endangered Red-Cockaded Woodpecker habitat are infrequently required to enter surface danger areas (SDA). Entry to SDA is always coordinated with the Range Control Officer, and Wildlife personnel are accompanied on the ground by personnel from the Base Explosive Ordnance Unit. Management activities include marking the boundaries of Red-Cockaded Woodpecker habitat and clearing debris from around cavity trees prior to prescribed burning activities.

2. Maintenance work on the boundaries is required about every five years and clearing debris from around cavity trees is required on an annual basis. Approximately 90 percent of the woodpecker habitat in the G-10 SDA was previously marked in 1980. A project is planned in the near future for marking the remaining habitat and performing maintenance work on the areas previously marked. Arrangements have been made with the Range Control Officer and Base EOD to clear debris from around cavity trees on 4 March 1985 in the G-10 SDA.

3. There is a possibility that unexploded ordnance may be present in the G-10 SDA work area and it is hereby requested an opinion on environmental hazardous differential pay for general schedule employees working in the SDA be provided. The enclosure documents a recent situation in the K-2 SDA.

4. For additional information please contact Charles D. Peterson at 1690/2083.

J. I. WOOTEN

Copy to:
AC/S FAC

11015
NREAD
4 Feb 1985

From: Base Wildlife Manager
To: MEMORANDUM FOR THE RECORD

Subj: SURFACE DANGER AREA AND SAFETY

1. Mr. Charles Peterson received a call from 1st Lieutenant Ben Redman, Explosive Ordnance Disposal Officer, on 28 January 1985 relative to clearing debris from around Red-Cockaded Woodpecker cavity trees and prescribed burning habitat in Surface Danger Areas (SDA). The marking of boundary lines around contiguous woodpecker habitat in the K-2 SDA was also discussed. Mr. Peterson informed 1st Lieutenant Redman that wildlife personnel would be available to clear debris/prescribed burn around cavity trees around the edge of the G-10 (SDA) but would not be available to enter the K-2 (SDA). Further, that NREAD instructions had been to provide the necessary materials to Range Maintenance for marking contiguous habitat in the K-2 (SDA).

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4. Mr. Bostic was instructed to not enter the K-2 (SDA) in the future due to the likely possibility of the live ordnance hazard.

5. Mr. Bostic informed me that 1st Sergeant Lecher was planning to blow the live rounds in place during 30-31 January 1985. The above information was conveyed to Mr. Wooten and Mr. Andrews.

C. D. PETERSON

Appendix I

United States Department of the Interior
FISH AND WILDLIFE SERVICE
P. O. BOX 95067
ATLANTA, GEORGIA 30347

FEB 1 1979

Brigadier General D. B. Barker
U.S. Marine Corps
Marine Corps Base
Camp Lejeune, North Carolina 28542

Dear General Barker:

This letter presents the Biological Opinion of the Fish and Wildlife Service relative to the effects of mechanized infantry training in the Camp Lejeune Mechanized Infantry Training Area upon the endangered red-cockaded woodpecker (Picoides borealis). Your letter to Regional Director Black, dated September 13, 1978, also requested consultation on the base's management plans for the red-cockaded woodpecker and sea turtles. The Biological Opinions on these two base-wide management programs will be handled separately and will follow at a later date.

This Biological Opinion is based upon field inspections and associated meetings and discussions with base personnel on December 11 and 12, 1978, and January 11 and 12, 1979, review of Fish and Wildlife Service files on past informal consultation concerning the area, review of the Draft Red-Cockaded Woodpecker Recovery Plan and other pertinent literature, and informal communication with researchers currently working with the species.

After a careful review of the findings by Fish and Wildlife personnel in the Asheville Area Office, it is our Biological Opinion that existing activities within the Mechanized Infantry Training Area are likely to jeopardize the continued existence of the red-cockaded woodpecker. This opinion is based upon the following considerations:

Field inspections revealed a commendable program in locating, marking, and designating red-cockaded woodpecker colonies, buffer zones, and support stands within the Mechanized Infantry Training Area. However, the following adverse impacts were found within designated red-cockaded wood-pecker habitat: (1) cutting of pine trees for barricades, etc.; (2) mechanical damage to pines by vehicles; (3) mortality of pines, including cavity trees, from root damage by heavy tracked vehicles; (4) girdling of pines by attachment of communication wires, etc.; (5) soil disturbance from digging foxholes, garbage pits, trenches, etc.; (6) soil and plant disturbance by heavy tracked vehicles traversing general forest areas off of established roads and trails; (7) destroyed or removed signs delineating designated areas and; (8) fire damage from

Enclosure (4)

accidental fires. These impacts are thought to be a result of lack of knowledge and/or enforcement of current regulations and poor conservation attitudes regarding endangered species, especially red-cockaded woodpeckers.

The impacts observed have the effect of destruction of the habitat of the red-cockaded woodpecker, including existing nesting and roosting cavity trees, future replacement cavity trees, and foraging trees. Other effects are more subtle but equally important. The whole ecology of the area is being affected, and the habitat is gradually being changed to a type not beneficial to the red-cockaded woodpecker. Disturbance to the bird itself is also occurring and is detrimental to reproductive activities. In fact, some of the activities are considered harrassment, which is included under the definition of "take" in Section 3(14) and is prohibited by Section 9(a) (1) (b) of the Endangered Species Act of 1973 (Public Law 93-205).

There are two identified reasonable and prudent alternatives that would eliminate jeopardy to the species. One alternative is to select another site for a Mechanized Infantry Training Area that does not contain red-cockaded woodpeckers. The second alternative is to prepare guidelines for the use of the Mechanized Infantry Training Area, incorporate these guidelines as base regulations, and stringently enforce the regulations. Because of economics and the adverse impact on other resources from alternative one, alternative two was selected and agreed to as the best alternative in a meeting with base personnel on January 11, 1979. These guidelines and/or regulations must include the following:

(1) Prohibition within the marked boundaries of red-cockaded woodpecker colonies, buffer zones and support stands of (a) all vehicle use except on established designated roads and trails. (these should be designated in cooperation with the Base Natural Resources Division personnel); (b) cutting or destruction of woody vegetation; (c) excavation or digging of foxholes, trenches, garbage pits; laying underground communication lines; or other similar significant disturbance of the soil; (d) use of open burning including campfires; and (e) bivouacking or setting up command posts.

(2) Prohibition of all training, forestry activities, and similar activities creating a major disturbance within the colony sites and buffer zones, from March 1 through July 31. (This includes prohibition of firing from Gun Positions 3, 6, 10, and 21 during this time period.)

for RCW Timber

(3) Assignment of responsibility and accountability for ensuring that the use of the Mechanized Infantry Training Area is compatible with the maintenance of designated red-cockaded woodpecker habitat (colonies, buffer zones, and support stands) and that the guidelines are prepared, incorporated into base regulations, brought to the attention of all personnel, and enforced.

(4) Daily inspection of each training area containing marked red-cockaded woodpecker habitat (colonies, buffer zones and support stands) during and after each training assignment and periodially at other times to determine if violations have occurred and corrective actions taken to include disciplinary action and prosecution under the Endangered Species Act, where warranted.

(5) Initiation of an information/education program with full, documented support of the entire Camp Lejeune Staff to effect a change of attitude among Base personnel concerning endangered species in general and the red-cockaded woodpecker in particular.

(6) Inspection at periodic (semi-annual) intervals by Fish and Wildlife Service personnel and recommendations made as to the effectiveness of the guidelines and regulations and corrective actions needed.

Please provide the Asheville Area Office with a copy of the guidelines when finalized and a copy of the resulting Base Regulations when promulgated. We would also like to be promptly informed of actions taken regarding violations.

It must be recognized that failure of alternative two to rectify the existing situation leaves only alternative one as a solution to the problem.

We would like to express our appreciation to your entire staff for their hospitality and assistance provided in this consultation process. We hope that the end results are an improvement of an already commendable program and an amicable and cooperative relationship between our agencies.

