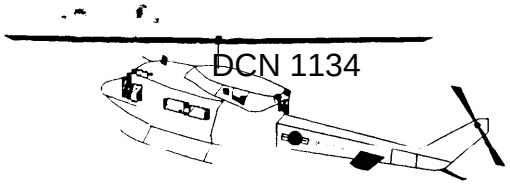
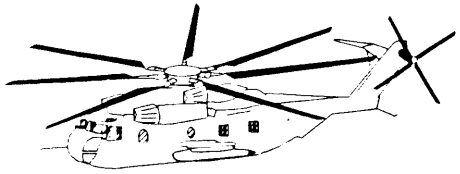


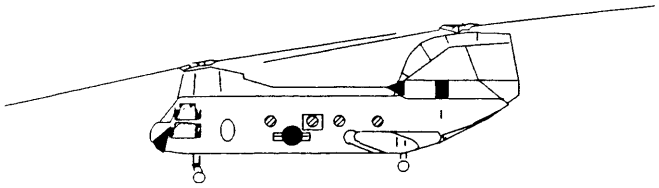
DCN 1134

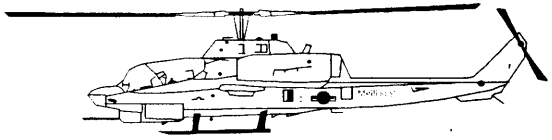


TEAM NEW RIVER
MAGTF BRIEF

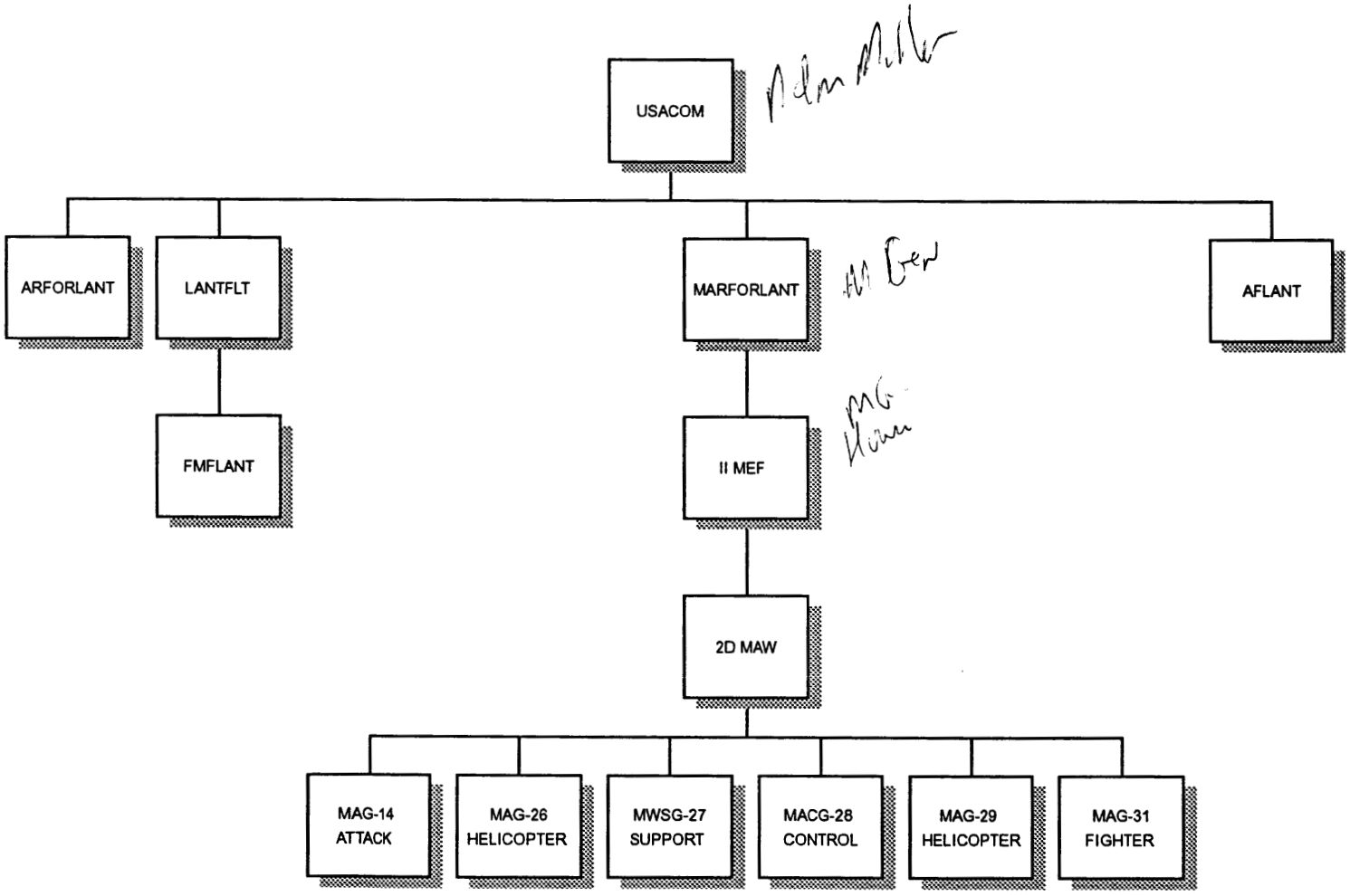
MARINE AIRCRAFT GROUP 29

MARINE AIRCRAFT GROUP 26

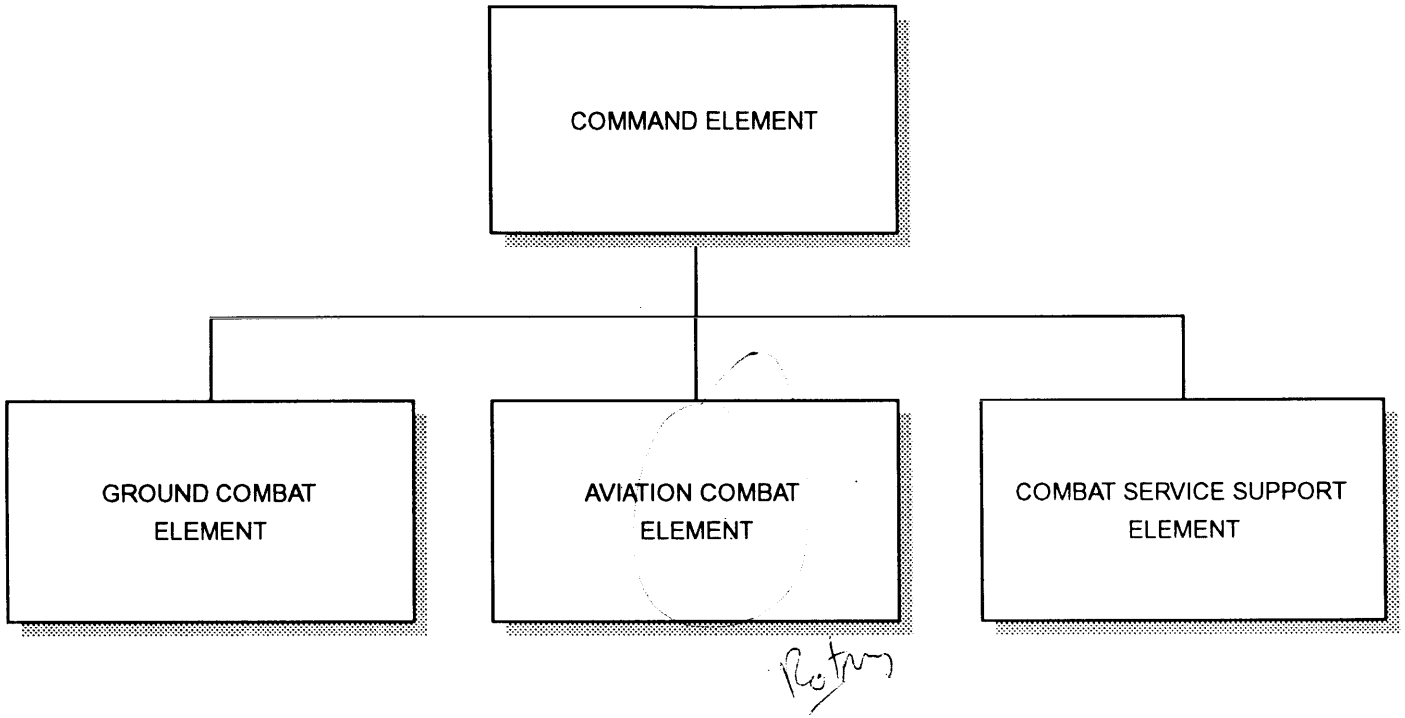




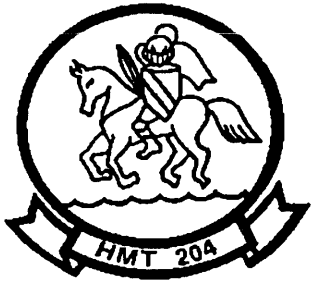
CHAIN OF COMMAND



MARINE MAGTF



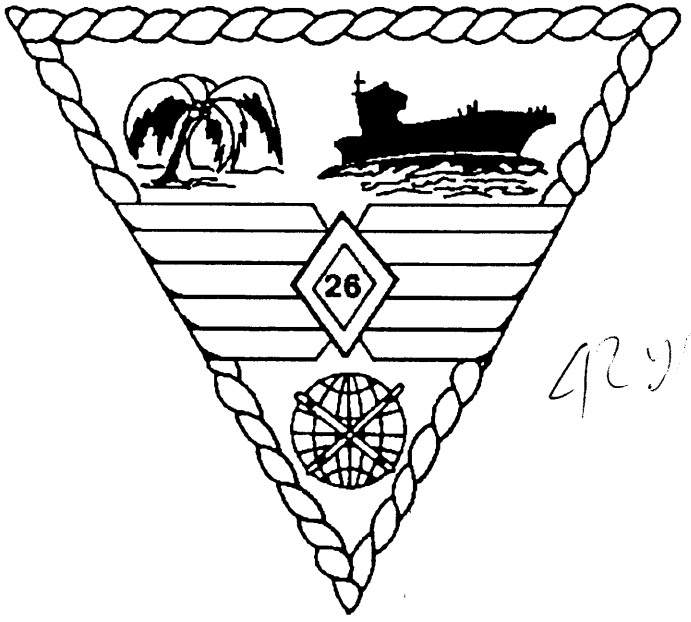
- OPERATE AS A COMPONENT OF A JOINT TASK FORCE
- ENTER BATTLE AREA AT NIGHT
- OPERATE UNDER ADVERSE WX CONDITIONS
- ENAGE, KILL OR CAPTURE ENEMY
- OPERATE IN A HOSTILE NBC ENVIRONEMENT
- OPERATE FROM THE SEA


