7. ***Concurrence Letter for the 301(h) Waiver Renewals for the Arecibo Regional Wastewater Treatment Plant (RWWTP) and Aguadilla RWWTP National Pollutant Discharge Elimination System Permits issued by the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration – June 1, 2020***

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Silver Spring, MD 20910

6/1/20

Refer to NMFS No: OPR-2020-01250

Ms. Doriel I. Pagán Crespo
President
Puerto Rico Aqueduct and Sewer Authority
P.O. Box 7066
San Juan, Puerto Rico 00916-7066

Mr. Jaime Geliga
Chief
Municipal Water Program Branch
U.S. Environmental Protection Agency-Region 2
City View Plaza II, Suite 7000
48 Road 165, km 1.2
Guaynabo, Puerto Rico 00968-8069

RE: Concurrence Letter for the 301(h) Waiver Renewals for the Arecibo Regional Wastewater Treatment Plant (RWWTP) and Aguadilla RWWTP National Pollutant Discharge Elimination System Permits

Dear Ms. Pagán and Mr. Geliga:

This responds to the May 13, 2020, email from Mr. Don Holmes of Jacobs, consultant for the Puerto Rico Aqueduct and Sewer Authority (PRASA), to the National Marine Fisheries Service (NMFS) regarding the extension of a 301(h) waiver under the Clean Water Act from the U.S. Environmental Protection Agency (EPA) to allow the continued operation of the Arecibo and Aguadilla Regional Wastewater Treatment Plants (RWWTP), respectively. The email included a Biological Evaluation (BE) for each RWWTP initiating a section 7 consultation under the Endangered Species Act (ESA) of 1973, as amended (ESA; 16 U.S.C. 1531 et seq.). EPA designated PRASA as its nonfederal representative to enable PRASA to conduct information section 7 consultations with the Services for its RWWTPs. The BEs concluded that the proposed action is not likely to adversely affect species listed as threatened or endangered under the ESA. This response to your request was prepared by NMFS pursuant to section 7(a)(2) of the ESA, implementing regulations at (50 CFR §402), and agency guidance for preparation of letters of concurrence.

This letter underwent pre-dissemination review using standards for utility, integrity, and objectivity in compliance with agency guidelines issued under section 515 of the Treasury and General Government Appropriations Act of 2001 (Data Quality Act; 44 U.S.C. 3504(d)(1) and

3516). A complete record of this informal consultation is on file at NMFS Office of Protected Resources in Silver Spring, Maryland.

Background and Consultation History

A previous consultation for 301(h) waiver renewals for the Aguadilla and Arecibo RWWTPs was concluded on August 13, 2013. The following species were listed since conclusion of the consultation and may be in the action area of the RWWTPs: oceanic whitetip shark (*Carcharhinus longimanus*), scalloped hammerhead shark (*Sphyrna lewini*, Central and Southwest Atlantic Distinct Population Segment [DPS]), Nassau grouper (*Epinephelus striatus*), giant manta ray (*Manta birostris*), rough cactus coral (*Mycetophyllia ferox*), pillar coral (*Dendrogyra cylindrus*), lobed star coral (*Orbicella annularis*), mountainous star coral (*Orbicella faveolata*), and boulder star coral (*Orbicella franksi*). In addition, green sea turtle DPSs were designated in 2016 and animals from the North and South Atlantic DPSs may be in waters around Puerto Rico. At PRASA's request, the 2013 consultation did consider the potential effects of the proposed action on coral species proposed for listing, including rough cactus coral, pillar coral, lobed star coral, mountainous star coral, and boulder star coral.

Action Agency's Effect Determinations

The BEs for the Aguadilla and Arecibo RWWTPs contained information regarding the species and DPSs listed since conclusion of the 2013 ESA section 7 consultation and concluded that the proposed 301(h) waivers for the National Pollutant Discharge Elimination System (NPDES) permit renewals were not likely to adversely affect these ESA-listed species.

Proposed Action and Action Area

The proposed action and action area have not changed since the 2013 consultation (see attachment). No changes have been made to the discharges from the RWWTPs since the conclusion of the previous consultation.

Affected ESA-listed Species and Designated Critical Habitat

This reinitiation is due to the listing of additional species that may be in the action areas, specifically scalloped hammerhead shark Central and Southwest Atlantic DPS, oceanic whitetip shark, Nassau grouper, and giant manta ray. Green sea turtles were included in the 2013 consultation. The 2016 division of this species into various DPSs, of which animals from the North and South Atlantic DPSs may be in the action areas, does not change our 2013 concurrence with the determination that the proposed action may affect, but is not likely to adversely affect green sea turtles. The ESA-listed corals for which a final listing rule was published in 2014 were considered in the 2013 consultation.