Sincerely yours,

Kenneth E. Black

Regional Director

ADDRESS ONLY THE DIRECTOR,
FISH AND WILDLIFE SERVICE

United States Department of the Interior

AFA/SE

FISH AND WILDLIFE SERVICE
WASHINGTON, D.C. 20240

In Reply Refer To:
FWS/OES 375.4

JUN 1 - 1979

Honorable Mitzi M. Wertheim
Deputy Under Secretary of the Navy
Pentagon
Washington, D.C. 20350

DWB
6/25

Dear Ms. Werthiem:

This responds to your letter of March 30, 1979, requesting reinitiation of consultation on the impacts of existing use patterns of the Mechanized Infantry Training Area on Camp Lejeune Marine Corps Base on the Endangered red-cockaded woodpecker. A biological opinion on the use of this area was issued by our Regional Director in Atlanta, Georgia, on February 1, 1979. A copy of that opinion is a part of the administrative record for this consultation. This correspondence serves as an amendment to the February 1 opinion and, therefore, should be read in conjunction with that earlier opinion.

By letter of April 2, 1979, I agreed to reinitiate consultation at the Washington Office level and appointed a Service consultation team. Your letter of April 3, 1979, acknowledged our reinitiation of consultation and appointed Ms. Mary Margaret Goodwin as your team leader. On April 24, 25, and 26, 1979, meetings were conducted at Camp Lejeune by the consultation teams, including the Commanding Generals of the Camp Lejeune Marine Corps Base and the Second Marine Division and members of their respective staffs.

Field investigations conducted by the teams revealed that red-cockaded woodpecker habitat was being adversely impacted by the training activities previously described in paragraph 4 of the February 1, 1979, opinion, i.e.: (1) cutting of pine trees for barricades, etc.; (2) mechanical damage to pines by vehicles; (3) mortality of pines, including cavity trees, from root damage by heavy tracked vehicles; (4) girdling of pines by attachment of communication wires, etc.; (5) soil disturbance from digging foxholes, garbage pits, trenches, etc.; (6) soil and plant disturbance by heavy tracked vehicles traversing general forest areas off of established roads and trails; (7) destroyed or removed signs delineating designated areas and; (8) fire damage from

Enclosure (5)

AMERICAN REVOLUTION BICENTENNIAL 1776-1976

Sent copy to Carolina 6/27/79

accidental fires. It was found that continued use of the Mechanized Training Area at existing levels is likely to result in the complete destruction of the forest habitat.

During the course of the consultation, the team reviewed the literature on the red-cockaded woodpecker and discussed the bird's biology and the training activities on Camp Lejeune with red-cockaded woodpecker Recovery Team members and other authorities knowledgeable of this species. The administrative record for this consultation is maintained in the Office of Endangered Species, U.S. Fish and Wildlife Service, Suite 500, 1000 N. Glebe Road, Arlington, Virginia.

The red-cockaded woodpecker's habitat is mature southern pine forests containing some trees having red heart disease. Red heart disease does not begin to occur naturally until the trees are "over mature," at approximately 60 to 80 years-of-age. Because much of the private timber lands in the South are intensively managed for pulp wood production and the amount of saw timber grown is decreasing rapidly, little suitable red-cockaded woodpecker habitat remains on these private lands. Private timber forests usually are on a 40 to 60-year rotation, which will eventually (perhaps by 2010) result in the nearly complete eradication of this woodpecker on such lands. Only the pine forests managed by Federal and some State agencies can be expected to maintain a longer timber rotation that may preserve forests attractive to the red-cockaded woodpecker. In the last decade no documentation of the establishment of any new woodpecker colony has been found anywhere in the range of the species. With the anticipated loss of all private forest habitat for this woodpecker, and the lack of expansion into now "over mature" forests, the outlook for the red-cockaded woodpecker is poor. Those habitats found in highway rights-of-way, parks, refuges, game management areas, public forests, and, as in this case, military installations may save this species from extinction.

Public forest lands administered by the Forest Service and the Departments of Defense and Interior now contain stands of mature trees and will ultimately comprise the majority of forested lands with suitable red-cockaded woodpecker habitat. However, current timber practices on these lands are reducing the numbers of mature pine trees upon which the red-cockaded woodpecker depends. The cumulative effects of actions on both private and public forest lands are adversely affecting the species to such an extent that the loss of the colonies found in the Mechanized Training Area is likely to jeopardize the continued existence of the species. Therefore, it is my biological opinion that the present activities conducted within the Mechanized Training Area are likely to jeopardize the continued existence of the red-cockaded woodpecker; however, a prudent and reasonable alternative is available which would avoid such jeopardy.

A review by the Marine Corps of the two alternatives offered in the February 1, 1979, opinion indicated that neither was acceptable to the training requirements of the Marine Corps. In their review of the first alternative (an alternative area for the mechanized training) the Marine Corps indicated that the selection of an alternative site is not practical because of the need for contiguous uninterrupted travel of troops, vehicles, and equipment between the ocean landing beaches and the Mechanized Training Area. Due to the configuration of the land at Camp Lejeune and the existing land use (e.g., ordnance impact areas) there are no alternative sites which meet the specific training requirements associated with both mechanized training and beach assaults.

The Marine Corps felt that the guidelines presented in the second alternative (modify use and management within present training area) would effectively eliminate their use of the Mechanized Training Area. In-depth discussions resulted in a better understanding of training activities and the types of actions which need to be conducted in the Mechanized Training Area. Because this area is essential for meeting the training requirements at Camp Lejeune and contains nine known woodpecker colonies (plus two others on the periphery) the Service's consultation team considered alternative use patterns for the Mechanized Training Area that would allow training activities which would be compatible with the conservation of the woodpecker. Although this was the intended purpose of the second alternative described in the February 1 opinion, discussions with Marine Corps personnel at Camp Lejeune revealed that there was some confusion and misunderstanding of the February 1 guidelines. These in-depth discussions provided a better understanding for all.

It is my opinion that if the guidelines for use of the Mechanized Training Area, enumerated in alternative 2 of the Service's Regional Office opinion of February 1, 1979, are deleted and replaced with the following guidelines, the likelihood of jeopardy would be eliminated. The conclusion (i.e., jeopardy to the species) of the February 1 biological opinion will remain as written.

1. The following restrictions and prohibitions apply only to the marked boundaries of red-cockaded woodpecker buffer zones (200-foot radius around each cavity tree) and support stands:

a. Restrict all vehicle use to designated roads and trails (any new trails shall be designated by the Base Natural Resources Division in consultation with the Base Training Department and shall be consistent with the conservation of the red-cockaded woodpecker) with the following exceptions: command tracked vehicles

may utilize a single, predesignated, ingress/egress route to each preselected command post site in red-cockaded woodpecker support stands, and wheeled vehicles may be used in the immediate vicinity of the bivouac and preselected command sites in red-cockaded woodpecker support stands. All vehicles operating within the support stands are prohibited from causing destruction or injury to tree roots or bark. No vehicles shall be allowed at any time within the buffer zones except for bona fide emergencies (fire or injured personnel) or on trails already designated as of April 26, 1979.

b. Prohibit indiscriminate cutting or destruction of woody vegetation. Only vegetation that has been specifically marked for cutting within a support stand may be cut for camouflage material, wood fires, barricades, etc. Such trees will be marked in advance only by the Base Natural Resources personnel and in a manner consistent with the conservation of the woodpecker. Should additional woody material be needed, it will be obtained outside the boundaries of the support stands of the Mechanized Training Area and brought into these areas for use.

c. Prohibit any excavating or digging that would result in the destruction of woody vegetation, including damage to root systems. Troops should be encouraged to utilize existing fox holes, trenches, etc.

2. Probibit the establishment of command posts and bivouacs in any buffer zones.

3. Prohibit the firing of artillery within 200 meters of a red-cockaded woodpecker cavity tree.

4. Increase the prescribed burning program in the Mechanized Training Area to reduce the potential for wildfires.

5. Initiate a program to at least annually survey the Mechanized Training Area and remove wires that are girdling trees.

6. Utilize other areas on the Base outside the Mechanized Training Area for more of the routine training by field units not requiring the specific features (e.g., landing zones, Combat Town) and tracked vehicles in the Mechanized Training Area.

7. The Mechanized Training Area will be inspected at periodic intervals by the U.S. Fish and Wildlife Service. Recommendations will then be made as to the effectiveness of the Base guidelines and regulations.

Inspections will determine if significant violations have occurred and insure that proper actions have been taken to correct any violations. Included in these inspections would be an annual color infrared aerial photo of the Mechanized Training Area. This photograph is to be provided by the Marine Corps at a scale suitable to detect the death of individual large trees (over 1 foot DBH).

In order to greatly facilitate the implementation and effectiveness of the above guidelines, we suggest that the following actions should be taken at Camp Lejeune:

A. An information/education program should be initiated and maintained to effect a change of attitude among all personnel utilizing Camp Lejeune concerning natural resources management, in general, and the Endangered red-cockaded woodpecker, in particular.