HMT 204

HMM-261

BLACK KNIGHTS
HMM-264

HML/A-167


26

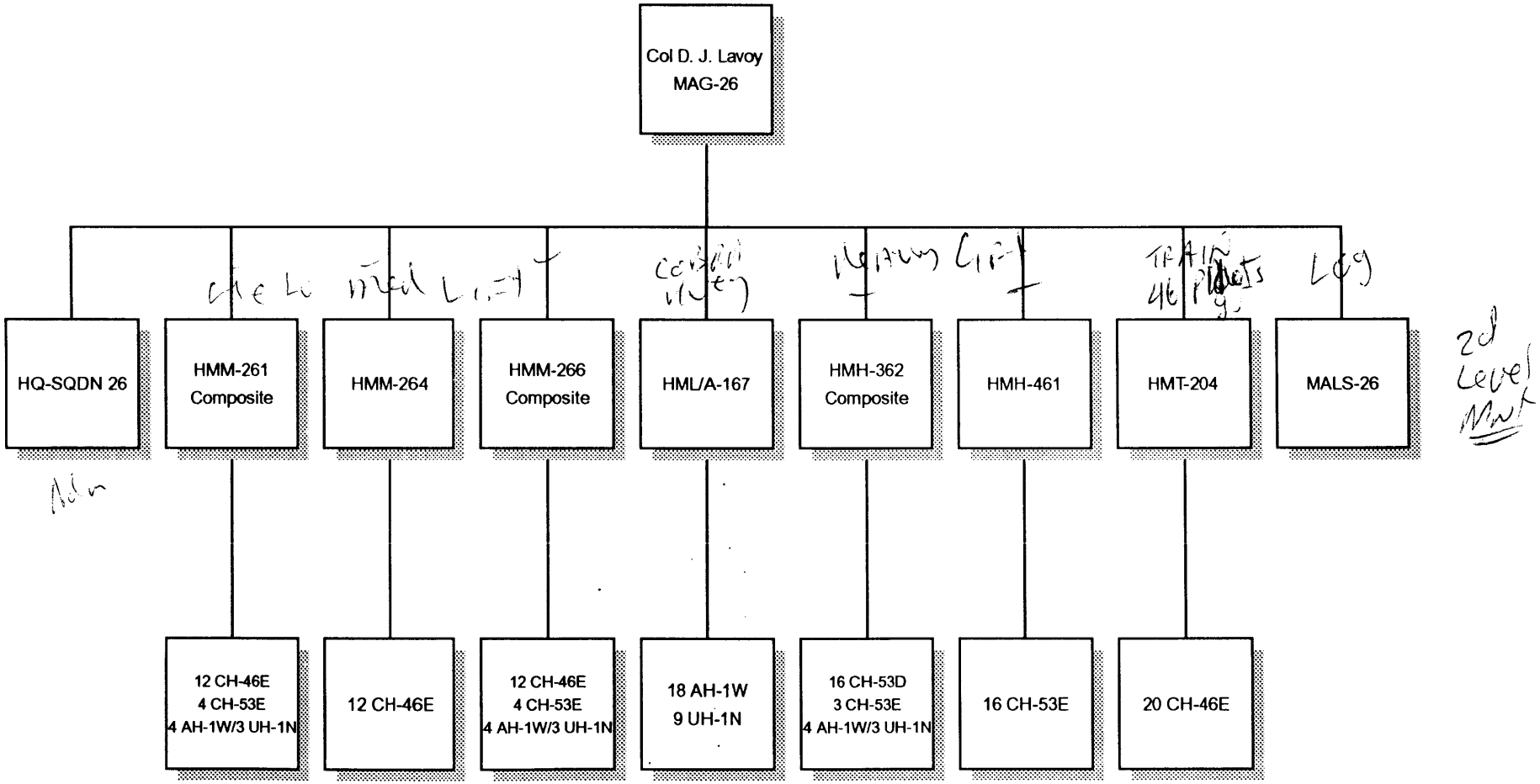
GRIFFINS
HMM-266

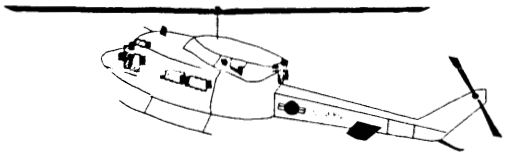
PATRIOTS
MALS-26

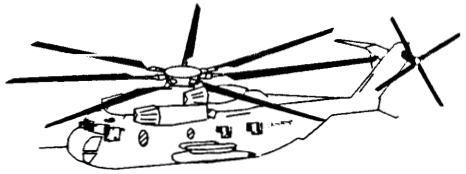
HMH-461

Holy Angels
HMH-362

MAG-26 Organization



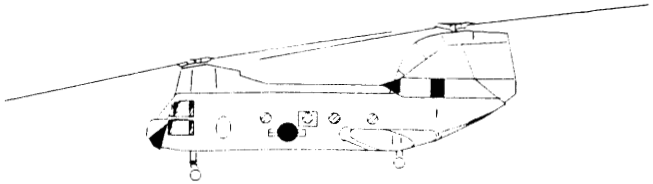


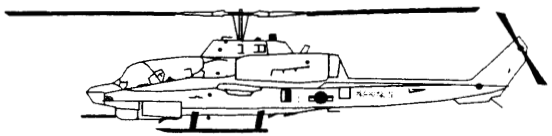


MARINE AIRCRAFT
GROUP 29

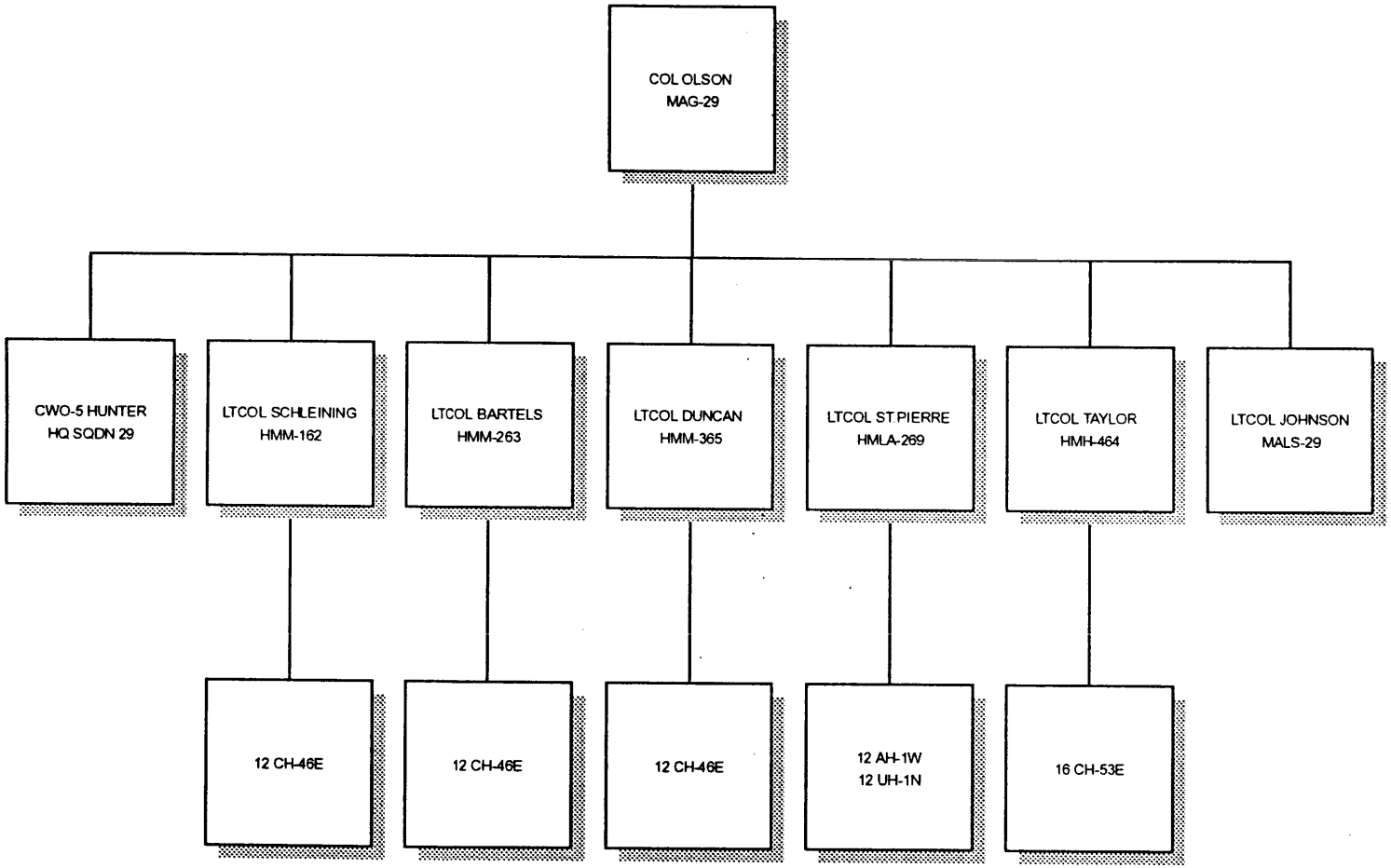
ATTACK
OBSERVATION
TRANSPORTATION
MAG
29

ORGANIZATION





MAG-29 ORGANIZATION



AIRCRAFT/MISSIONS

- CH-46E — ASSAULT TRANSPORT OF COMBAT TROOPS DURING AMPHIBIOUS OPERATIONS AND SUBSEQUENT OPERATIONS ASHORE.

- CH-53E/D — COMBAT ASSAULT TRANSPORT OF EQUIPMENT AND SUPPLIES, DURING AMPHIBIOUS OPERATIONS AND SUBSEQUENT OPERATIONS ASHORE.

- UH-1N — UTILITY HELICOPTER SUPPORT DURING AMPHIBIOUS OPERATIONS AND SUBSEQUENT OPERATIONS ASHORE.

- AH-1W — ANTI-ARMOR AND CLOSE AIR SUPPORT DURING AERIAL AND GROUND ESCORT OPERATIONS.

