

ROB BISHOP, UT
CHAIRMAN
DON YOUNG, AK
LOUIE GOHMERT, TX
DOUG LAMBORN, CO
ROBERT J. WITTMAN, VA
JOHN FLEMING, LA
TOM McCLINTOCK, CA
GLENN THOMPSON, PA
CYNTHIA LUMMIS, WY
DAN BENISHEK, MI
JEFF DUNCAN, SC
PAUL A. GOSAR, AZ
RAUL R. LABRADOR, ID
DOUG LAMALFA, CA
JEFF DENHAM, CA
PAUL COOK, CA
BRUCE WESTERMAN, AR
GARRET GRAVES, LA
DAN NEWHOUSE, WA
RYAN ZINKE, MT
JODY HICE, GA
AUMUA AMATA COLEMAN RADEWAGEN, AS
TOM MacARTHUR, NJ
ALEX MOONEY, WV
CRESENT HARDY, NV
DARIN LAHOOD, IL

JASON KNOX
STAFF DIRECTOR

U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

RAÚL M. GRIJALVA, AZ
RANKING MEMBER
GRACE F. NAPOLITANO, CA
MADELEINE Z. BORDALLO, GU
JIM COSTA, CA
GREGORIO KILILI CAMACHO SABLÁN, CNMI
NIKI TSONGAS, MA
PEDRO R. PIERLUISI, PR
JARED HUFFMAN, CA
RAUL RUIZ, CA
ALAN LOWENTHAL, CA
MATTHEW CARTWRIGHT, PA
DON BEYER, VA
NORMA J. TORRES, CA
DEBBIE DINGELL, MI
RUBEN GALLEGÓ, AZ
LOIS CAPPES, CA
JARED POLIS, CO
Wm. LACY CLAY, MO

DAVID WATKINS
DEMOCRATIC STAFF DIRECTOR

June 6, 2016

Dr. Kathryn Sullivan
Under Secretary for Oceans and Atmosphere and
Administrator, National Oceanographic and Atmospheric Administration
1401 Constitution Ave, NW
Washington, DC 20230

Ms. Eileen Sobeck
Assistant Administrator
NOAA National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD

Dear Dr. Sullivan and Ms. Sobeck:

I am writing today to request that you take immediate action to restore damaged coral reefs and prevent additional damage from occurring as the result of dredging activities permitted by the U.S. Army Corps of Engineers (Corps) in South Florida. To date, the National Marine Fisheries Service (NMFS) has failed to pursue compliance and enforcement actions against the Corps and its permitted contractors as required by the Endangered Species Act (ESA) to protect colonies of staghorn coral and five other recently listed coral species in the vicinity of the Port of Miami and Port Everglades. As a result, many of these colonies have been illegally destroyed and the potential for additional unauthorized destruction of listed corals has increased.

In 2010 the Corps reinitiated ESA Section 7 consultation on the 2003 biological opinion (BiOp) for the Port of Miami dredging project with NMFS. The Corps stated that 31 staghorn coral colonies existed within the dredging impact area, and that sedimentation impacts to corals would be localized, temporary, and insignificant. Based on this information, NMFS issued a revised BiOp in 2011 and granted the Corps' request for an incidental take statement (ITS) to relocate the 31 colonies, which included lethal take of five colonies. No other take was authorized.

In September 2013, immediately before dredging began, a Corps survey found 243 staghorn coral colonies spread over only a portion of the impact zone. This made it clear that the information the Corps provided to underpin the BiOp and the ITS was incomplete and inaccurate. But instead of rescinding the BiOp until it could resurvey the area and determine whether or not the proposed action would result in jeopardy or adverse modification of critical habitat, NMFS requested that the Corps reinstate consultation and allowed the Corps to move ahead after relocating only 38 colonies. I understand NMFS' perspective that this decision was made to avoid delays associated with the October 2013 government shutdown, and that the Corps agreed to reinstate consultation. However, stronger action should have been taken.