B. A responsibility and accountability program should be developed at all levels to insure that the use of the Mechanized Training Area is compatible with the maintenance of the red-cockaded woodpecker buffer zones and support stands.

C. Base regulations and guidelines should be prepared which are brought to the attention of all personnel using Camp Lejeune and these should be effectively enforced.

D. The Base should also develop a monitoring program to insure that the protective measures instituted from this opinion are having the desired effect of maintaining the support stands and buffer zones as viable habitat for the woodpecker.

In summary, I would like to point out that the major thrust of the February opinion has not been changed. There is an imperative need to protect the habitat of the red-cockaded woodpecker and provide ample replacement vegetation for the future needs of the bird. This can best be accomplished by the implementation of appropriate Base regulations incorporating the above guidelines and, most importantly, the stringent enforcement of these regulations. Implementation of the regulations will not only provide protection for the red-cockaded woodpecker, but will also insure that the natural vegetation cover is maintained for the continued training needs of the Marine Corps.

I would like to thank you, your Special Assistant, and the Commanding Generals and their respective staffs of the Camp Lejeune Marine Corps

Base and the Second Marine Division for cooperating with my consultation team and for the genuine interest shown in natural resources management and the Endangered Species Program. Your assistance made this consultation proceed very smoothly and successfully.

Should this action, as now planned, be modified or altered or should new species be listed that may be affected, you must reinitiate consultation.

Sincerely yours,

Harold J. O'Connor

Acting Director

cc: CG, Camp Lejuene MCB
CG, Second Marine Division
Regions 2, 4, and 5
Mr. Jim Baker, Jacksonville Area Office
Mr. Wendell Neal, Jackson Area Office

UNITED STATES MARINE CORPS
MARINE CORPS BASE
CAMP LEJEUNE, NORTH CAROLINA 28542

IN REPLY REFER TO
5200
NREAD
24 Oct 86

From: Director, Natural Resources and Environmental Affairs Division, Marine Corps Base, Camp Lejeune
To: Major J. Hull, Investigator

Subj: STATEMENT OF JULIAN I. WOOTEN, SS 243-70-4340

Ref: (a) Meeting with Maj Hull, JAG Investigator, and Julian I. Wooten, NREAD on 20 Oct 86
(b) On site inspection of K-2 Impact Area by Mr. R. E. Alexander, AC/S FAC, Lt Ben Redmond, EOD Officer, and Mr. Don Gurganus, on 12 July 86

Encl: (1) Dir, NREAD ltr 11015 NREAD of 9 Sep 86
(2) USFWS Biological Opinion of 19 Nov 84 concerning Red-Cockaded Woodpecker in K-2 Impact Area

1. As Director of the Natural Resources and Environmental Affairs Division, I have Supervisory responsibility for matters related to the Base Forestry, Fish and Wildlife and Operational Environmental management functions, including management activities relative to Endangered Species protection, i.e. Red-Cockaded Woodpecker.

2. During reference (a), the recent discovery of destroyed Red-Cockaded Woodpecker cavity trees with marked habitat in the K-2 Impact Area as addressed in enclosure (1) were discussed. The colony of Red-Cockaded Woodpeckers were discovered near the K303-K305 range during reference (b) by Mr. Alexander, Lt Redmond, and Mr. Gurganus as they inspected the K-2 Impact Area for a planned improvement project (partial clearing & drainage).

3. Prior to beginning the K-2 Impact Area improvement project, the Base entered Formal Consultation with the United States Fish and Wildlife Service (USFWS), as required by the Endangered Species Act of 1973 because of a "may effect" determination on the colony of Red-Cockaded Woodpecker in the K-2. As a part of formal consultation involving the K-2 Impact Area Red-Cockaded Woodpecker, colony, a site inspection on 26 Oct 1984 by Mr. Warren Parker, USFWS, Asheville, North Carolina, and Base Training and Operations, and Assistant Chief of Staff, Facilities personnel was accomplished. A helicopter overflight by the same representatives and NREAD personnel was a part of the consultation also.

4. On 19 November 1984, the USFWS rendered a biological opinion which provides for protection of the colony of Red-Cockaded Woodpecker in the K-2 Impact Area. Enclosure (1) provides information relative to Red-Cockaded Woodpecker habitat protective measures for the K-2 Impact Area Colony and information concerning the discovery of the destroyed cavity trees.

J. I. Wooten
J. I. WOOTEN

Enclosure (22)

11015
NREAD
9 Sep 86

From: Director, Natural Resources and Environmental Affairs Division, Marine Corps Base, Camp Lejeune
To: Assistant Chief of Staff, Training, Marine Corps Base, Camp Lejeune
Via: Assistant Chief of Staff, Facilities, Marine Corps Base, Camp Lejeune

Subj: ENDANGERED RED-COCKADED WOODPECKER

Encl: (1) Red-Cockaded Woodpecker Habitat Inspection Rept 8-86 dtd 3 Sep 86
(2) BWildMgr ltr 11015 NREAD of 4 Feb 85

1. A periodic inspection was recently conducted of endangered Red-Cockaded Woodpecker habitat in the K-2 Surface Danger Area by Base Training and Natural Resources personnel. A serious violation involving direct destruction of three active cavity trees was observed by the inspectors and is documented in enclosure (1). The violation is believed to have occurred in early 1985 as supported by enclosure (2).

2. Two of the dead cavity trees were discovered by Mr. John Hammond, N. C. State University Researcher; Mr. Julian Wooten, NREAD and MGySgt Barton, EOD; on 15 Aug 86 while attempting to locate the three Red-Cockaded Woodpeckers observed at the site in December 85. The remaining dead Red-Cockaded Woodpecker cavity tree was discovered on 3 Sep 86 by Messrs. Julian Wooten, Charles Peterson and Willie Bostic, NREAD, and SSgt McKenzie, EOD.

3. It is recommended that a JAG investigation be conducted and that the U. S. Fish and Wildlife Service be notified immediately relative to the violation.

JULIAN I. WOOTEN

ENCLOSURE (1)

VIOLATION TO REVISED RED-COCKADED WOODPECKER BIOLOGICAL OPINION REPORT NO. 8-86

This periodic inspection was conducted by Staff Sergeant McKenzie, Base Explosive Ordnance Disposal; Messrs Julian Wooten, Charles Peterson and Willie Bostic, Natural Resources and Environmental Affairs Division, on 3 September 1986.

1. K-2 Surface Danger Area, Grid 797353, Buffer Zone Habitat Area.

a. Destruction of three active cavity trees through the placement of explosive charges to detonate unexploded ordnance.

b. One of the trees was apparently blown down immediately and others have both died since the charges were detonated.

c. This colony site was inhabited by one clan of Red-Cockaded Woodpeckers consisting of at least three birds prior to destruction of the trees.

d. Natural Resources personnel have reason to believe that the explosive charges were detonated sometime on or about 30-31 January 1985.

11015
NREAD
4 Feb 1985

From: Base Wildlife Manager
To: MEMORANDUM FOR THE RECORD

Subj: SURFACE DANGER AREA AND SAFETY

1. Mr. Charles Peterson received a call from 1st Lieutenant Ben Redman, Explosive Ordnance Disposal Officer, on 28 January 1985 relative to clearing debris from around Red-Cockaded Woodpecker cavity trees and prescribed burning habitat in Surface Danger Areas (SDA). The marking of boundary lines around contiguous woodpecker habitat in the K-2 SDA was also discussed. Mr. Peterson informed 1st Lieutenant Redman that wildlife personnel would be available to clear debris/prescribed burn around cavity trees around the edge of the Q-10 (SDA) but would not be available to enter the K-2 (SDA). Further, that NREAD instructions had been to provide the necessary materials to Range Maintenance for marking contiguous habitat in the K-2 (SDA).

2. Mr. Peterson discussed the above conversation with Mr. Julian Wooten, Director, NREAD. Mr. Wooten requested that the Base Safety Officer be contacted concerning entry to safety danger areas as discussed. Mr. Peterson discussed entry to both SDA with Mr. R. J. Andrews, Base Safety Officer who informed him that it would be inappropriate for him to restrict the subject entry when heavy equipment operators were entering the SDA every day. Mr. Andrews further stated that the subject entry is authorized provided personnel are accompanied by EOD personnel.