Effects of the Action

"Effects of the action" has been recently revised to mean all consequences to listed species or critical habitat that are caused by the proposed action, including the consequences of other activities that are caused by the proposed action. A consequence is caused by the proposed action

if it would not occur but for the proposed action and it is reasonably certain to occur. Effects of the action may occur later in time and may include consequences occurring outside the immediate area involved in the action (see 50 C.F.R. § 402.02; see also 50 C.F.R. § 402.17).

The applicable standard to find that a proposed action is not likely to adversely affect ESA-listed species or designated critical habitat is that all of the effects of the action are expected to be discountable, insignificant, or wholly beneficial. Beneficial effects have an immediate positive effect without any adverse effects to the species or habitat. Insignificant effects relate to the size or severity of the impact and include those effects that are undetectable, not measurable, or so minor that they cannot be meaningfully evaluated. Insignificant is the appropriate effect conclusion when plausible effects are going to happen, but will not rise to the level of constituting an adverse effect. Discountable effects are those that are extremely unlikely to occur. For an effect to be discountable, there must be a plausible adverse effect (i.e., a credible effect that could result from the action and that would be an adverse effect if it did affect a listed species), but it is very unlikely to occur (NMFS and USFWS 1998).

Based on information from Jacobs, no shark or ray species or Nassau grouper have been observed near the outfalls of each of the RWWTPs or at the sampling sites that are part of the environmental monitoring program required of PRASA as part of the NPDES permits for the RWWTPs. Due to the distance from shore and the depth at which the outfalls are located, only adult Nassau grouper might be expected, but the lack of habitat makes it unlikely that these fish would be in the area of the outfalls except when transiting past them. Habitat at the outfalls is soft bottom, meaning that it is also unlikely to provide any forage habitat for ESA-listed elasmobranchs. Based on information in the BEs, fish collections were conducted in 2007 at the Aguadilla and Arecibo outfalls as part of environmental monitoring and no Nassau grouper were captured. Information in the BEs also indicates that treated wastewater is rapidly diluted near the outfalls due to strong wave conditions in both Aguadilla and Arecibo at the outfall points. Thus, we believe the effects to ESA-listed elasmobranchs are discountable due to the rapid dilution of treated effluent around the discharges, as well as the fact that these species infrequently transit through the action areas and have never been sighted during outfall monitoring activities over the past 20 years. We believe the effects to Nassau grouper are also discountable because the species has never been sighted during monitoring or captured during fish sampling activities and can thus be assumed to be infrequent in the action areas, as well as because of the rapid dilution of treated effluent and the fact that areas containing potential habitat for adult grouper are thousands of feet away from each outfall. Monitoring of these habitats over the past 20 years has not generated data indicating the operation of the RWWTP outfalls has resulted in changes in coral habitats in the action areas. Therefore, we concur with PRASA's determination that the continued discharges from the outfalls of the RWWTPs may affect, but are not likely to adversely affect, ESA-listed fish species.

Conclusion

Based on this analysis, NMFS concurs with PRASA that the effects of the proposed action are not likely to adversely affect the subject ESA-listed species.

Reinitiation of Consultation

Reinitiation of consultation is required and shall be requested by the federal agency**,** or by NMFS, where discretionary federal involvement or control over the action has been retained or is authorized by law and: (1) new information reveals effects of the action that may affect an ESA-listed species or designated critical habitat in a manner or to an extent not previously considered; (2) the identified action is subsequently modified in a manner that causes an effect to the ESA-listed species or designated critical habitat that was not considered in this concurrence letter; or if (3) a new species is listed or critical habitat designated that may be affected by the action (50 C.F.R. §402.16).

Please direct questions regarding this letter to Dr. Lisamarie Carrubba, Consulting Biologist, at (301) 427-8493, or by email at lisamarie.carrubba@noaa.gov, or me at (301) 427-8495, or by email at cathy.tortorici@noaa.gov.

Sincerely,

PETERSEN.KRISTINE.K.1365887604 Digitally signed by PETERSEN.KRISTINE.K.1365887604 Date: 2020.06.01 15:28:49 -04'00'

for Cathryn E. Tortorici
Chief, ESA Interagency Cooperation Division
Office of Protected Resources

cc: Jacobs – don.holmes@jacobs.com
PRASA – juan.perez@acueductospr.com, victor.rivera@acueductospr.com
EPA – chang.moses@epa.gov, laguer.yasmin@epa.gov

Attachment: 2013 Letter of Concurrence

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Southeast Regional Office
263 13th Avenue South
St. Petersburg, Florida 33701-5505
http://sero.nmfs.noaa.gov

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AUG 13 2013

Mr. Alberto Lazaro
Director
Puerto Rico Aqueduct and Sewer Authority
P.O. Box 7066
San Juan, Puerto Rico 00916-7066

Ms. Grace Musumeci
Chief, Environmental Review Section
Strategic Planning and Multi-Media Programs Branch
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, New York 10007-1866