Dredging began in November 2013 and the Corps reneged on its commitment to reinstate consultation until being served with a notice of intent to sue by several conservation groups in the summer of 2014. In the meantime, multiple surveys and reports showed that sedimentation from dredging operations was having significant negative impacts on staghorn coral colonies. When the Corps finally did reinstate consultation, it acknowledged unauthorized take of staghorn corals, and admitted that impacts from sedimentation had far exceeded the assumptions of the BiOp. Based on this information, NMFS recommended an emergency relocation of the remaining colonies in the impact area, but was able to move only 211 staghorn coral colonies during the two-day period the Corps agreed to stop dredging. Despite not being able to relocate all listed coral colonies, and finding significant damage far outside the impact zone used as the basis for the 2011 BiOp, NMFS allowed dredging to continue. I understand that the Corps had again pledged to reinstate consultation, and that some corals were relocated, but failing to stop work on the project when permitted levels of take had already been exceeded was inappropriate under the law.

In 2015, after additional surveys found even more damage, the Corps ignored repeated NMFS requests for information to support reinstated consultation, and warnings from NMFS that it had exceeded authorized take levels. The Corps only provided NMFS a supplemental Biological Assessment (BA) in January 2016 – months after dredging had ended – acknowledging sediment impacts to 290 staghorn coral colonies for which no ITS was issued. The BA did not include information requested by NMFS for corals outside the proposed impact area, where damage had clearly occurred. It also included no compensatory mitigation plan. Remarkably, NMFS chose to end the consultation in February, instead of pursuing additional remedial action. I understand that since the project was completed, NMFS felt it could not legally require consultation. However, it is clear that the Corps knowingly violated the ESA 4(d) regulation for threatened staghorn coral. I also understand that NMFS has requested mitigation from the Corps to address impacts to essential fish habitat under the Magnuson-Stevens Act, but such action does not remedy the ESA violations that have occurred.

The Corps now proposes to authorize a similar dredging project for Port Everglades in Broward County, FL. The 2014 BiOp NMFS issued for the Port Everglades project found that colonies of staghorn and other species of coral which had been proposed for ESA listing would be negatively impacted, but that these impacts would not cause jeopardy or adverse modification of critical habitat. However, that BiOp and the Environmental Impact Statement (EIS) incorporated inaccurate assumptions about the extent of dredging impacts on corals. Specifically, the proposed area of sedimentation impact is projected to be only 150 feet from the channel. The recent

experience at the Port of Miami makes clear that a much larger area will be impacted, and therefore should be subject to surveys, monitoring, and mitigation. Further, as was the case in Miami, additional colonies of staghorn coral have been identified in the area since issuance of the BiOp, and several new species of coral that exist in the area have been listed under the ESA. Based on this new information, it is clear that the BiOp for staghorn coral is inadequate from both a scientific and regulatory perspective. I understand that NMFS included in the BiOp an informal conference opinion for the coral species proposed to be listed, but that is also now insufficient given that these species have been listed as threatened. Since the Corps has not moved to reinstate consultation as required by law, I request that NMFS rescind the 2014 BiOp, thereby ensuring that the Corps will have no choice but to reinstate.

The new BiOp should incorporate lessons learned from the Port of Miami project, including consideration of a significantly larger area of potential impacts. New baseline surveys conducted by NMFS or an independent third party – not the Corps – are necessary to ensure that the counting errors from the Port of Miami project are not repeated. The BiOp should also include a full consideration of impacts to newly listed corals and establish in advance a process for in-course adjustments dredging operations and mitigation should impacts exceed what is proposed and authorized. I understand NMFS' desire to facilitate dredging without unreasonable delays, but the Port Everglades project cannot move forward until it is authorized by Congress. Therefore both agencies have not only the obligation, but also the time to conduct consultation in a more responsible manner.

Thank you for your assistance and cooperation in responding to this request. I would appreciate a response by July 1, 2016, informing me of how your Agency plans to ensure that the devastating environmental impacts we saw in Miami are mitigated, and are not repeated at Port Everglades. Should you have any questions, please have your staff contact Matt Strickler on the Natural Resources Committee staff at (202) 225-6065.

Sincerely,



Raul M. Grijalva
Ranking Member
Committee on Natural Resources

Cc: Lieutenant General Thomas P. Bostick
Commanding General and Chief of Engineers
U.S. Army Corps of Engineers

Christy Goldfuss
Managing Director
White House Council on Environmental Quality