OPERATIONAL COMMITMENTS

- MEU DEPLOYMENTS
  - LF6F 22, 24, 26 MEU
- SPECIAL PURPOSE MAGTF
- AIR CONTINGENCY FORCE
- SPECIAL OPERATIONS TRAINING GROUP
  - SPECIAL TRAINING EXERCISE
- CONTINGENCY MAGTF (MPF)
- CAX, WTI, MWTC

HMH-362 SPMAGTF

- PEOPLE M/N
  - OFFICERS 47/1
  - ENLISTED 217/3
- AIRCRAFT
  - CH-53D 8
  - CH-53E 4
  - UH-1N 3
  - AH-1W 4
- DEPLOYED WINDOW
  - 17 OCT - 1 OCT

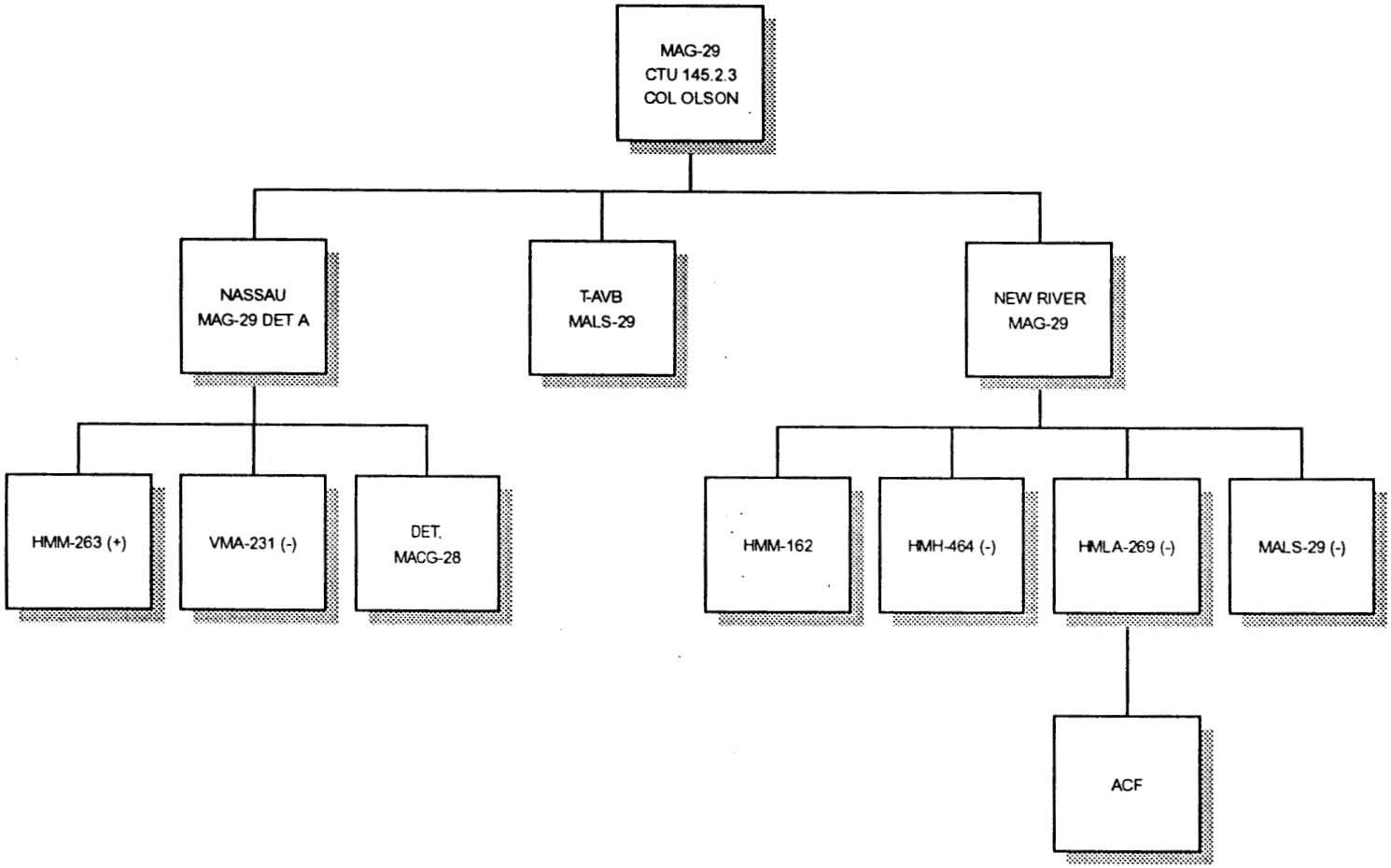
HMM-266 COMPOSITE

- PEOPLE M/N
  - OFFICERS 58/1
  - ENLISTED 275/3
- AIRCRAFT
  - CH-46E 12
  - CH-53E 4
  - UH-1N 3
  - AH-1W 4
- DEPLOYED WINDOW
  - 3 JUL - 24 JUN

HMM-261 COMPOSITE

- PEOPLE M/N
  - OFFICERS 53/1
  - ENLISTED 251/3
- AIRCRAFT
  - CH-46E 12
  - CH-53E 4
  - UH-1N 3
  - AH-1W 4
- DEPLOYED WINDOW
  - 4 APR - 2 APR

AP-94 ORGANIZATION



AGILE PROVIDER - 94

DATE	EVENT
19 APRIL	CHOP CTF - 145/SAIL - II MEF FWD
27 APRIL	REHEARSAL
30 APRIL	NON COMBATANT EVACUATION
2 MAY	NIGHT AMPHIBIOUS ASSAULT TAVB OPERATIONAL
4 MAY	PHASE CONTROL ASHORE
6 MAY	ACF DEPLOYMENT
7 MAY	LINK UP WITH US ARMY

HMM-365 LF6F

DATE	EVENT
MAY	SAIL MOREHEAD CITY
JUNE	D-DAY CEREMONIES FRANCE
JUNE	INCHOP 6TH FLEET
JUNE	SPANISH PHIBLEX
JULY	TUNISIAN PHIBLEX
AUG	SPANISH EXERCISE
SEP	DYNAMIC GUARD TURKEY
OCT	OUTCHOP
NOV	RETURN

COMBINED ARMS EXERCISE
29 Palms CA

- Integrated MAGTF
- Live Fire
- Rapid Maneuver
- Expeditionary Environment
- Dedicated Unit Training

FY-94 * = RANGE REQUEST DOLLARS (1) = NOTES

	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP
HQTRS						CAX 3/4 WTI 2-94 27 FEB-11 APR		WARLORD 16-20 MAY			AGILE SWORD 8-22 AUG	
MALS				MARFORCARIB 5 JAN - 1 APR					MARFORCARIB 27 MAY- 1 JUL		AGILE SWORD 8-22 AUG	
				LF6F 1-94 7 JAN - 24 JUN					LF6F 1-95 4 APR 94 - 2 APR 95			
HMLA-167	DET LF6F 1-94 7 JAN - 24 JUN DET MARFORCARIB 13 OCT - UFN			*CAX 3/4-94 / WTI 2-94 15 JAN - 2 MAR / 20 FEB - 17 APR / 27 APR			ACF	DET LF6F 1-95 27 MAY- 1JUL CAPEX 2-94 WARLORD 9-13 MAY 16-20 MAY	BLOCK TRNG CAPEX 3-94 *DFT NAS CECIL FIELD 6-10 JUN 18-22 JUL 9 - 21 AUG(6/6)		AGILE SWORD 8-22 AUG	
HMM-261								LF6F 1-95 WORK UP				
HMM-264				*CAX 3/4 MWTC WTI 2-94 10 JAN - 2 MAR / 27 FEB - 17 APR			CAPEX 2-94 9 - 13 MAY	BLOCK TRNG WARLORD 18-22 APR 16-20 MAY	CAPEX 3-94 18 - 22 JUL	UNITAS(3) 15 - 25 JUL		
HMM-266	LF6F WORX UP (12/4/4/3)				LF6F 1-94 7 JAN - 24 JUN					CONUS STBY 24 JUN-24 JUL	COC AUG	
HMH-362	MARFORCARIB(DEP) 13 OCT-19 DEC (8/4/4/3)			MARFORCRIB(DEP) 12-17 JAN		MARFORCARIB(DEP 8-22 MAR	*DAWSON DET 6-16 APR	MCRESS 16-20 MAY	MARFORCARIB(DEP) 23 MAY - 11 JUL		MARFORCARIB CONUS STBY 12 JUL - 1 OCT AGILE SWORD 8-22 AUG COC AUG	
HMH-461	JTF 129/SOTG) (6)			*CAX 3/4-94 / WTI 2-94 15 JAN - 2 MAR / 27 FEB - 17 APR				CAPEX 2-94 WARLORD 9 - 13 MAY 16-20 MAY	CAPEX 3-94 18 - 22 JUL	AGILE SWORD 8-22 AUG (ON CALL FISDU 26 APR - 11 MAY)		
HMT-204	COC								DFT MCAS BEAUFORT 26 APRIL - 11 MAY(8)			

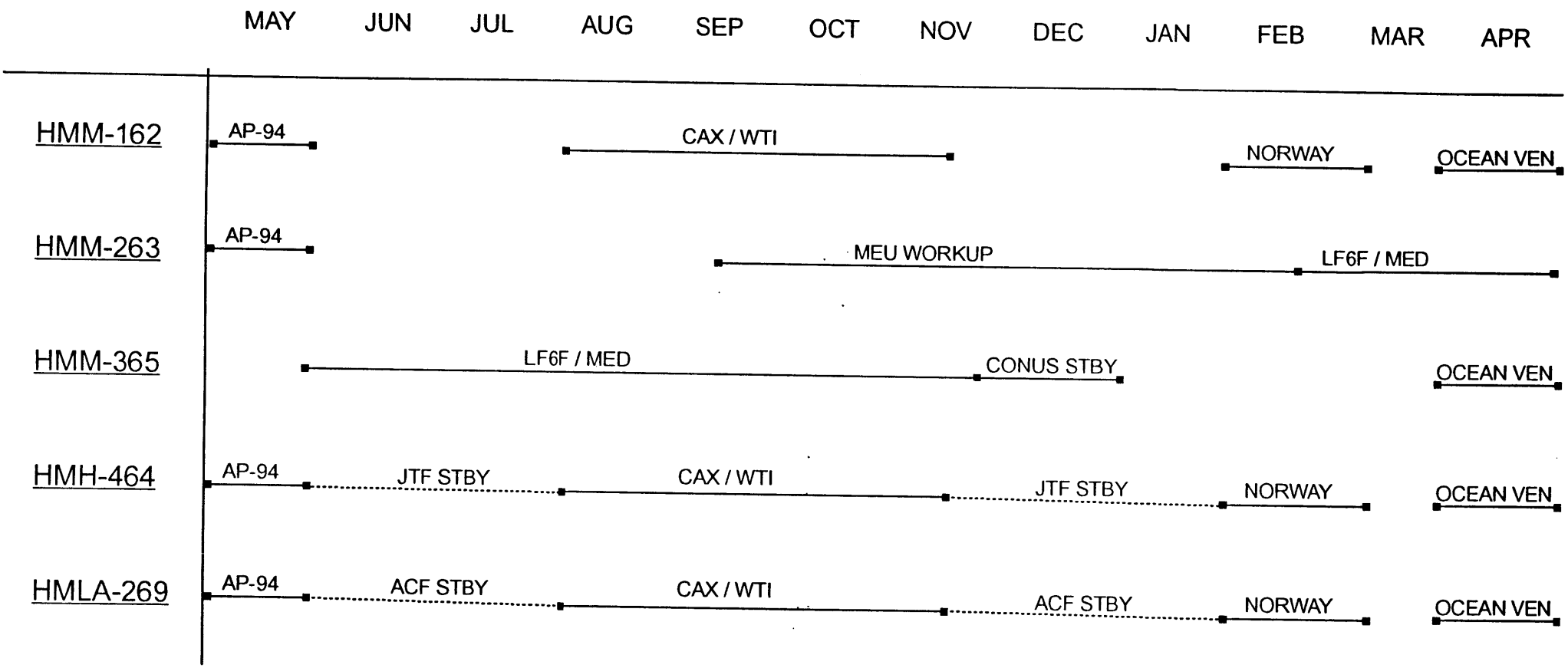
FY-95 * = RANGE REQUEST DOLLARS (1) = NOTES