Ref.: 301(h) Waiver Renewal for the Arecibo Regional Wastewater Treatment Plant (RWWTP), National Pollutant Discharge Elimination System (NPDES) Permit PR0023710 (SER-2012-9327) and Aguadilla RWWTP, NPDES Permit PR0023736 (SER-2012-9326)

Dear Mr. Lazaro and Ms. Musumeci:

This responds to the September 20, 2012, and November 1, 2012, transmittals from CH2MHill, consultant for the Puerto Rico Aqueduct and Sewer Authority (PRASA), regarding the extension of a 301(h) waiver under the Clean Water Act from the U.S. Environmental Protection Agency (EPA) to allow the continued operation of the Arecibo and Aguadilla Regional Wastewater Treatment Plants (RWWTP), respectively. The transmittals included Biological Evaluations (BE) initiating Section 7 consultation pursuant to the requirements of the Endangered Species Act (ESA). EPA designated PRASA as its nonfederal representative to enable PRASA to conduct Section 7 consultations with the Services. The projects are located at the existing RWWTPs, each of which has an ocean outfall, in Arecibo and Aguadilla, Puerto Rico. The consultation history for the Arecibo RRWTP is as follows:

- On October 16, 2012, we sent a request for additional information (RAI) via e-mail after reviewing the BE for the Arecibo RWWTP.
- In response, CH2MHill sent a copy of the 301(h) waiver application on November 28, 2012. However, the information in the waiver application did not fully respond to our RAI and we sent a follow-up RAI on February 20, 2013.
- We received a response on March 13, 2013, with the additional information for the Arecibo RWWTP Section 7 consultation.

- On March 18, 2013, we spoke with the EPA about the RWWTP consultations and PRASA's request to eliminate coral monitoring for the Arecibo discharge.

The consultation history for the Aguadilla RRWTP is as follows:

- We sent an RAI dated January 2, 2013, after reviewing the BE for the Aguadilla RWWTP.
- We received a response dated February 1, 2013, with the additional information for the Aguadilla RWWTP Section 7 consultation.

We also received a letter dated April 5, 2013, requesting that we consider including the coral species NMFS has proposed for listing under the ESA in the Section 7 consultations being conducted for the two RWWTPs. EPA, through PRASA, is requesting concurrence with its project-effect determinations made under Section 7 of the ESA for the renewal of 301(h) waivers for both RWWTPs in order for the plants to continue operation, which includes the discharge of primary treated sewage into waters of the Caribbean Sea.

You determined that the project is not likely to adversely affect ESA-listed species under our jurisdiction. Our findings on the project's potential effects are based on the project description in this response. Changes to the proposed action may negate our findings and may require reinitiating consultation.

The Arecibo RWWTP is an advanced primary treatment facility located in Arecibo, Puerto Rico, that began operations on April 4, 1986, and serves the municipality of Arecibo and a portion of Hatillo. The Aguadilla RWWTP is an advanced primary treatment facility located in Aguadilla, Puerto Rico, that serves the municipalities of Aguadilla, Aguada, Moca, and Rincón. PRASA submitted the original application for a 301(h) waiver for the Aguadilla RWWTP in 1979. The Arecibo RWWTP outfall is located in the Atlantic Ocean 3,769 feet offshore at a depth of 69 to 82 feet below mean sea level (because the outfall ends in a 660 foot long multi-port diffuser, water depths vary along the diffuser length) (approximate position 18.49105°N, 66.6899°W, North American Datum [NAD] 83)(Figure 1). The Aguadilla RWWTP outfall is located in the Atlantic Ocean 2,450 feet offshore at a depth of 52 feet with a Y-shaped diffuser at the end (approximate position 18.406667°N, 67.192783°W, NAD 83)(Figure 2). PRASA proposes the renewal of the NPDES permits and associated 301(h) waivers for the continued operation of the RWWTPs and ocean outfalls.

The last section of the Arecibo outfall pipeline is a rectangular series of multi-port diffusers of which PRASA proposes a reconfiguration in order to decrease the number of diffuser ports and make the system more efficient for mixing effluent. The Arecibo outfall mixing zone extends up to 200 feet from the outfall. Currently, only 56 of the 112 diffuser ports are open on alternating sides of the diffuser barrel at the Arecibo outfall. PRASA proposes the closing of some of the ports in the Arecibo outfall and the reconfiguration of the diffuser using 41 ports, one on each of the seaward-most 41 risers in order to optimize diffuser performance for the current range of effluent flows. The Aguadilla outfall ends in a Y-shaped diffuser with 29 ports per leg ranging in diameter from 4 to 7 inches. Each diffuser leg is approximately 373 feet long. Because of the Y-shaped configuration of the Aguadilla outfall diffuser, the mixing zone is V-shaped and

measures approximately 400 feet long concentrated between the diffuser legs. Currently, 30 of the 58 diffuser ports are open on alternating sides of the diffuser barrel. PRASA proposes the closure of some of the ports in order to reconfigure the diffuser using 20 ports, one on each of the seaward-most 10 risers in order to optimize diffuser performance for the current range of effluent flows.