3. Arrangements were made with 1st Sergeant Lecher, EOD to accompany Mr. Willie Bostic, Mr. Sam Poole, Mr. Clinton Bryant and Sergeant Darrell Bowers to the woodpecker cavity trees to clear debris/prescribed burn on 29 January 1985. A live heat round was discovered by Wildlife personnel at the base of each of the first four cavity trees visited. Each round was shown to 1st Sergeant Lecher who actually stepped over one round without seeing the same. The 1st Sergeant used a pocket knife to remove soil from around one round to identify it while Wildlife personnel were located nearby. All the Wildlife personnel were very nervous and upset with the discovery of the live ordnance.

4. Mr. Bostic was instructed to not enter the K-2 (SDA) in the future due to the likely possibility of the live ordnance hazard.

5. Mr. Bostic informed me that 1st Sergeant Lecher was planning to blow the live rounds in place during 30-31 January 1985. The above information was conveyed to Mr. Wooten and Mr. Andrews.

C. D. PETERSON

ENCLOSURE (2)

United States Department of the Interior

FISH AND WILDLIFE SERVICE

ENDANGERED SPECIES FIELD STATION
100 OTIS STREET, ROOM 224
ASHEVILLE, NORTH CAROLINA 28801

November 19, 1984

Brigadier General L. H. Buehl
Commanding General
U. S. Marine Corps Base
Camp LeJeune, North Carolina 28542

Dear General Buehl:

On October 26, 1984, I visited Camp Lejeune in reference to endangered species concerns regarding the K-2 Impact Area and the Camp Lejeune-Cherry Point Railroad Improvement Project. A summary of my findings follows, but first I wish to express my thanks to you and your staff for the many courtesies extended to me during my visit.

An on site inspection of the active red-cockaded woodpecker colony site that was recently found by your personnel clearly indicates that it is located wholly within a narrow zone of longleaf pine in the northwest quadrant of the K-2 buffer area adjacent to K-303. A helicopter overflight confirmed that sufficient pine foraging habitat is located to the north and west of the colony site. My recommendation is that this colony area be marked and protected and that sufficient adjacent foraging habitat be dedicated to provide for a total of about 125 acres for these birds. This will allow for the clearing of the K-2 Impact Area as planned and will also provide for the needs of this particular colony of woodpeckers. As mentioned during our earlier meeting, the red-cockaded woodpecker seems to do well in disturbed situations including impact areas, as long as foraging habitat is provided.

Assuming that no new colonies are found within the K-2 impact area, and assuming that the above-mentioned additional pine habitat is dedicated to this colony for foraging, then I do not perceive any endangered species conflicts with this range project.

An on-site review of the railroad from Camp Lejeune to near Havelock was made. This proved to be most informative. Upon my return to Asheville, I have had discussions with several biologists knowledgeable of this particular area and the American alligator and the following guidance has been developed:

A. The only area of genuine concern is a zone that begins approximately at mile marker 26 (road crossing that leads into Camp Brian), and runs back toward Camp Lejeune a distance of about six miles (see attached map).

B. Certain work within this 6-mile zone should be restricted to the period October 1 to December 15, and March 15 to June 15. The type work addressed in this case is the pulling of ditches and barrow pits. Work such as cutting survey lines and actually cutting trees within the right-of-way can be carried out at any time. Our concern is the disturbance of nesting alligators during the late summer period, and all alligators during the winter hibernation period by digging and dirt moving operations.

If these stipulations are incorporated in the planning for this railroad improvement, then I can see no problems with this species.

These are my observations of the October field review. Since both of the referenced projects are "may affect" situations, you must initiate formal consultation with the Fish and Wildlife Service before either of the projects proceed. This is mandated by the provisions of the Endangered Species Act. The consultation process will essentially complete your requirements under the Act. If you will incorporate suggested modifications as outlined in this letter in your request for consultation, then we will simply issue a "no jeopardy" biological opinion. For file purposes, I suggest that a separate letter requesting formal consultation for each project be sent.

If you have any questions regarding my conclusions, please let me know. Again, I appreciate the courtesies extended during my recent visit, and your interest in endangered species.

Sincerely yours,

Warren T. Parker

Warren T. Parker
Field Supervisor

EXTRACT FROM USCA

subsection (a) [enacting subsec. (c) (2) of this section] shall take effect January 1, 1981."

Endangered Species Scientific Authority; Interim Performance of Functions of Commission. Section 6(b) of Pub.L. 96–159, provided that until such time as the Chairman, Members, and Executive Secretary of the International Convention Advisory Commission are appointed, but not later than 90 days after Dec. 28, 1979, the functions of the Commission be carried out by the Endangered Species Scientific Authority as established by Ex.Ord. No. 11911, formerly set out as a note under section 1537 of this title, with staff and administrative support being provided by the Secretary of the Interior as set forth in that Executive order.

Legislative History. For legislative history and purpose of Pub.L. 96–159, see 1979 U.S. Code Cong. and Adm. News, p. 2557. See, also, Pub.L. 97–304, 1982 U.S. Code Cong. and Adm. News, p. 2807.

Cross References

Authorization of appropriations, see section 1542 of this title.

Code of Federal Regulations

Endangered species convention, see 50 CFR 23.1 et seq.

Notes of Decisions

1. **Injunction**

Injunction barring Endangered Species Scientific Authority and the Fish and Wildlife Service from authorizing export of bobcats until guidelines were issued satisfying requirements the Court of Appeals set out in previous decision was properly vacated where Congress, in subsequent amendment by section 5(a)(1) of Pub.L. 97–304 to subsec. (c) of this section, overruled the court's prior decision, thereby removing the basis for the injunction. Defenders of Wildlife, Inc. v. Endangered Species Scientific Authority, 1984, 725 F.2d 726, 233 U.S.App.D.C. 199.

§ 1538. Prohibited acts

(a) Generally

(1) Except as provided in sections 1535(g)(2) and 1539 of this title, with respect to any endangered species of fish or wildlife listed pursuant to section 1533 of this title it is unlawful for any person subject to the jurisdiction of the United States to—

(A) import any such species into, or export any such species from the United States;

(B) take any such species within the United States or the territorial sea of the United States;

(C) take any such species upon the high seas;

(D) possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such species taken in violation of subparagraphs (B) and (C);

(E) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, any such species;

(F) sell or offer for sale in interstate or foreign commerce any such species; or

(G) violate any regulation pertaining to such species or to any threatened species of fish or wildlife listed pursuant to section 1533 of this title and promulgated by the Secretary pursuant to authority provided by this chapter.

Enclosure (12)

(2) Except as provided in sections 1535(g) (2) and 1539 of this title, with respect to any endangered species of plants listed pursuant to section 1533 of this title, it is unlawful for any person subject to the jurisdiction of the United States to—

(A) import any such species into, or export any such species from, the United States;

(B) remove and reduce to possession any such species from areas under Federal jurisdiction;

(C) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, any such species;

(D) sell or offer for sale in interstate or foreign commerce any such species; or

(E) violate any regulation pertaining to such species or to any threatened species of plants listed pursuant to section 1533 of this title and promulgated by the Secretary pursuant to authority provided by this chapter.

(b) Species held in captivity or controlled environment

(1) The provisions of subsections (a) (1) (A) and (a) (1) (G) of this section shall not apply to any fish or wildlife which was held in captivity or in a controlled environment on (A) December 28, 1973, or (B) the date of the publication in the Federal Register of a final regulation adding such fish or wildlife species to any list published pursuant to subsection (c) of section 1533 of this title: *Provided*, That such holding and any subsequent holding or use of the fish or wildlife was not in the course of a commercial activity. With respect to any act prohibited by subsections (a) (1) (A) and (a) (1) (G) of this section which occurs after a period of 180 days from (i) December 28, 1973, or (ii) the date of publication in the Federal Register of a final regulation adding such fish or wildlife species to any list published pursuant to subsection (c) of section 1533 of this title, there shall be a rebuttable presumption that the fish or wildlife involved in such act is not entitled to the exemption contained in this subsection.

(2) (A) The provisions of subsection (a) (1) of this section shall not apply to—

(i) any raptor legally held in captivity or in a controlled environment on November 10, 1978; or

(ii) any progeny of any raptor described in clause (i);

until such time as any such raptor or progeny is intentionally returned to a wild state.