	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP
HQTRS	WARLORD 1-95 24-28 OCT			*CAX 3/4 6 JAN-18 FEB	WTI 2-95 1 MAR - 1 APR			OCEAN VENTURE 1-20 MAY ONSLOW OPAREA				
MALS				*CAX 3/4-95 6 JAN-18 FEB	WTI 2-95 1 MAR - 1 APR							
HMLA-167	CAPEX 4-94 3-7 OCT	DFT FT CAMPBELL 19-28 OCT WARLORD 24-28 OCT		*CAX 3/4-95 6 JAN - 18 FEB	WTI 2-95 1 MAR - 1 APR				BLOCK TRN 5-9 JUN	DFT AP HILL 21-30 JUN	BLOCK TRN 7-11 AUG	
HMM-261		LF6F 1-95 22 OCT 94 - 2 APR					CONUS STBY 2 APR-1 MAY					
HMM-264	CAPEX 4-94 3 - 7 OCT											LF6F 3-95 25 AUG 95 - 31 JAN 96
HMM-266				*CAX 3/4-95 6 JAN - 18 FEB	WTI 2-95 1 MAR - 1 APR *MWTC 3-95 2-27 FEB							
HMH-362	MARFORCARIB WARLORD (MCCRES)											
HMH-461	CAPEX 4-94 3 - 7 OCT JTF 129/SOTG)	WARLORD/MCCRES 24-28 OCT NOV COC		*CAX 3/4-95 6 JAN - 18 FEB	WTI 2-95 1 MAR - 1 APR							
HMT-204								DFT NAS JACKSONVILLE 1-20 MAY				

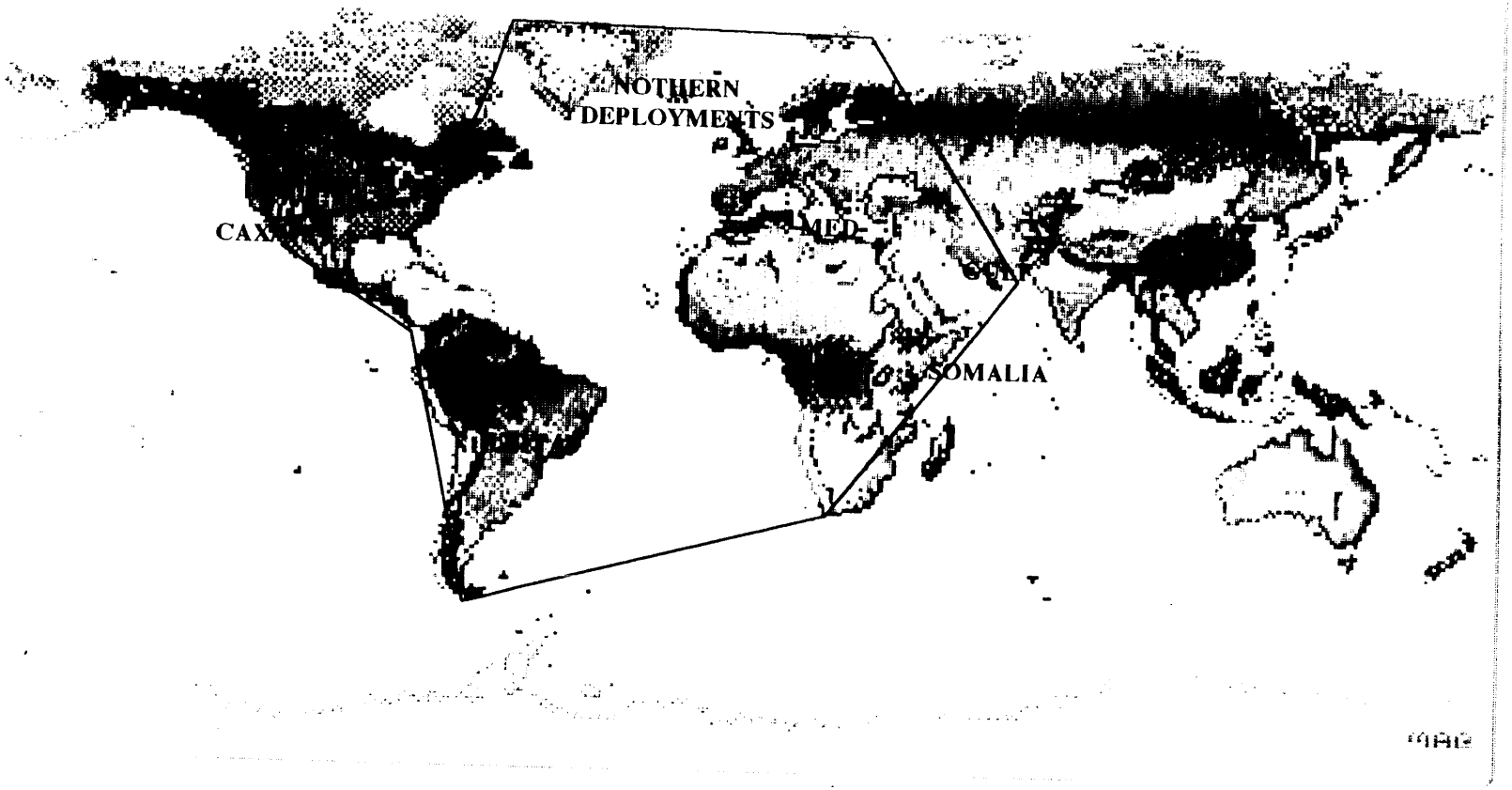
FY-95 * = RANGE REQUEST DOLLARS (1) = NOTES

OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP

DEPLOYMENT TIMELINE



AREA OF RESPONSIBILITY



MEU(SOC) 6-Month Training Plan

Initial Collective Training Phase (ICTP)		Intermediate Training Phase (ITP)	Final Training Phase (FTP)
A Cycle	*B Cycle*		
10 Wks	*4 Wks*	*5 Wks*	*7 Wks*

Chop — Deploy

ICTP (A Cycle)
- Aircraft Training (TERF, NVG II, CQ) Individual T/M/S
- Individual Weapons Training
- Induct Equipment into Maintenance Cycle

ICTP (B Cycle)
- Advanced Aviation Tactics and Techniques (MCCRES)
- Maintenance Stand-down
- Integrate with BLT (MEUEX)

ITP
- Training with MSPF and SOTG (TRUE, GOPLAT)
- Night STXs

FTP
- Blue/Green Workups
- SOCEX

Assets

12 CH-46E
4 CH-53D/E
4 AH-1W
3 UH-1N
6 AV-8B
2 C-130
(CONUS Stand-by)

SEA BASED COMPATIBILITY

AIRCRAFT

- BLADE FOLD
- ROTOR BRAKE
- CORROSION RESISTANCE
- TIE DOWN
- TACAN

EQUIPMENT

- INTEGRATED MAINTENANCE/SUPPLY
- SUPPORT EQUIPMENT
- READINESS REPORTING
- FUEL

TRAINING

- SHIPBOARD OPS/ENVIROMENT
- TERMINOLOGY
- INSTRUMENTS
- EMERGENCIES (FIRE FIGHTING)

MARINE AIRCRAFT
GROUP 29

MARINE AIRCRAFT
GROUP 26

PROVIDE HIGHLY TRAINED AVIATION ASSETS

- SEA BASED
- EXPEDITIONARY
- SUSTAINABILITY
- NIGHT ORIENTED
- HOSTILE ENVIRONMENTS

Document Separator

2D LAAD
BATTALION

1. LAAD Battalion Mission and Tasks

a. Mission. To provide close-in, surface-to-air weapons fire in assigned zones of operation defending forward combat areas, vital areas, and installations against low altitude air attack. To further provide surface-to-air weapons support for units engaged in special operations.

b. Tasks

(1) Maintain a primary capability as a highly mobile, man-portable, surface-to-air weapons component of the Marine Air-Ground Task Force with the ability to rapidly deploy ashore in the assault echelon of an expeditionary operation.

(2) Provide for the separate deployment of subordinate batteries and platoons to accommodate special tactical situations and Marine Air-Ground Task Force task organization.

(3) Plan and coordinate requirements for liaison and communications with appropriate commands to ensure the most effective integration of LAAD units within the integrated air defense system.

(4) Conduct individual and unit training to qualify subordinate LAAD batteries and elements thereof for tactical deployment and combat operations.

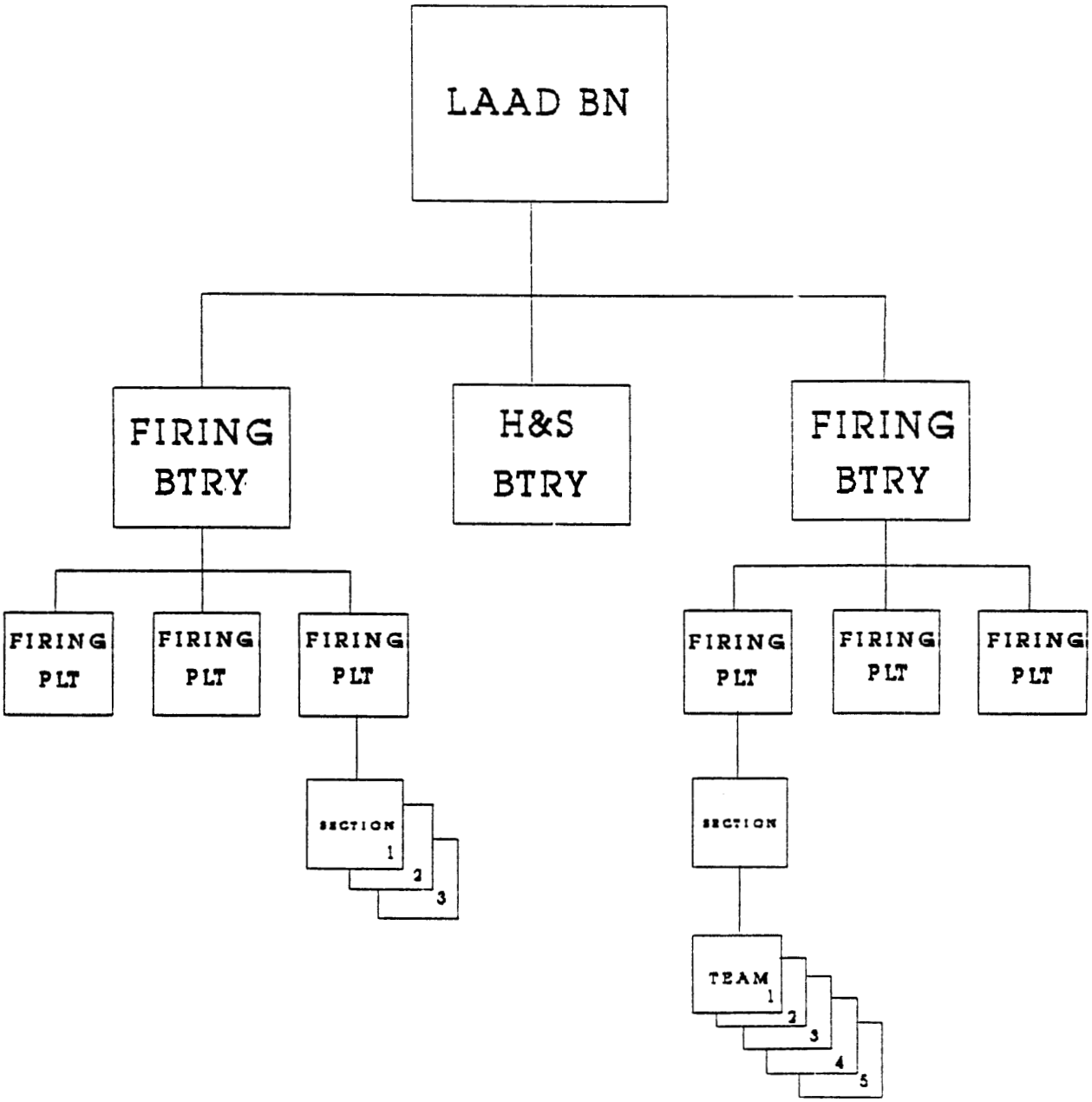
2. **STINGER Capabilities and limitations**

a. The Stinger Missile is a man-portable, shoulder-fired, passive infrared (heat seeking) or ultraviolet (contrast lock) homing missile, which is designed to counter high speed, low flying, fixed wing or rotary winged aircraft. The missiles super cooled seeker section gives it an all aspect engagement capability, and contains circuitry to provide extensive infrared counter counter measures (IRCCM; ie. Flare/IR Jammer rejection). The missile requires no control from the gunner after firing and has the following characteristics (UNCLASSIFIED):