Based on information in the BEs and 301(h) waiver applications for the RWWTPs, including excerpts from monitoring surveys conducted as part of NPDES permit requirements, the area around the Arecibo and Aguadilla outfalls are characterized by soft bottom with no coral colonization. PRASA is requesting that EPA eliminate the coral monitoring requirement from the new NPDES permit for the Arecibo RWWTP. In an April 4, 2012, e-mail to National Marine Fisheries Service, EPA explained why they agree with PRASA that no monitoring is appropriate because of the distance of the outfall from the nearest coral community, information from monitoring surveys since 1999 that consistently demonstrate the nearest coral community is sparse and poorly developed, the predominant current movement transports the effluent plume offshore and away from any coral communities, dilution modeling that predicts initial dilution at 30 meters from the outfall under a worst-case scenario, dye studies that show the effluent plume is rapidly diluted within 75 meters of the outfall, and information from receiving water (i.e. waters offshore at the outfalls) monitoring studies that indicates there are no observed periods of significant onshore transport of the effluent plume (see April 4, 2012, e-mail from EPA). The rest of the monitoring requirements would remain the same and there would be no change to the monitoring requirements for the Aguadilla RWWTP.

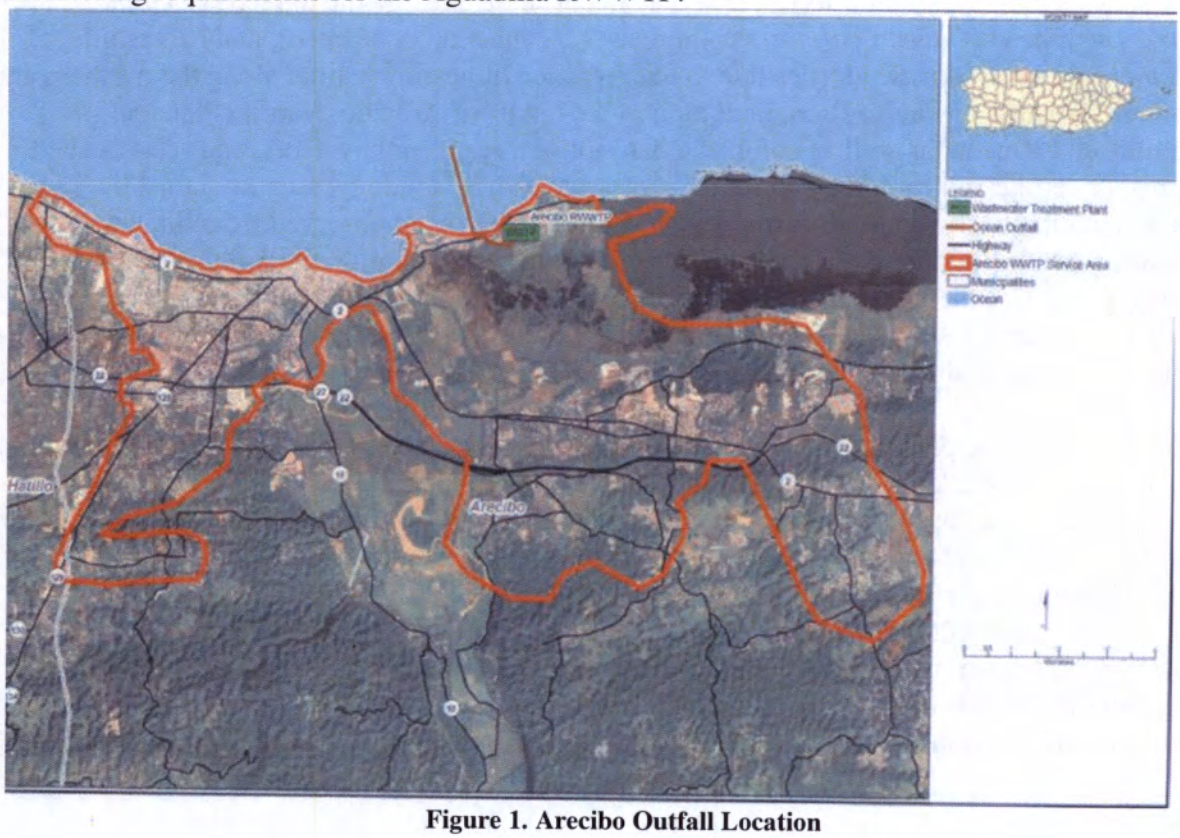


Figure 1. Arecibo Outfall Location

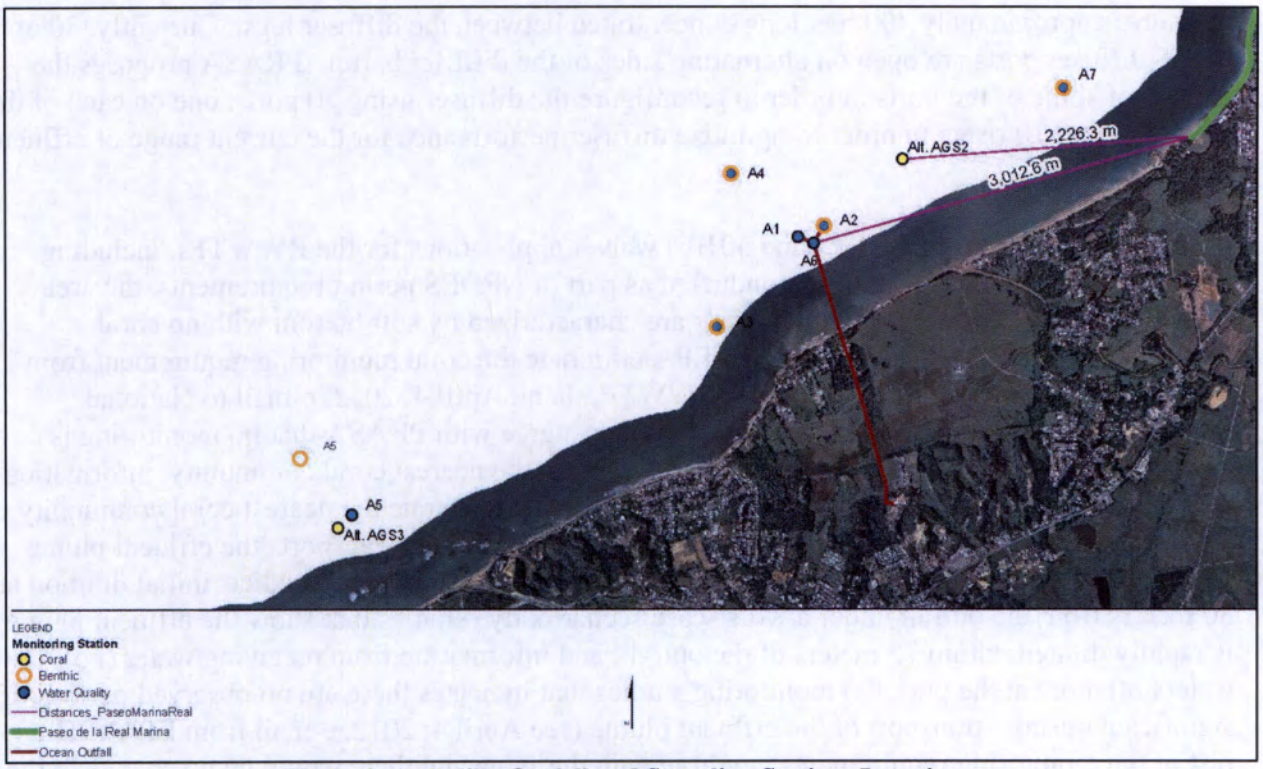


Figure 2. Aguadilla Outfall and Sampling Stations Locations

ESA-listed species under our purview that may occur in the area include green (*Chelonia mydas*), loggerhead (*Caretta caretta*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) sea turtles due to the presence of nesting habitat along the northern and northwestern coasts of Puerto Rico, including