(B) Any person holding any raptor or progeny described in subparagraph (A) must be able to demonstrate that the raptor or progeny does, in fact, qualify under the provisions of this paragraph, and shall maintain and submit to the Secretary, on request, such inventories, documentation, and records as the Secretary may by regulation require as being reasonably appropriate to carry out the purposes of this paragraph. Such requirements shall not unnecessarily duplicate the requirements of other rules and regulations promulgated by the Secretary.

under the jurisdiction of the United States or on the high seas for recreational purposes) or plants to fail to file any declaration or report as the Secretary deems necessary to facilitate enforcement of this chapter or to meet the obligations of the Convention.

(f) Designation of ports

(1) It is unlawful for any person subject to the jurisdiction of the United States to import into or export from the United States any fish or wildlife (other than shellfish and fishery products which (A) are not listed pursuant to section 1533 of this title as endangered species or threatened species, and (B) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants, except at a port or ports designated by the Secretary of the Interior. For the purpose of facilitating enforcement of this chapter and reducing the costs thereof, the Secretary of the Interior, with approval of the Secretary of the Treasury and after notice and opportunity for public hearing, may, by regulation, designate ports and change such designations. The Secretary of the Interior, under such terms and conditions as he may prescribe, may permit the importation or exportation at nondesignated ports in the interest of the health or safety of the fish or wildlife or plants, or for other reasons if, in his discretion, he deems it appropriate and consistent with the purpose of this subsection.

(2) Any port designated by the Secretary of the Interior under the authority of section 668cc–4(d) of this title, shall, if such designation is in effect on December 27, 1973, be deemed to be a port designated by the Secretary under paragraph (1) of this subsection until such time as the Secretary otherwise provides.

(g) Violations

It is unlawful for any person subject to the jurisdiction of the United States to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in this section.

(Pub.L. 93–205, § 9, Dec. 28, 1973, 87 Stat. 893; Pub.L. 95–632, § 4, Nov. 10, 1978, 92 Stat. 3760; Pub.L. 97–304, § 9(b), Oct. 13, 1982, 96 Stat. 1426.)

Historical Note

References in Text. This chapter, referred to in subsec. (a)(1)(G), (2)(E), (c)(2), (e), and (f)(1), in the original read "this Act", meaning Pub.L. 93–205, Dec. 28, 1973, 81 Stat. 884, as amended, known as the "Endangered Species Act of 1973", which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1531 of this title and Tables volume.

Section 668cc–4(d) of this title, referred to in subsec. (f)(2), was repealed by Pub.L. 93–205, § 14, Dec. 28, 1973, 87 Stat. 903.

1982 Amendment. Subsec. (a)(2)(B). Pub.L. 97–304, § 9(b)(1), added subpar. (B). Former subpar. (B) was redesignated (C).

Subsec. (a)(2)(C)–(E). Pub.L. 97–304, § 9(b)(1), redesignated subpars. (B), (C), and (D) as (C), (D), and (E), respectively.

Subsec. (b)(1). Pub.L. 97–304, § 9(b)(2), substituted "The provisions of subsections (a)(1)(A) and (a)(1)(G) of this section shall not apply to any fish or wildlife which was held in captivity or in a controlled environment on (A) December 28, 1973, or (B) the date of the publication in the Federal Register of a final regulation adding such fish or wildlife species to any list published pursuant to subsection (c) of section 1533 of this title *Provided*, That such holding and any subsequent holding or use of the fish or wildlife was not in the course of a commercial activ-

ty. With respect to any act prohibited by subsections (a) (1) (A) and (a) (1) (G) of this section which occurs after a period of 180 days from (i) December 28, 1973, or (ii) the date of publication in the Federal Register of a final regulation adding such fish or wildlife species to any list published pursuant to subsection (c) of section 1533 of this title, there shall be a rebuttable presumption that the fish or wildlife involved in such act is not entitled to the exemption contained in this subsection" for "The provisions of this section shall not apply to any fish or wildlife held in captivity or in a controlled environment on December 28, 1973, if the purposes of such holding are not contrary to the purposes of this chapter; except that this subsection shall not apply in the case of any fish or wildlife held in the course of a commercial activity. With respect to any act prohibited by this section which occurs after a period of 180 days from December 28, 1973, there shall be a rebuttable presumption that the fish or wildlife involved in such act was not held in captivity or in a controlled environment on December 28, 1973".

Subsec. (b) (2) (A). Pub.L. 97–304, § 9(b) (3), substituted "The provisions of subsection (a) (1) of this section shall not apply to" for "This section shall not apply to" in the provisions preceding cl. (i).

1978 Amendment. Subsec. (b). Pub.L. 95–632 designated existing provision as par. (1) and added par. (2).

Effective Date. Section effective Dec. 28, 1973, see section 16 of Pub.L. 93–205, set out as an Effective Date note under section 1531 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93–205, see 1973 U.S. Code Code. and Adm.News, p. 2989. See, also, Pub.L. 95–632, 1978 U.S.Code Cong. and Adm.News, p. 9453; Pub.L. 97–304, 1982 U.S.Code Cong. and Adm.News, p. 2807.

Cross References

Exemption as providing exception on taking of endangered species, see section 1536 of this title.
Issuance of protective regulations, see section 1533 of this title.
Penalties and enforcement, see section 1540 of this title.
Permits and hardship exemptions, see section 1539 of this title.
Taking of resident endangered or threatened species, cooperative agreements with States, see section 1535 of this title.

Code of Federal Regulations

Designated ports, see 50 CFR 221.1 et seq.
Endangered species regulations concerning terrestrial plants, see 7 CFR 355.1 et seq.
Establishment of ports for importation, exportation, and reexportation of plants, see 50 CFR 24.1 et seq.
Importation, exportation, and transportation of wildlife, see 50 CFR 14.1 et seq.
Importation of antiques composed of an endangered or threatened species, see 19 CFR 10.1 et seq.
Sealing provisions, see 50 CFR 230.1 et seq.

Library References

Customs Duties ⇐22.
Fish ⇐13.
Game ⇐7.

C.J.S. Customs Duties § 30.
C.J.S. Fish § 28 et seq.
C.J.S. Game §§ 1, 5.

Notes of Decisions

Taking of species
Generally 3
Predator control 4

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1. Constitutionality

Rational basis exists for subjecting endangered species imported legally pursuant to economic hardship permit issued under Endangered Species Conservation Act of 1969, former sections 668aa to 668cc–6 of this title, to provisions of this chapter and thus application of this chapter does not violate U.S.C.A. Const. Amend. 5. Delbay Pharmaceuticals, Inc. v. Department of Commerce, D.C.D.C. 1976, 409 F.Supp. 637.

2. Compliance with section

Under Convention on International Trade in Endangered Species of Wild Fauna and Flora, Convention signatories may implement domestic measures stricter than those contained in the act and may completely prohibit trade in a species; thus, regulations removing mariculture exemption with respect to importation and trade of green sea turtle products were authorized under the Convention where regulations were authorized by this chapter. Cayman Turtle Farm, Ltd. v. Andrus, D.C. D.C.1979, 478 F.Supp. 125.

3. Taking of species—Generally

Action of Hawaii Department of Land and Natural Resources in maintaining feral sheep and goats in critical habitat of the Palila bird, which has been classified as an endangered species, constituted a "taking" within meaning of this chapter since the Palila was endangered by such activity and the Mauna Kea Plan adopted by the Department called for fencing of about 25% of the forest area and additional studies to determine if the game animal should be exterminated would not end the "taking" in view of evidence that complete eradication of the feral animals was necessary to prevent harm to the Palila. Palila v. Hawaii Dept. of Land and Natural Resources, C.A. Hawaii 1981, 639 F.2d 495.

Assuming arguendo that the Department of Interior's proposed lease of tracts in the northern portion of the Santa Maria Basin for oil and gas development would constitute a threat to the continued survival of species protected by this chapter and the Marine Mammal Protection Act, section 1361 et seq. of this title, such a threat would still not constitute a "taking". State of Cal. By and Through Brown v. Watt, D.C.Cal.1981, 520 F.Supp. 1359, affirmed in part, vacated in part, reversed in part 683 F.2d 1253, 77 L.Ed.2d 295, reversed on other grounds 104 S.Ct. 656, 78 L.Ed.2d 496, on remand 729 F.2d 614.