RANGE	5+ KM
ALTITUDE	10,000+ FT
SPEED	Mach 2+
WEIGHT	34.5 lbs
LENGTH	60.0 in
WARHEAD	HE/I equivalent to 1 lb TNT with impact/delay fuzing
IFF SUBSYSTEM	Mode IV & Mode III

b. LAAD Teams carry six missiles in their HMMWV as a basic load, but are restricted by weight of the weapon system to one round per man in the Man-Portable Air Defense (MANPAD) mode of employment. These weapons come sealed in a reusable, steel Weapon Round Container (WRC). These WRC's, or 'monoboxes' as they are commonly referred to, are 7 cubic feet in size, and weigh approximately 85 lbs. Thus, a standard HMMWV, modified with a rack for securing WRC's is a vital component to the LAAD team and their weapon system.

c. LAAD teams are employed during times of darkness only under special circumstances. Currently Thermal Night Sights are being fielded that will allow the LAAD Teams to become 24 hour capable. Special ROE must be established because the Thermal Sight allows only marginal target identification.



Document Separator

NULLI SECUNDUS
MALS-14

MALS-14 BRIEF OUTLINE

- BACKGROUND INFORMATION
- SUPPORTED UNITS
- CONCEPT OF ORGANIZATION
- PERSONNEL
- EFFECTIVENESS
- CHALLENGES

BACKGROUND INFORMATION

MISSION: PROVIDE AVIATION LOGISTICS SUPPORT FOR THE SUBORDINATE UNITS OF MARINE AIRCRAFT GROUP 14

TASKS:

(1) PROVIDE INTERMEDIATE LEVEL MAINTENANCE SUPPORT ON AIRCRAFT AND AERONAUTICAL EQUIPMENT

(2) PROVIDE AVIATION SUPPLY SUPPORT FOR AIRCRAFT OF ALL SUPPORT UNITS

(3) SCREEN AND REPAIR AERONAUTICAL MATERIALS IN NEED OF REWORK, TEST, OR INSPECTION.

SUPPORTED UNITS

	CURRENT # A/C
VMAT-203	35 (15 T'S + 20 B'S)
VMA-542	19
VMA-223	19
VMA-231	20
VMGRT-253	10 (F'S)
VMGR-252	13 (9 F'S + 4 R'S)
VMAQ-1	5
VMAQ-2	4
VMAQ-3	3
VMAQ-4	(5) *
TOTAL A/C	128 * EXCLUDES A/C UDP

OTHER
NORWAY PREPOS
MWSS-271
MWSS-274
PHOTO LAB

CONCEPT OF ORGANIZATION

MALS - 14 IS ORGANIZED AS A CORE UNIT CAPABLE OF ABSORBING GROUPS OF AUGMENTEES ASSOCIATED WITH SPECIFIC AIRCRAFT TYPES AND SQUADRONS. THIS CONCEPT ALLOWS THE SQUADRON TO SUPPORT AN AIR COMBAT ELEMENT WITH A VARIETY OF AIRCRAFT CONFIGURATIONS. IT ALSO FACILITATES THE SIMULTANIOUS SUPPORT OF SEPARATE AIRCRAFT DETACHMENTS.

STRUCTURE

FIXED WING MALS

CO
XO
SGTMAJ
SQDN GYSGT

S-1 1/10	S-3 2/5	S-4 1/6	GROUND SAFETY 1/1	MED DEPT 1/3	SUPPLY DEPT 9/85	MAINT DEPT 11/216

SP 2/3	SR 1/17	SC 1/22	SM 1/10	SQ 1/8	SD 1/14	SS 1/6	SA 1/5

AMO/M.A. MAT. CONT QA / PC 4/26	P/P 1/7	A/F /11	AVI 2/64	ORD 2/46	GSE 1/28	ALSS 1/32

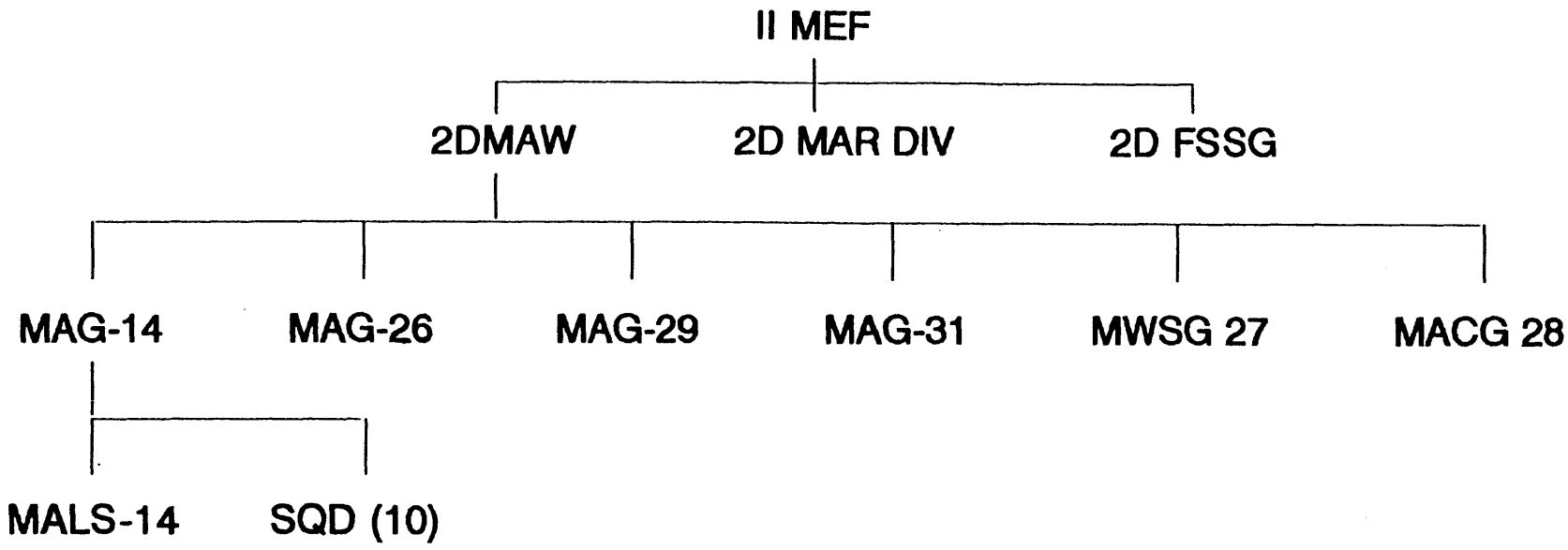
TOTAL : 27 / 328

PERSONNEL

* T/O MALS CORE AS OF 2/94	26/361 (325 CORE + 36 FOR 1ST DEGREE ENGINE REPAIR)
* AUGMENTS FROM SQDS	0/713
* TOTAL	26/1074
* ON HAND CHARGEABLE	25/ 1124

KEY PERSONNEL LIST

BILLET	NAME
COMMANDING OFFICER	LTCOL R. D. PENNINGTON
EXECUTIVE OFFICER	MAJ S. F. FOREMAN
SERGEANT MAJOR	SGTMAJ R. L. RAMSEY
S-1 OFFICER	CWO3 J. T. FULLER
S-1 CHIEF	MSGT G. L. WILLIAMS
S-3 OFFICER	CAPT R. D. COLEMAN
S-3 CHIEF	MSGT T. W. COGGER
S-4 OFFICER	1STLT M. B. PENNINGTON
S-4 CHIEF	GYSGT R. L. MCATEE
SAFETY OFFICER	1STLT M. B. PENNINGTON
AIRCRAFT MAINT OFFICER	MAJ J. F. BROOKS
AIRCRAFT MAINT CHIEF	MSGT W. H. BROOKS
AVIONICS OFFICER	MAJ R. WITTENBERG
AVIONICS CHIEF	MGYSGT E. F. KINLAW
ORDNANCE OFFICER	MAJ R. V. DANIELS
ORDNANCE CHIEF	MSGT M. K. SMITH
AVIATION SUPPLY OFFICER	MAJ H. J. GUILLORY
AVIATION SUPPLY CHIEF	MSGT L. D. TITUS



MALS-14

COMMANDING OFFICER: LTCOL ROSS PENNINGTON

MISSION/FUNCTION: PROVIDE AVIATION LOGISTICS SUPPORT FOR THE SUBORDINATE UNITS OF MARINE AIRCRAFT GROUP 14 (10 FLYING SQDNS)

CONCEPT OF ORGANIZATION: CORE UNIT + T/M/S AUGMENTS ALLOWS FOR SIMULTANEOUS ACE SUPPORT OF SEPARATE DETACHMENTS

SIZE: CORE - 25/361* USMC 1/3 USN AUGMENTS - 713 USMC TOTAL - 1100 USMC/USN

A/C SUPPORTED: AV8B/AV8B II PLUS, EA6B, KC-130 F/R = 128 A/C (EXCLUDES UDP A/C)
(4 SQDNS) (4 SQDNS) (2 SQDNS)

ELEMENTS DEPLOYED: VMAQ-1 - UDP IWAKUNI, JAPAN (72)

DEPLOYMENT WORKUPS: VMAQ-3 - CVW-1 (USS AMERICA), VMA-233 (USS NASSAU), VMA-542 (GUAM)
STAND-BY VMA-231 (IWAKUNI)