in the towns of Arecibo, Hatillo, Aguada, Aguadilla, and Rincón, as well as colonized hardbottom, reefs, embayments, and seagrass beds that provide refuge and foraging habitat for green, hawksbill, and loggerhead sea turtles. The endangered humpback whale (*Megaptera novaeangliae*) has been observed from the vessels used during benthic and other monitoring surveys at the outfalls during the months of their winter migration. Other ESA-listed whale species, including blue (*Balaenoptera musculus*), finback (*B. physalus*), sei (*B. borealis*), and sperm whales (*Physeter macrocephalus*) may also be present in the area of the offshore outfalls of the RWWTPs.

Studies at each of the plant outfalls in 1985 conducted as part of the original 301(h) waiver renewal did not find elkhorn or staghorn corals. No areas containing hardbottom were found at the Aguadilla outfall discharge location, which is part of the reason why the site was selected for the outfall. No colonies of ESA-listed corals have been observed during monitoring studies by CH2MHill under contract to PRASA conducted in the area of the Arecibo outfall since monitoring began in 2000 or in the area of the Aguadilla outfall since monitoring began in 1999. The nearest colonized hardbottom communities near the Arecibo outfall containing the essential feature of coral critical habitat[1] are in the locations selected for coral monitoring stations. These coral monitoring stations are approximately 3,280 feet east and 2,624 feet west of the Arecibo

[1] The essential feature of critical habitat for listed corals is substrate of suitable quality and availability, in water depths from the mean high water line to 30 m, to support successful larval settlement, recruitment, and reattachment of fragments. Substrate of suitable quality and availability means consolidated hardbottom or dead coral skeletons free from fleshy macroalgae and sediment cover.