4. —— Predator control

Regulations of Fish and Wildlife Service concerning trapping of Eastern Timber Wolf in areas of depredation on domestic animals, allowing wolves to be trapped within one-half mile of farm where depredation occurred, containing no requirement that trapper determine with reasonable cause identity of predative wolf or wolves and having no requirement that wolf or wolves be taken in humane manner were illegal under provisions of this chapter. Sierra Club v. Clark, D.C.Minn. 1984, 577 F.Supp. 783.

5. Impact on habitat—Generally

Under this chapter, an action affecting a designated critical habitat is an offense if it might be expected to result in reduction in number or distribution of the species of sufficient magnitude to place the species in further jeopardy, or restrict the potential and reasonable expansion or recovery of that species. Hill v. Tennessee Valley Authority, C.A. Tenn.1977, 549 F.2d 1064, affirmed 98 S.Ct. 2279, 437 U.S. 153, 57 L.Ed.2d 117.

Purpose of construction of Meramec Park Lake Dam was not attempt to harass or harm Indiana bat, in violation of this chapter. Sierra Club v. Froehlke, C.A.Mo.1976, 534 F.2d 1289.

6. —— Construction of dams and reservoirs

Where completion and operation of dam by Tennessee Valley Authority would either eradicate known population of the snail darter, an endangered species, or destroy its critical habitat, completion and operation of dam were prohibited by explicit provisions of this chapter, even though dam was virtually completed and even though Congress continued to appropriate large sums of public money for project after congressional appropriations committees were advised of project's apparent impact upon survival of snail darter. Tennessee Valley Authority v. Hill, Tenn. 1978, 98 S.Ct. 2279, 437 U.S. 153, 57 L.Ed.2d 117.

Construction of Meramec Park Reservoir would not violate this chapter as regards continued existence of the Indiana bat, in view of fact that when the reservoir reached its normal pool level it would not affect any caves that were presently inhabited by the bats and expert in the field stated that the bats would probable become extinct within [illegible] or 20 years even if the reservoir were [illegible] built. Sierra Club v. Froehlke, D.C.Mo.1[illegible] 392 F.Supp. 130, affirmed 534 F.2d [illegible]

7. Species held in captivity

This section was intended to exempt listed specimens held in noncommercial zoos and held by private collectors, but it implicitly reflects converse intent to include specimens of listed species in controlled environments; it would be plainly inconsistent with comprehensive sweep of the Act to read into the Act a second exemption applicable to limited situation where captive or self-sustained population of a protected species is reared abroad, even though Act does not expressly address specific situation of species bred in captivity abroad. Cayman Turtle Farm, Ltd. v. Andrus, D.C.D.C.1979, 478 F.Supp. 125.

8. Species held in commercial activity

This chapter applied to captive-bred sea turtles which were hatched and raised in a controlled environment in overseas commercial activity and which were acquired after December 28, 1973, and thus sea turtle regulation prohibiting importation and trade in the United States of all green sea turtle products produced in mariculture operations was authorized by the Act. Cayman Turtle Farm, Ltd. v. Andrus, D.C.D.C.1979, 478 F.Supp. 125.

Fish or wildlife which are imported pursuant to economic hardship permit issued under the Endangered Species Conservation Act of 1969, former sections 668aa to 668cc–6 of this title, and which are held in course of commercial activity on date of enactment of this chapter are subject to provisions of this chapter. Delbay Pharmaceuticals, Inc. v. Department of Commerce, D.C.D.C.1976, 409 F.Supp. 637.

9. Substance derived from imports—Generally

Substance which was derived from endangered species which was imported legally pursuant to economic hardship permit issued under the Endangered Species Conservation Act of 1969, former sections 668aa to 668cc–6 of this title, and which was held in United States on date of enactment of this chapter was subject to provisions of this chapter. Delbay Pharmaceuticals, Inc. v. Department of Commerce, D.C.D.C.1976, 409 F.Supp. 637.

10. —— Right to sell

Permit allowing importation of substance derived from endangered species pursuant to economic hardship exception to the Endangered Species Conservation Act of 1969, former sections 668aa to 668cc–6 of this title, did not give the right to sell the substance in interstate commerce in violation of this chapter. Delbay Pharmaceuticals, Inc. v. Department of Commerce, D.C.D.C.1976, 409 F.Supp. 637.

11. Jurisdiction

Controversy whereby plaintiffs sought protection under this chapter for endangered species of bird from harm caused by feral sheep and goats maintained by the Hawaii Department of Land and Natural Resources for sport hunting purposes was ripe for adjudication, despite contention that there was no final agency determination to sue since the agency was still deciding whether the sheep and goats should be removed from the bird's critical habitat; jurisdiction of the court was not conditioned on final decision of state agency but on violation of this chapter, and defendants' present actions in leaving the sheep and goats in a critical habitat was causing immediate injury. Palila v. Hawaii Dept. of Land and Natural Resources, D.C. Hawaii 1979, 471 F.Supp. 985, affirmed 639 F.2d 495.

12. Complaint

Complaint asserting that this section was unconstitutional as applied to substances which were derived from endangered species, which were legally imported into United States under economic hardship permit and which were legally held in the United States on effective date of this section did not state claim upon which relief could be granted. Delbay Pharmaceuticals, Inc. v. Department of Commerce, D.C.D.C.1976, 409 F.Supp. 637.

13. Injunction

Preliminary injunction would not issue to enjoin enforcement of this chapter with regard to interstate sale of drug containing substance which was derived from endangered species and which was legally imported pursuant to economic hardship permit issued under the Endangered Species Conservation Act of 1969, former sections 668aa to 668cc–6 of this title, where there was danger of harm to public interest if injunction issued and harm suffered if injunction was not entered could be adequately compensated by money damages. Delbay Pharmaceuticals, Inc. v. Department of Commerce, D.C.D.C. 1976, 409 F.Supp. 637.

EXCERPT FROM 50 CFR

Woundfin

(i) *Arizona: Gila and Yavapai Counties.* Verde River from backwaters of Horseshoe Reservoir upstream to Perkinsville.

(ii) *Arizona: Graham and Greenlee Counties.* Gila River from backwaters of San Carlos Reservoir upstream to Arizona/New Mexico State line.

(iii) *Arizona: Greenlee County.* San Francisco River from its junction with the Gila River upstream to the Arizona/New Mexico State line.

(iv) *Arizona: Gila County.* Tonto Creek, from Punkin Center upstream to Gisela.

(v) *Arizona: Yavapai County.* Hassayampa River, from Red Cliff upstream to Wagoner.

The movement of woundfin beyond these areas will be limited to the lower portion of larger tributaries where suitable habitat exists. Downstream movement is limited by dams, reservoirs, and dry streambed. Upstream movement from these areas is restricted due to the absence of habitat. Upstream areas are too cold and the gradient is too steep to support populations of woundfin.

(7) The reintroduced populations will be checked annually to determine their condition. A seining survey will be used to determine population expansion or contraction, reproduction success, and general health condition of the fish.

[49 FR 35954, Sept. 13, 1984, and 50 FR 30194, July 24, 1985]

§ 17.85 Special rules—invertebrates. [Reserved]

§ 17.86 Special rules—plants. [Reserved]

Subpart I—Interagency Cooperation

§ 17.94 Critical habitats.

(a) The areas listed in § 17.95 (fish and wildlife) and § 17.96 (plants) and referred to in the lists at §§ 17.11 and 17.12 have been determined by the Director to be Critical Habitat. All Federal agencies must insure that any action authorized, funded, or carried out by them is not likely to result in the destruction or adverse modification of the constituent elements essential to the conservation of the listed species within these defined Critical Habitats. (See Part 402 for rules concerning this prohibition; see also Part 424 for rules concerning the determination of Critical Habitat).

(b) The map provided by the Director does not, unless otherwise indicated, constitute the definition of the boundaries of a Critical Habitat. Such maps are provided for reference purposes to guide Federal agencies and other interested parties in locating the general boundaries of the Critical Habitat. Critical Habitats are described by reference to surveyable landmarks found on standard topographic maps of the area and to the States and county(ies) within which all or part of the Critical Habitat is located. Unless otherwise indicated within the Critical Habitat description, the State and county(ies) names are provided for informational purposes only.

(c) Critical Habitat management focuses only on the biological or physical constituent elements within the defined area of Critical Habitat that are essential to the conservation of the species. Those major constituent elements that are known to require special management considerations or protection will be listed with the description of the Critical Habitat.

(d) The sequence of species within each list of Critical Habitats in §§ 17.95 and 17.96 will follow the sequences in the lists of Endangered and Threatened wildlife (§ 17.11) and plants (§ 17.12). Multiple entries for each species will be alphabetic by State.