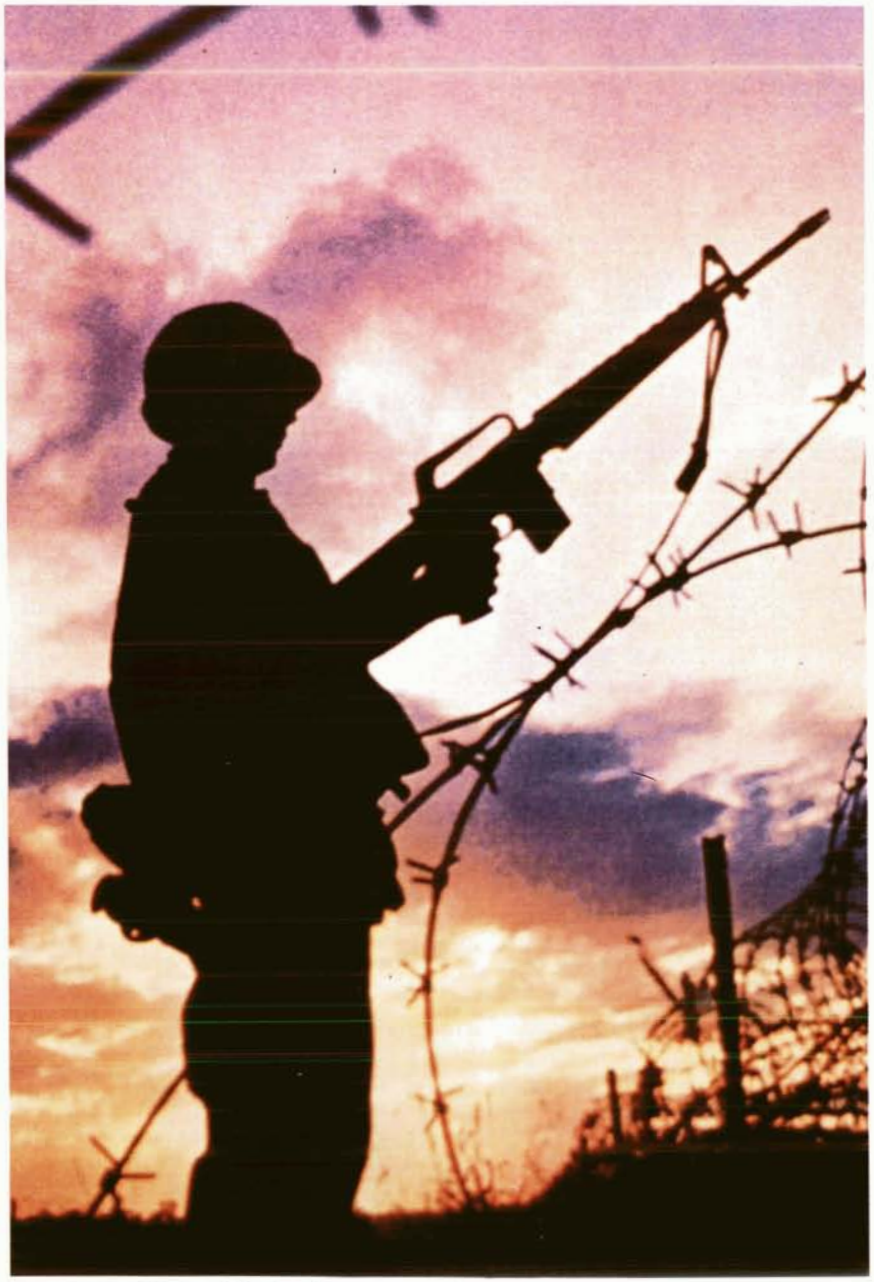
ELEMENTS DETACHED: VMA-223 HILL AFB, OGDEN, UT
VMA-542 FT SILL, OK
VMAQ-2 FALLON, NEV
VMA-203 MCAS YUMA,AZ
VMAQ-3/VMA-231 AGILE PROVIDER- TAVB-3 SS WRIGHT

* INCLUDING MALS 8810X ENG CORE, 1ST DEGREE REPAIR

Document Separator

Environment 2000

Marine Corps Air Station
Cherry Point, North Carolina



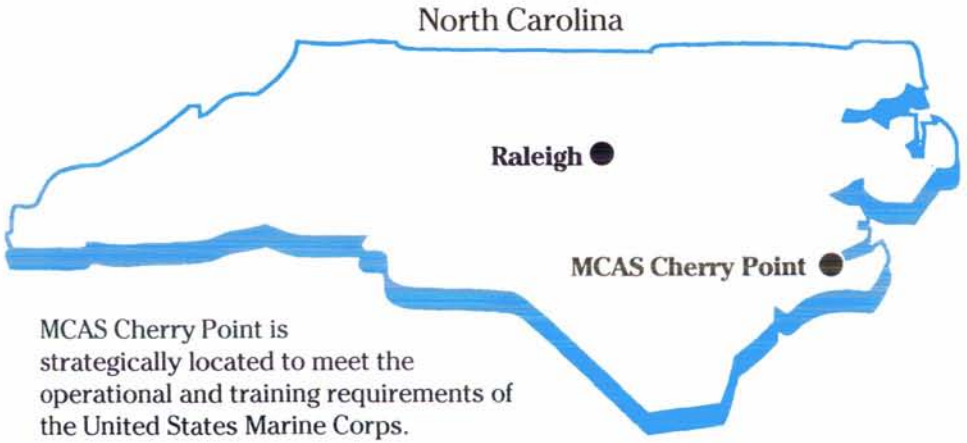
The United States Marine Corps — a force in readiness with the ability to go anywhere, anytime to protect our nation's interests.

Introduction

The Marine Corps is unique among our nation's armed forces in having an integrated structure for operating by air, water, and land. Aboard Marine Corps Air Station (MCAS) Cherry Point, North Carolina, we have adhered to this philosophy by instituting programs to protect the natural environment on all three fronts. This booklet highlights our efforts to preserve the air, water, and land resources of eastern North Carolina through the year 2000 and beyond.

MCAS Cherry Point,

the largest Marine Corps Air Station in the world, is recognized as one of the most responsive, efficient, and innovative providers of aviation support facilities and services in the Department of Defense. The Air Station is located in the coastal plains of eastern North Carolina, midway between New Bern and Morehead City. Approximately 25,000 marines, sailors, civilians, and dependents work and reside on the Air Station's 26,500 acres of forests, industrial lands, outlying fields, and ranges.



MCAS Cherry Point is strategically located to meet the operational and training requirements of the United States Marine Corps.

Cherry Point aircraft play a vital role in civilian and military search and rescue operations for coastal North Carolina.

Natural beauty abounds
in and around the Air Station.

Marine Corps Air Station Cherry Point is encompassed on three sides by water, with the city of Havelock skirting the southern boundary.

Our unique industrial complex is located within an environmentally sensitive area. Surrounded by a large expanse of forested land, an abundant supply of surface water, and a variety of wildlife, we have both a moral and legal obligation to preserve the natural beauty of the region and to comply with Federal, State, and local natural resource and environmental laws and regulations. Given the industrial nature of the Air Station, this is no small challenge.

Tenant Commands

Our two principal tenant commands are the Naval Aviation Depot (NAVAVNDEPOT) and 2d Marine Aircraft Wing (2d MAW). The NAVAVNDEPOT, recognized as one of the best of six such facilities in the Department of the Navy, is charged with depot level aircraft rework and support operations. Similarly, the 2d MAW is responsible for the repair of aircraft, equipment, and vehicles in support of its aircraft operational requirements around the world. This high level of industrial activity generates numerous waste by-products, which we manage carefully to preclude the potential to pollute our air, water, and land resources.

A wide variety of aircraft are rebuilt at the "Carolina Naval Aviation Depot" operated by the Marine Corps.

Unit environmental coordinators ensure that environmental safeguards are incorporated into daily operations.

Our industrial wastes are treated to remove pollutants prior to release to the domestic system for final treatment.

Waste Treatment

We operate a sophisticated one half million gallon-per-day industrial waste treatment plant aboard MCAS Cherry Point to pretreat industrial wastes from the NAVAVNDEPOT and flight line areas. This flow is further treated in a 3.5 million gallon-per-day wastewater treatment plant. We began construction of a state-of-the-art $17,000,000 upgrade to our wastewater treatment plant in March 1992 that will ensure compliance with stringent water quality standards beyond the year 2000.

We are obligated to protect the quality of adjacent waters. Domestic wastewater is treated in a tertiary system that consistently produces a quality effluent that meets or exceeds EPA standards.

Recycling

Our continually expanding environmental efforts also take into consideration the effects of residential growth in the area. We have educated base personnel on the need to actively participate in solid waste reduction. Our recycling program was initiated in 1988 and our goal is to recycle 75 percent of the household waste generated in military housing by the year 2000.

Our curbside recycling program is popular with base residents with participation approaching 100 percent.

Marines and civilians are provided with comprehensive training in waste minimization techniques.

Installation Restoration

MCAS Cherry Point is currently engaged in an intensive Installation Restoration Program to identify, assess, and cleanup environmental contamination from historic hazardous waste operations. All historic disposal sites aboard MCAS Cherry Point have been identified, and environmental studies have been completed. In 1989, the Air Station entered into an agreement with the U.S. Environmental Protection Agency (EPA) to develop remediation plans for historic hazardous waste sites. This agreement, which incorporates firm time frames for our ongoing cleanup efforts, was the first of its kind ever negotiated between the EPA and the Department of the Navy.

Storage sites are routinely monitored to determine the operational status of environmental safeguards.

The Air Station is aggressively cleaning up historic waste disposal sites.

Our staff is trained in the most up-to-date environmental management skills.

Total Quality Leadership

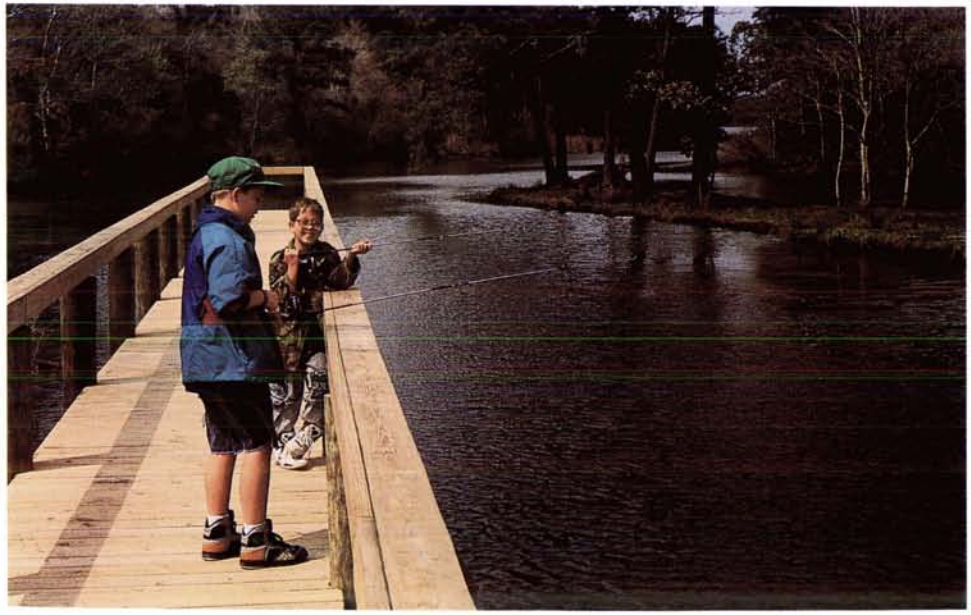
The Air Station is recognized as an environmental leader within the Department of Defense. At the same time, we are faced with formidable environmental challenges stemming from a combination of our size and location, the nature of our mission, and increasingly complex environmental laws and regulations. We respond to these challenges through the use of total quality leadership principles. We operate on a system of integrated environmental management and mutual regulatory compliance accountability. The Natural Resources and Environmental Affairs Department has overall responsibility for environmental and natural resources management programs aboard the Air Station. Our multidisciplinary staff includes engineers, geologists, foresters, biologists, and environmental technicians who are dedicated to proactive environmental management.