outfall. The nearest colonized hardbottom and reef areas near the Aguadilla outfall that contain the essential feature of coral critical habitat are located in the area of the coral monitoring stations, which were selected as being the nearest hardbottom areas to the diffuser. These coral monitoring stations are approximately 3,050 northeast and 3,228 feet southwest of the Aguadilla outfall. CH2MHill also provided information indicating that *Montastraea annularis*, *M. faveolata*, and *Dichocoenia stokesii*, all of which are proposed for listing under the ESA, have been observed at the Aguadilla coral monitoring sites, but these sites are not in the vicinity of the outfall as noted above. Similarly, CH2MHill indicated that *M. faveolata* and *Dichocoenia stokesii* have also been observed at the Arecibo coral monitoring sites, but these sites are not in the vicinity of the outfall as previously noted.

We concur with PRASA's determination that the proposed action may affect, but is not likely to adversely affect hawksbill, loggerhead, leatherback, and green sea turtles. Information in the BEs indicates that treated wastewater is rapidly diluted near the outfalls due to strong wave conditions in both Aguadilla and Arecibo, moving treated wastewater rapidly offshore and away from nesting beaches used by these species. At the point of outfall of both RRWTPs, no sea turtles have been observed during monitoring studies that have been conducted since the plants began operation, likely due to the lack of sea turtle habitat in the area of the outfalls. Any sea turtle presence in the area of the outfalls would be due to the animals transiting past the discharges. The outfall pipelines for both plants cross areas containing sea turtle nesting habitat, but the discharge points are located 3,769 feet (Arecibo) and 2,450 feet (Aguadilla) from the shore. Leatherbacks are only present in nearshore waters during nesting season, but the beaches in the area of each of the outfalls do not support nesting by large numbers of these animals due to the limited sand areas and small sizes of these beaches. Loggerhead sea turtle nesting is infrequent in Puerto Rico and has been reported to date in some areas along the east coast, as well as in Culebra and Vieques. Loggerheads are also reported infrequently in stranding data, mainly associated with boat strikes (Puerto Rico Department of Natural and Environmental Resources, unpublished data). Therefore, we believe effluent impacts to leatherback and the NAODPS for loggerhead sea turtles due to the continued operation of the Arecibo and Aguadilla outfalls will be insignificant.

The information in the BEs indicates that, at the Arecibo and Aguadilla outfalls, there is only soft bottom. There are low-relief colonized hardbottoms in the area of the Arecibo outfall with limited coral colonization, which were selected for the establishment of coral monitoring stations each and west of the outfall point. In the area of the Aguadilla outfall, there are colonized hardgrounds east of the outfall and well-developed coral communities on hardgrounds and coral reefs west of the outfall, which were selected as the coral monitoring stations for the NPDES permit. The coral reefs and colonized hardgrounds may provide refuge and/or foraging habitat for loggerhead, hawksbill, and green sea turtles. There may also be some nearshore seagrass beds in the area of each outfall, but seagrass coverage is typically limited along the north and northwest coasts due to strong wave action and the limited extent of the shelf. Hawksbill and green sea turtles could be affected by a loss of refuge and/or foraging habitat as a result of the transport of advanced primary treated wastewater to ocean waters.

However, benthic monitoring data that has been collected by CH2MHill under contract to PRASA at both outfall locations, as well as at coral monitoring stations established at the nearest

coral community locations east and west of each outfall location, indicate that there have been no significant changes in benthic community composition since monitoring began (in 2000 and 1999 for Arecibo and Aguadilla, respectively). The oldest survey data we were able to obtain is from 1985 and indicates that there were no well-established coral colonies in the immediate areas of the outfalls. Therefore, we believe that the impacts of the continued discharge of primary treated wastewater from the Aguadilla and Arecibo RWWTPs on green and hawksbill sea turtles are discountable due to the lack of refuge and foraging habitat in the areas of the outfalls and the rapid dilution of treated effluent around the discharge points, making contact with the effluent by sea turtles for prolonged periods unlikely.

We concur with PRASA's determination that the continued discharges may affect, but are not likely to adversely affect, ESA-listed whale species. No whale species have been observed at the discharge points or within the mixing zones for the outfalls since monitoring of each discharge began. Humpbacks have been observed during winter monitoring activities offshore of the outfalls. Sightings of other whale species were not reported, but researchers responsible for the monitoring activities are not tasked with being observers looking for ESA-listed sea turtles or whales. Information in the BEs indicates that treated wastewater is rapidly diluted near both outfalls due to strong wave conditions, as noted previously. Monitoring reports for the outfalls included in the BEs indicate that the benthic communities in the area of the outfalls have remained relatively unchanged over the entire monitoring period of the outfalls (since 2000 and 1999 for Arecibo and Aguadilla, respectively). Therefore, we believe that the impacts of the continued discharges to ESA-listed whale species are discountable due to the rapid dilution of treated effluent around the discharges, as well as the infrequent presence of whales in the area of each of the outfalls. The majority of whales sighted in waters around Puerto Rico are sighted for only several months of the year, making contact with the effluent by ESA-listed whale species for prolonged periods unlikely.