[45 FR 13021, Feb. 27, 1980]

§ 17.95 Critical habitat—fish and wildlife.

(a) *Mammals.*

INDIANA BAT (*Myotis sodalis*)

Illinois. The Blackball Mine, La Salle County.

Indiana. Big Wyandotte Cave, Crawford County; Ray's Cave, Greene County.

Kentucky. Bat Cave, Carter County; Coach Cave, Edmonson County.

Missouri. Cave 021, Crawford County; Cave 009, Franklin County; Cave 017, Franklin County; Pilot Knob Mine, Iron County; Bat Cave, Shannon County; Cave 029, Washington County (numbers assigned by Division of Ecological Services, U.S. Fish and Wildlife Service, Region 6).

Tennessee. White Oak Blowhole Cave, Blount county.

West Virginia. Hellhole Cave, Pendleton County.

Enclosure (24)

United States Department of the Interior
FISH AND WILDLIFE SERVICE
P. O. BOX 95067
ATLANTA, GEORGIA 30347

FEB 1 1979

Brigadier General D. B. Barker
U.S. Marine Corps
Marine Corps Base
Camp Lejeune, North Carolina 28542

Dear General Barker:

This letter presents the Biological Opinion of the Fish and Wildlife Service relative to the effects of mechanized infantry training in the Camp Lejeune Mechanized Infantry Training Area upon the endangered red-cockaded woodpecker (Picoides borealis). Your letter to Regional Director Black, dated September 13, 1978, also requested consultation on the base's management plans for the red-cockaded woodpecker and sea turtles. The Biological Opinions on these two base-wide management programs will be handled separately and will follow at a later date.

This Biological Opinion is based upon field inspections and associated meetings and discussions with base personnel on December 11 and 12, 1978, and January 11 and 12, 1979, review of Fish and Wildlife Service files on past informal consultation concerning the area, review of the Draft Red-Cockaded Woodpecker Recovery Plan and other pertinent literature, and informal communication with researchers currently working with the species.

After a careful review of the findings by Fish and Wildlife personnel in the Asheville Area Office, it is our Biological Opinion that existing activities within the Mechanized Infantry Training Area are likely to jeopardize the continued existence of the red-cockaded woodpecker. This opinion is based upon the following considerations:

Field inspections revealed a commendable program in locating, marking, and designating red-cockaded woodpecker colonies, buffer zones, and support stands within the Mechanized Infantry Training Area. However, the following adverse impacts were found within designated red-cockaded wood-pecker habitat: (1) cutting of pine trees for barricades, etc.; (2) mechanical damage to pines by vehicles; (3) mortality of pines, including [illegible] of pines by root damage by heavy tracked vehicles; (4) girdling of pines by attachment of communication wires, etc.; (5) soil disturbance from digging foxholes, garbage pits, trenches, etc.; (6) soil and plant disturbance by heavy tracked vehicles traversing general forest areas off of established roads and trails; (7) destroyed or removed signs delineating designated areas and; (8) fire damage from

Enclosure (25)

accidental fires. These impacts are thought to be a result of lack of knowledge and/or enforcement of current regulations and poor conservation attitudes regarding endangered species, especially red-cockaded woodpeckers.

The impacts observed have the effect of destruction of the habitat of the red-cockaded woodpecker, including existing nesting and roosting cavity trees, future replacement cavity trees, and foraging trees. Other effects are more subtle but equally important. The whole ecology of the area is being affected, and the habitat is gradually being changed to a type not beneficial to the red-cockaded woodpecker. Disturbance to the bird itself is also occurring and is detrimental to reproductive activities. In fact, some of the activities are considered harrassment, which is included under the definition of "take" in Section 3(14) and is prohibited by Section 9(a) (1) (b) of the Endangered Species Act of 1973 (Public Law 93-205).

There are two identified reasonable and prudent alternatives that would eliminate jeopardy to the species. One alternative is to select another site for a Mechanized Infantry Training Area that does not contain red-cockaded woodpeckers. The second alternative is to prepare guidelines for the use of the Mechanized Infantry Training Area, incorporate these guidelines as base regulations, and stringently enforce the regulations. Because of economics and the adverse impact on other resources from alternative one, alternative two was selected and agreed to as the best alternative in a meeting with base personnel on January 11, 1979. These guidelines and/or regulations must include the following:

(1) Prohibition within the marked boundaries of red-cockaded woodpecker colonies, buffer zones and support stands of (a) all vehicle use except on established designated roads and trails (these should be designated in cooperation with the Base Natural Resources Division personnel); (b) cutting or destruction of woody vegetation; (c) excavation or digging of foxholes, trenches, garbage pits; laying underground communication lines; or other similar significant disturbance of the soil; (d) use of open burning including campfires; and (e) bivouacking or setting up command posts.

(2) Prohibition of all training, forestry activities, and similar activities creating a major disturbance within [illegible] colonies and buffer zones, from March 1 through July 31. (This includes prohibition of firing from [illegible] Positions 3, [illegible] and 31 during this time period.)

(3) Assignment of responsibility [illegible] ensuring that the use of the Mechanized Infantry Training Area is compatible with the maintenance of designated red-cockaded woodpecker habitat (colonies, buffer zones, and support stands) and that the guidelines are prepared, incorporated into base regulations, brought to the attention of all personnel, and enforced.

(4) Daily inspection of each training area containing marked red-cockaded woodpecker habitat (colonies, buffer zones and support stands) during and after each training assignment and periodially at other times to determine if violations have occurred and corrective actions taken to include disciplinary action and prosecution under the Endangered Species Act, where warranted.

(5) Initiation of an information/education program with full, documented support of the entire Camp Lejeune Staff to effect a change of attitude among Base personnel concerning endangered species in general and the red-cockaded woodpecker in particular.

(6) Inspection at periodic (semi-annual) intervals by Fish and Wildlife Service personnel and recommendations made as to the effectiveness of the guidelines and regulations and corrective actions needed.

Please provide the Asheville Area Office with a copy of the guidelines when finalized and a copy of the resulting Base Regulations when promulgated. We would also like to be promptly informed of actions taken regarding violations.

It must be recognized that failure of alternative two to rectify the existing situation leaves only alternative one as a solution to the problem.

We would like to express our appreciation to your entire staff for their hospitality and assistance provided in this consultation process. We hope that the end results are an improvement of an already commendable program and an amicable and cooperative relationship between our agencies.

Sincerely yours,

Kenneth B. Black

Regional Director

File Rec'd

United States Department of the Interior

FISH AND WILDLIFE SERVICE
WASHINGTON, D.C. 20240

In Reply Refer To:
FWS/OES 375.4

JUL 18 1979

Honorable Mitzi M. Wertheim
Deputy Under Secretary of the Navy
Pentagon
Washington, D.C. 20350

Dear Ms. Werthiem:

This responds to your letter of March 30, 1979, requesting reinitiation of consultation on the impacts of existing use patterns of the Mechanized Infantry Training Area on Camp Lejeune Marine Corps Base on the Endangered red-cockaded woodpecker. A biological opinion on the use of this area was issued by our Regional Director in Atlanta, Georgia, on February 1, 1979. A copy of that opinion is a part of the administrative record for this consultation. This correspondence serves as an amendment to the February 1 opinion and, therefore, should be read in conjunction with that earlier opinion.

By letter of April 2, 1979, I agreed to reinitiate consultation at the Washington Office level and appointed a Service consultation team. Your letter of April 3, 1979, acknowledged our reinitiation of consultation and appointed Ms. Mary Margaret Goodwin as your team leader. On April 24, 25, and 26, 1979, meetings were conducted at Camp Lejeune by the consultation teams, including the Commanding Generals of the Camp Lejeune Marine Corps Base and the Second Marine Division and members of their respective staffs.

Field investigations conducted by the teams revealed that red-cockaded woodpecker habitat was being adversely impacted by the training activities previously described in paragraph 4 of the February 1, 1979, opinion, i.e.: (1) cutting of pine trees for barricades, etc.; (2) mechanical damage to pines by vehicles; (3) mortality of pines, including cavity trees, from root damage by heavy tracked vehicles; (4) girdling of pines by attachment of communication wires, etc.; (5) soil disturbance from digging foxholes, garbage pits, trenches, etc.; (6) soil and plant disturbance by heavy tracked vehicles traversing general forest areas off of established roads and trails; (7) destroyed or removed signs delineating designated areas and; (8) fire damage from

accidental fires. It was found that continued use of the Mechanized Training Area at existing levels is likely to result in the complete destruction of the forest habitat.