The Air Station environmental laboratories monitors the quality of air, water, and land resources for compliance with environmental laws.

Careful management of our wetlands preserves wildlife habitat and protects water quality.

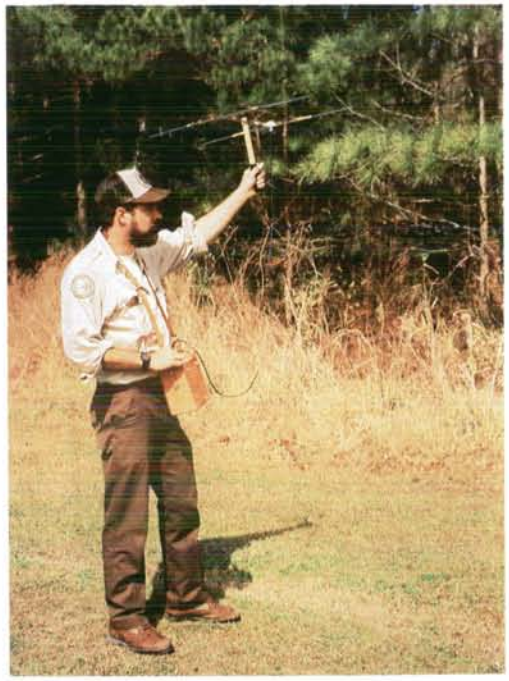
Natural Resources

Fish, wildlife, and timber are abundant at MCAS Cherry Point. These valuable assets are managed in cooperation with State and Federal resource management agencies. Professionally managed programs permit multiple uses of renewable resources while we fulfill our responsibility to preserve them for future generations.



Fishing, hunting, hiking, and other outdoor recreational activities enhance the quality of life for residents and visitors alike.

The use of radio tracking telemetry helps researchers learn more about our wildlife.



Wildlife Projects

Recent cooperative projects at MCAS Cherry Point have included restoration of the wild turkey and the trapping of river otters for restocking in western North Carolina.

MCAS Cherry Point also plays an active role in wildlife research programs. The North Carolina Cooperative Fish and Wildlife Research Unit at North Carolina State University is conducting research on the effects of aircraft noise on black ducks at Piney Island Bombing Range in Carteret County, North Carolina, and an intensive ecological study on the Neuse River and creeks adjacent to the Air Station. In addition, the North Carolina Wildlife Resources Commission is conducting a comprehensive gray fox population study.

Improvements in wildlife habitat led to a successful project to restore the wild turkey to the Air Station's forests.

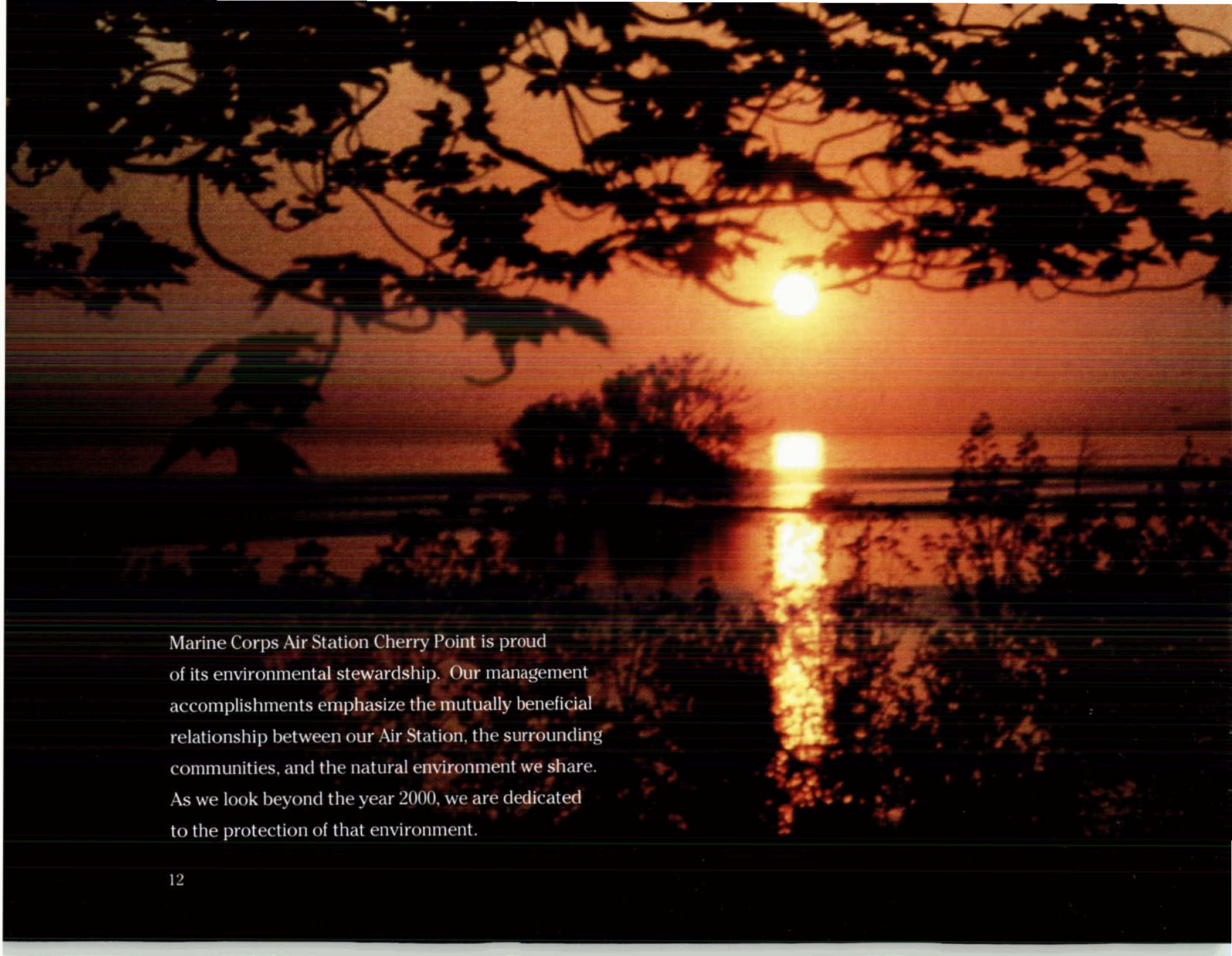
Young seedlings will be the forests of the next century.

Selective harvesting of mature trees is important to multiple-use forest management.

Air Station personnel and equipment provide valuable assistance for forest fire suppression in the surrounding counties.

Forest Management

Our integrated, multiple-use Forest Management Program has existed since 1963, when the first Long-Range Forestry Management Plan was developed in cooperation with the U.S. Forest Service and the U.S. Fish and Wildlife Service. Careful timber management practices have more than doubled the standing inventory of timber to 56 million board feet. Over the years, counties in which MCAS Cherry Point holds property have been assisted by a program that shares 40 percent of the excess proceeds from timber sales.



Marine Corps Air Station Cherry Point is proud of its environmental stewardship. Our management accomplishments emphasize the mutually beneficial relationship between our Air Station, the surrounding communities, and the natural environment we share. As we look beyond the year 2000, we are dedicated to the protection of that environment.

MCAS CHERRY POINT
UNITED STATES MARINE CORPS

Document Separator

1994 ECONOMIC IMPACT

Marine Corps Air Station
Cherry Point, North Carolina

MARINE CORPS AIR STATION
CHERRY POINT, NORTH CAROLINA 28533

Since assuming command of the Air Station in July 1993, I have been gratified by the genuine rapport which exists between your communities and that of the Marines, Sailors, and Civilians here at Cherry Point.

Home to the Second Marine Aircraft Wing and the Naval Aviation Depot (NAVAVNDEPOT), Cherry Point exerts considerable economic influence in what we consider to be a truly regional community: the quad-counties of Carteret, Craven, Jones, and Pamlico. As a result of the deliberations of the 1993 Defense Base Realignment and Closure (BRAC) Commission, the Commission recommended the closure of three NAVAVNDEPOT's, so we expect an almost immediate and sizeable increase in 1994 workload and employment at our NAVAVNDEPOT, with a corresponding increase in our payrolls. In addition, the BRAC Commission has recommended the closure of Naval Air Station Cecil Field in Florida, so we envision Navy planes and personnel arriving at Cherry Point by the late 1990's, which will further increase our payrolls and our economic contribution to the community.