We concur with PRASA's determination that the project may affect, but is not likely to adversely affect coral critical habitat. We believe that the project will have no effect on ESA-listed corals. The nearest coral area from the Arecibo outfall is approximately 2,600 feet away and the nearest coral area from the Aguadilla outfall is approximately 3,000 feet away. Neither ESA-listed corals nor the essential features of coral critical habitat are within the immediate vicinity of the outfall and historic data from 1985 indicates that the areas around each outfall have historically been devoid of coral colonization by ESA-listed species. In addition, dilution modeling and monitoring studies conducted around the outfall and at sampling sites by CH2MHill, including at the nearest coral community locations to the east and west of each outfall, indicate that the mixing zone extending from each outfall is less than 300 feet, which is far less than the distance to the nearest coral communities. Therefore, the continued operation of the outfall will have no effect on ESA-listed corals as they are not present in the area of the outfalls based on available monitoring data. The essential feature of coral critical habitat is not present in the immediate vicinity of either of the outfalls, both of which are characterized by soft bottom habitat. Because the coral monitoring ongoing since 1999, as well as the surveys conducted in 1985, indicate that the coral community composition and extent have changed little over time since the plants have been operational and discharging effluent throughout this time, NMFS believes that the effects to coral designated critical habitat associated with the continued operation are insignificant. CH2MHill also sent a letter dated April 5, 2013, on behalf of PRASA requesting that we

consider the potential impacts of the continued operation of the Arecibo and Aguadilla RWWTP discharges as part of this consultation on corals proposed for ESA listing. There are *Montastraea* spp. and *Dichocoenia stokesii* reported at the coral monitoring sites for both RWWTPs, which are 2,600 and 3,000 feet away from the Arecibo and Aguadilla outfalls, respectively. None of the coral species currently proposed for listing have been documented in the area of the Arecibo or Aguadilla RWWTP outfalls since surveys were conducted around the RWWTP outfalls in 1985 and monitoring began in 1999. Therefore, because the coral species proposed for listing are not present in the area of the RWWTP outfalls, we believe that the continued operation of the outfalls will have no effect on the species.

This concludes the EPA's consultation responsibilities under Section 7 of the ESA for the proposed federal permit actions. Be advised that a new consultation must be initiated if a take occurs or new information reveals effects of the action not previously considered, or the identified action is subsequently modified in a manner that causes an effect to listed species or critical habitat in a manner or to an extent not previously considered, or if a new species is listed or critical habitat designated that may be affected by the identified action. Because PRASA is proposing a reconfiguration of the diffusers at each of the outfalls, a separate Section 7 consultation may be required for these projects.

Additional relevant information is enclosed for your review. We look forward to further cooperation with you on other projects to ensure the conservation of our threatened and endangered marine species and designated critical habitat. If you have any questions regarding this consultation, please contact Dr. Lisamarie Carrubba, consultation biologist, at (787) 851-3700, or by e-mail at Lisamarie.Carrubba@noaa.gov.

Sincerely,

Miles M. Croom

for Roy E. Crabtree, Ph.D.
Regional Administrator

Enc.: *PCTS Access and Additional Considerations for ESA Section 7 Consultations* (Revised July 15, 2009)