During the course of the consultation, the team reviewed the literature on the red-cockaded woodpecker and discussed the bird's biology and the training activities on Camp Lejeune with red-cockaded woodpecker Recovery Team members and other authorities knowledgeable of this species. The administrative record for this consultation is maintained in the Office of Endangered Species, U.S. Fish and Wildlife Service, Suite 500, 1000 N. Glebe Road, Arlington, Virginia.

The red-cockaded woodpecker's habitat is mature southern pine forests containing some trees having red heart disease. Red heart disease does not begin to occur naturally until the trees are "over mature," at approximately 60 to 80 years-of-age. Because much of the private timber lands in the South are intensively managed for pulp wood production and the amount of saw timber grown is decreasing rapidly, little suitable red-cockaded woodpecker habitat remains on these private lands. Private timber forests usually are on a 40 to 60-year rotation, which will eventually (perhaps by 2010) result in the nearly complete eradication of this woodpecker on such lands. Only the pine forests managed by Federal and some State agencies can be expected to maintain a longer timber rotation that may preserve forests attractive to the red-cockaded woodpecker. In the last decade no documentation of the establishment of any new woodpecker colony has been found anywhere in the range of the species. With the anticipated loss of all private forest habitat for this woodpecker, and the lack of expansion into now "over mature" forests, the outlook for the red-cockaded woodpecker is poor. Those habitats found in highway rights-of-way, parks, refuges, game management areas, public forests, and, as in this case, military installations may save this species from extinction.

Public forest lands administered by the Forest Service and the Departments of Defense and Interior now contain stands of mature trees and will ultimately comprise the majority of forested lands with suitable red-cockaded woodpecker habitat. However, current timber practices on these lands are reducing the numbers of mature pine trees upon which the red-cockaded woodpecker depends. The cumulative effects of actions on both private and public forest lands are adversely affecting the species to such an extent that the loss of the colonies found in the Mechanized Training Area is likely to jeopardize the continued existence of the species. Therefore, it is my biological opinion that the present activities conducted within the Mechanized Training Area are likely to jeopardize the continued existence of the red-cockaded woodpecker; however, a prudent and reasonable alternative is available which would avoid such jeopardy.

A review by the Marine Corps of the two alternatives offered in the February 1, 1979, opinion indicated that neither was acceptable to the training requirements of the Marine Corps. In their review of the first alternative (an alternative area for the mechanized training) the Marine Corps indicated that the selection of an alternative site is not practical because of the need for contiguous uninterrupted travel of troops, vehicles, and equipment between the ocean landing beaches and the Mechanized Training Area. Due to the configuration of the land at Camp Lejeune and the existing land use (e.g., ordnance impact areas) there are no alternative sites which meet the specific training requirements associated with both mechanized training and beach assaults.

The Marine Corps felt that the guidelines presented in the second alternative (modify use and management within present training area) would effectively eliminate their use of the Mechanized Training Area. In-depth discussions resulted in a better understanding of training activities and the types of actions which need to be conducted in the Mechanized Training Area. Because this area is essential for meeting the training requirements at Camp Lejeune and contains nine known woodpecker colonies (plus two others on the periphery) the Service's consultation team considered alternative use patterns for the Mechanized Training Area that would allow training activities which would be compatible with the conservation of the woodpecker. Although this was the intended purpose of the second alternative described in the February 1 opinion, discussions with Marine Corps personnel at Camp Lejeune revealed that there was some confusion and misunderstanding of the February 1 guidelines. These in-depth discussions provided a better understanding for all.

It is my opinion that if the guidelines for use of the Mechanized Training Area, enumerated in alternative 2 of the Service's Regional Office opinion of February 1, 1979, are deleted and replaced with the following guidelines, the likelihood of jeopardy would be eliminated. The conclusion (i.e., jeopardy to the species) of the February 1 biological opinion will remain as written.

1. The following restrictions and prohibitions apply only to the marked boundaries of red-cockaded woodpecker buffer zones (200-foot radius around each cavity tree) and support stands:

a. Restrict all vehicle use to designated roads and trails (any new trails shall be designated by the Base Natural Resources Division in consultation with the Base Training Department and shall be consistent with the conservation of the red-cockaded woodpecker) with the following exceptions: command tracked vehicles

may utilize a single, predesignated, ingress/egress route to each preselected command post site in red-cockaded woodpecker support stands, and wheeled vehicles may be used in the immediate vicinity of the bivouac and preselected command sites in red-cockaded woodpecker support stands. All vehicles operating within the support stands are prohibited from causing destruction or injury to tree roots or bark. No vehicles shall be allowed at any time within the buffer zones except for bona fide emergencies (fire or injured personnel) or on trails already designated as of April 26, 1979.

b. Prohibit indiscriminate cutting or destruction of woody vegetation. Only vegetation that has been specifically marked for cutting within a support stand may be cut for camouflage material, wood fires, barricades, etc. Such trees will be marked in advance only by the Base Natural Resources personnel and in a manner consistent with the conservation of the woodpecker. Should additional woody material be needed, it will be obtained outside the boundaries of the support stands of the Mechanized Training Area and brought into these areas for use.

c. Prohibit any excavating or digging that would result in the destruction of woody vegetation, including damage to root systems. Troops should be encouraged to utilize existing fox holes, trenches, etc.

2. Probibit the establishment of command posts and bivouacs in any buffer zones.

3. Prohibit the firing of artillery within 200 meters of a red-cockaded woodpecker cavity tree.

4. Increase the prescribed burning program in the Mechanized Training Area to reduce the potential for wildfires.

5. Initiate a program to at least annually survey the Mechanized Training Area and remove wires that are girdling trees.

6. Utilize other areas on the Base outside the Mechanized Training Area for more of the routine training by field units not requiring the specific features (e.g., landing zones, Combat Town) and tracked vehicles in the Mechanized Training Area.

7. The Mechanized Training Area will be inspected at periodic intervals by the U.S. Fish and Wildlife Service. Recommendations will then be made as to the effectiveness of the Base guidelines and regulations.

Inspections will determine if significant violations have occurred and insure that proper actions have been taken to correct any violations. Included in these inspections would be an annual color infrared aerial photo of the Mechanized Training Area. This photograph is to be provided by the Marine Corps at a scale suitable to detect the death of individual large trees (over 1 foot DBH).

In order to greatly facilitate the implementation and effectiveness of the above guidelines, we suggest that the following actions should be taken at Camp Lejeune:

A. An information/education program should be initiated and maintained to effect a change of attitude among all personnel utilizing Camp Lejeune concerning natural resources management, in general, and the Endangered red-cockaded woodpecker, in particular.

B. A responsibility and accountability program should be developed at all levels to insure that the use of the Mechanized Training Area is compatible with the maintenance of the red-cockaded woodpecker buffer zones and support stands.

C. Base regulations and guidelines should be prepared which are brought to the attention of all personnel using Camp Lejeune and these should be effectively enforced.

D. The Base should also develop a monitoring program to insure that the protective measures instituted from this opinion are having the desired effect of maintaining the support stands and buffer zones as viable habitat for the woodpecker.

In summary, I would like to point out that the major thrust of the February opinion has not been changed. There is an imperative need to protect the habitat of the red-cockaded woodpecker and provide ample replacement vegetation for the future needs of the bird. This can best be accomplished by the implementation of appropriate Base regulations incorporating the above guidelines and, most importantly, the stringent enforcement of these regulations. Implementation of the regulations will not only provide protection for the red-cockaded woodpecker, but will also insure that the natural vegetation cover is maintained for the continued training needs of the Marine Corps.

I would like to thank you, your Special Assistant, and the Commanding Generals and their respective staffs of the Camp Lejeune Marine Corps

Base and the Second Marine Division for cooperating with my consultation team and for the genuine interest shown in natural resources management and the Endangered Species Program. Your assistance made this consultation proceed very smoothly and successfully.

Should this action, as now planned, be modified or altered or should new species be listed that may be affected, you must reinitiate consultation.

Sincerely yours,

Harold J. O'Connor

Acting Director

cc: CG, Camp Lejuene MCB
CG, Second Marine Division
Regions 2, 4, and 5
Mr. Jim Baker, Jacksonville Area Office
Mr. Wendell Neal, Jackson Area Office