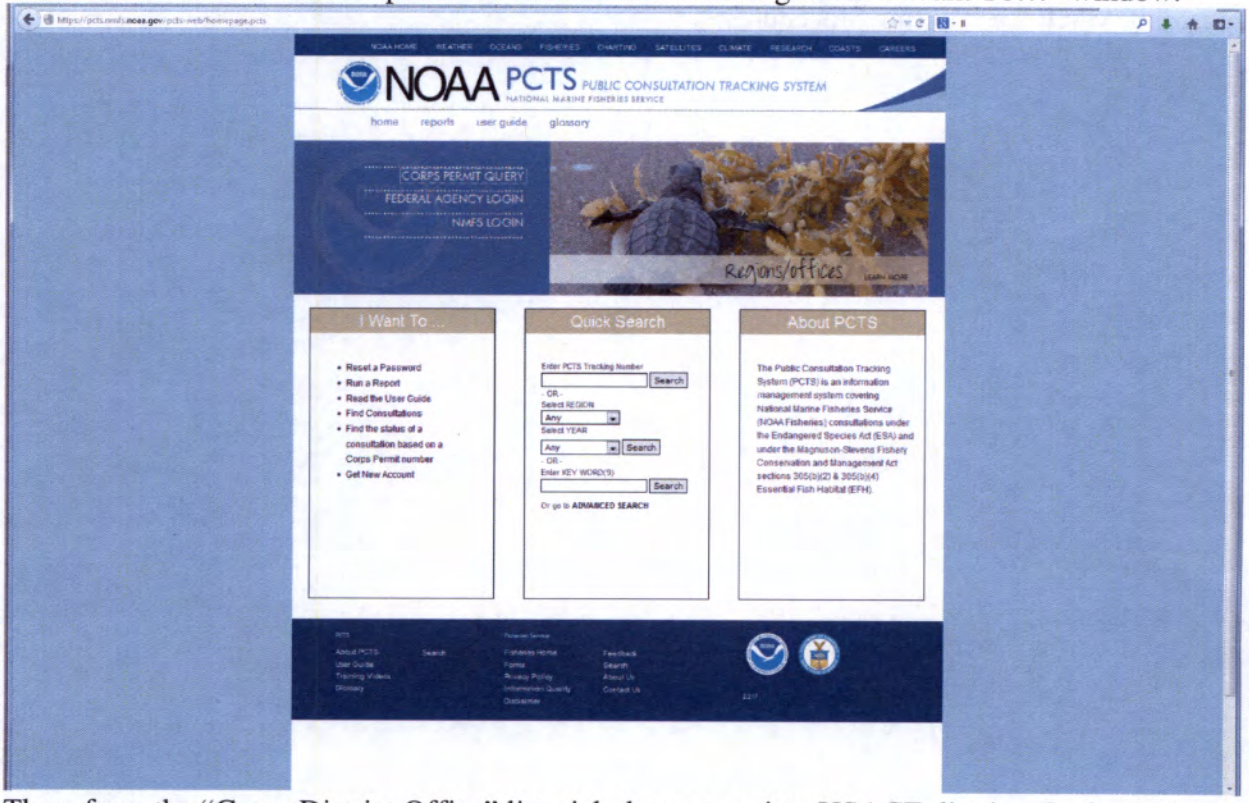
cc: CH2MHill – Don Holmes
EPA – Jaime Géliga

File: 1514-22.K

PCTS Access and Additional Considerations for ESA Section 7 Consultations
(Revised 6-11-2013)

Public Consultation Tracking System (PCTS) Guidance: PCTS is a Web-based query system at **https://pcts.nmfs.noaa.gov/** that allows all federal agencies (e.g., U.S. Army Corps of Engineers - USACE), project managers, permit applicants, consultants, and the general public to find the current status of NMFS's Endangered Species Act (ESA) and Essential Fish Habitat (EFH) consultations which are being conducted (or have been completed) pursuant to ESA Section 7 and the Magnuson-Stevens Fishery Conservation and Management Act's (MSA) Sections 305(b)2 and 305(b)(4). Basic information including access to documents is available to all.

The PCTS Home Page is shown below. For USACE-permitted projects, the easiest and quickest way to look up a project's status, or review completed ESA/EFH consultations, is to click on either the "Corps Permit Query" link (top left); or, below it, click the "Find the status of a consultation based on the Corps Permit number" link in the golden "I Want To…" window.



Then, from the "Corps District Office" list pick the appropriate USACE district. In the "Corps Permit #" box, type in the 9-digit USACE permit number identifier, with no hyphens or letters. Simply enter the year and the permit number, joined together, using preceding zeros if necessary after the year to obtain the necessary 9-digit (no more, no less) number. For example, the USACE Jacksonville District's issued permit number SAJ-2013-0235 (LP-CMW) must be typed in as 201300235 for PCTS to run a proper search and provide complete and accurate results. For querying permit applications submitted for ESA/EFH consultation by other USACE districts, the procedure is the same. For example, an inquiry on Mobile District's permit MVN201301412 is entered as 201301412 after selecting the Mobile District from the "Corps District Office" list. PCTS questions should be directed to Eric Hawk at Eric.Hawk@noaa.gov or (727) 551-5773.

EFH Recommendations: In addition to its protected species/critical habitat consultation requirements with NMFS' Protected Resources Division pursuant to Section 7 of the ESA, prior to proceeding with the proposed action the action agency must also consult with NMFS' Habitat Conservation Division (HCD) pursuant to the MSA requirements for EFH consultation (16 U.S.C. 1855 (b)(2) and 50 CFR 600.905-.930, subpart K). The action agency should also ensure that the applicant understands the ESA and EFH processes; that ESA and EFH consultations are separate, distinct, and guided by different statutes, goals, and time lines for responding to the action agency; and that the action agency will (and the applicant may) receive separate consultation correspondence on NMFS letterhead from HCD regarding their concerns and/or finalizing EFH consultation.

Marine Mammal Protection Act (MMPA) Recommendations: The ESA Section 7 process does not authorize incidental takes of listed or non-listed marine mammals. If such takes may occur an incidental take authorization under MMPA Section 101 (a)(5) is necessary. Please contact NMFS' Permits, Conservation, and Education Division at (301) 713-2322 for more information regarding MMPA permitting procedures.