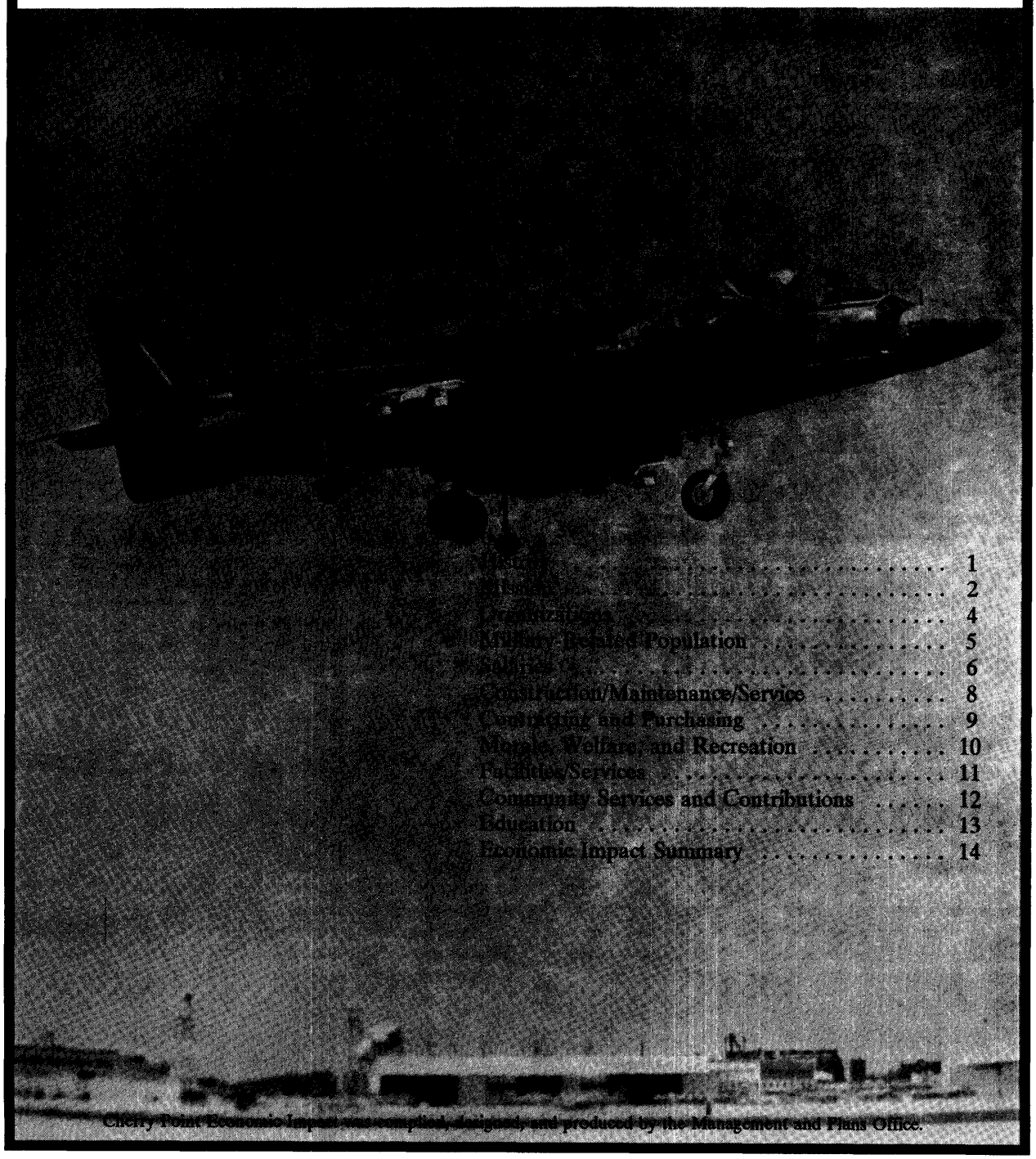
In 1994, we expect salaries to exceed $469.4 million; we estimate our contracts awarded to North Carolina companies will cost $17.9 million, in the aggregate; and we project that other Air Station support needs will cost $114.8 million. Taking into account some predicted increases in the NAVAVNDEPOT projections, I expect Cherry Point's 1994 economic contribution to exceed $602 million, of which slightly more than $507 million will remain here in the quad-county region of North Carolina.

I hope the data in this report will prove useful to you in planning for the future. All of us at Cherry Point genuinely appreciate your effective support of our mission, and I am committed to continuing our partnership in this dynamic regional community in which our uniquely shared heritage has, thus far, been able to accommodate such meaningful progress.

Fred McCorkle

F. MCCORKLE
BRIGADIER GENERAL, U.S. MARINE CORPS
COMMANDING GENERAL

Table of Contents



[illegible] 1
[illegible] 2
[illegible] 4
Military-Related Population 5
[illegible] 6
Construction/Maintenance/Service 8
Contracting and Purchasing 9
Morale, Welfare, and Recreation 10
Facilities/Services 11
Community Services and Contributions 12
Education 13
Economic Impact Summary 14

Cherry Point Economic Impact was compiled, designed, and produced by the Management and Plans Office.

History

(1942 - 1993)

Entrance to MCAS, Cherry Point in 1950

A preliminary search began during the summer of 1940 along the South Atlantic and Gulf Coast states for a suitable site to locate a division and wing size air-ground team. In 1941, this search led to the selection of a site on the North Carolina coast of New River and an inland site on the south bank of the Neuse River between Slocum and Hancock Creeks known today as Marine Corps Air Station, Cherry Point.

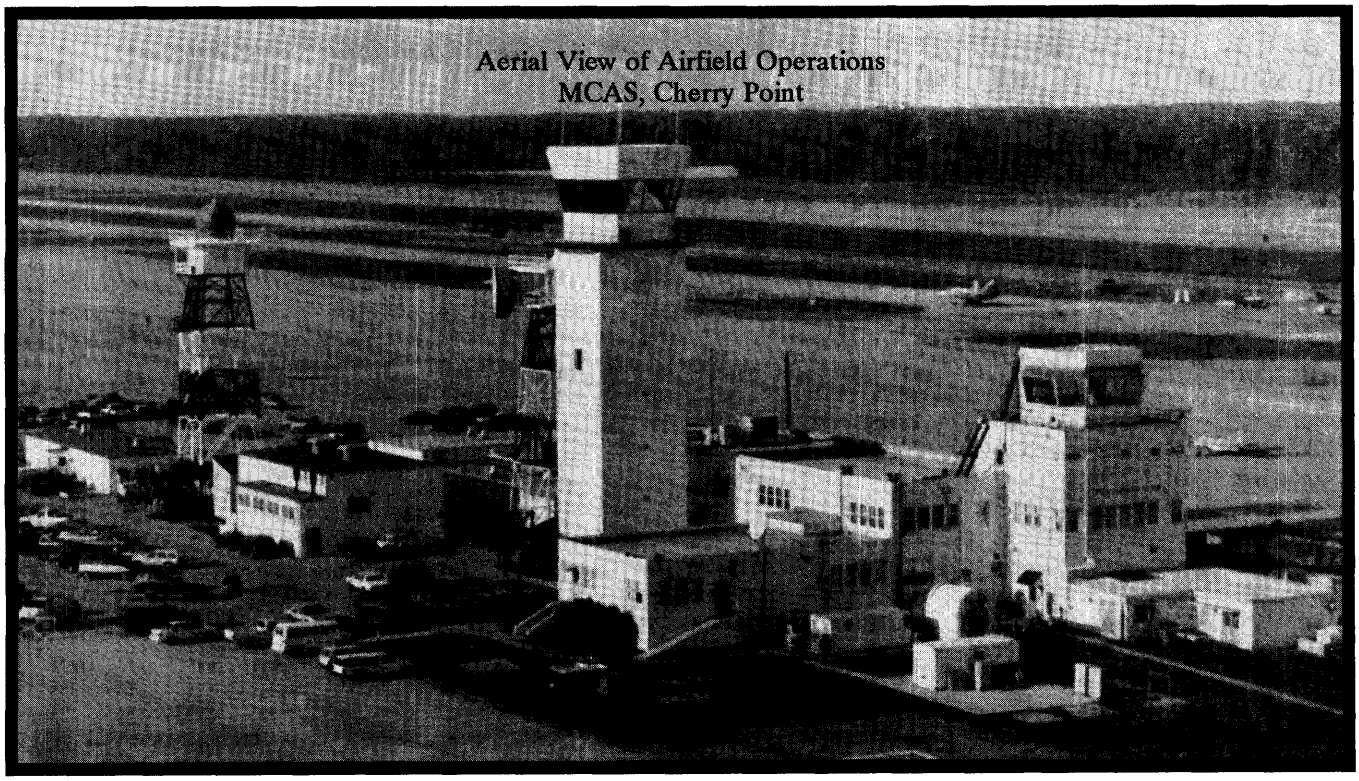
Construction on the original 7,582 acre tract began in August 1941 with monies allocated from Congress in the sum of $15 million. This new site was designated as "Cunningham Field at Cherry Point, North Carolina" in September 1941. November 1941 saw the construction of landing field runways, and in March 1942, the Air Station's Commanding Officer, Lieutenant Colonel Thomas J. Cushman, USMC, started flight operations at Cherry Point by landing a Grumman J2F "Duck" amphibian.

In May 1942, Marine Corps Air Station, Cherry Point, North Carolina, was officially commissioned at an unembellished flag ceremony. This command rapidly grew and became the world's largest Marine Corps Air Station (MCAS) and home for a number of Marine Aircraft Wings (MAW).

MCAS, Cherry Point, has been the home of the 3rd MAW, 9th MAW, and since 1946, home of the 2d MAW. Through the years, well over 100 squadrons have been formed and deployed in harms way and tens of thousands of young men and women have trained as individual replacements when duty called.

Personnel of MCAS, Cherry Point, have participated in world events defending vital national interests including World War II, Korea, Lebanon, Vietnam, Dominican Republic, Cuban Missile Crisis, Grenada, Panama, and Desert Storm, as well as, routinely assisting in humanitarian relief efforts worldwide after natural disasters. All of this is possible because of our highly realistic training environment and the high tempo of operations the 2d MAW maintains as the East Coast force-in-readiness.

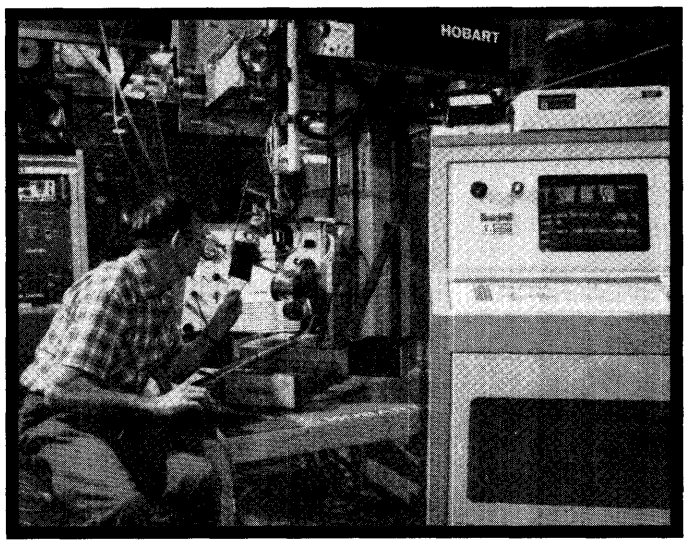
Mission



MCAS, Cherry Point exists to:

Furnish the highest quality operating environment for all using activities in order to provide America with the best trained, best led, best supported armed forces capable of operating anytime, anywhere to fight and win by:

* Operating and maintaining facilities and assigned aircraft
* Providing a full range of vital support services
* Enhancing quality of life
* Protecting the natural environment
* Conducting proactive community relations



NAVAVNDEPOT artisan operating state-of-the-art computer controlled welder. This technology facilitates the build up weld material along the worn areas of gas turbine engine blades. This process allows the depot to reuse worn blades that otherwise would have been scrapped.

This year the Naval Aviation Depot at Cherry Point celebrates 50 years of fleet service; five decades of providing maintenance, engineering and logistical support on a variety of military aircraft, engines and components.

Late 1943 saw initial buildings and facilities completed and the beginning of production at the Assembly and Repair Department (A&R). Operations during the war years saw many changes in aircraft design and complexity. New technology was incorporated in the late 1940s and the facility was redesignated as an Overhaul and Repair Department. By the 1960s, it was a vital resource in supporting fleet combat operations throughout the world and was organizationally placed under Navy management as a Naval Air Rework Facility; renamed as the Naval Aviation Depot (NAVAVNDEPOT) in 1987.

Cherry Point NAVAVNDEPOT continues to play an important role in the aviation community with a FY 93 market share value of $338 million. FY 94 will bring an increase in both workload and personnel as results of the 1993 Base Realignment and Closure (BRAC) Commission are recognized. The depot will employ over 3,300 civilians with a projected FY 94 payroll of approximately $139 million.

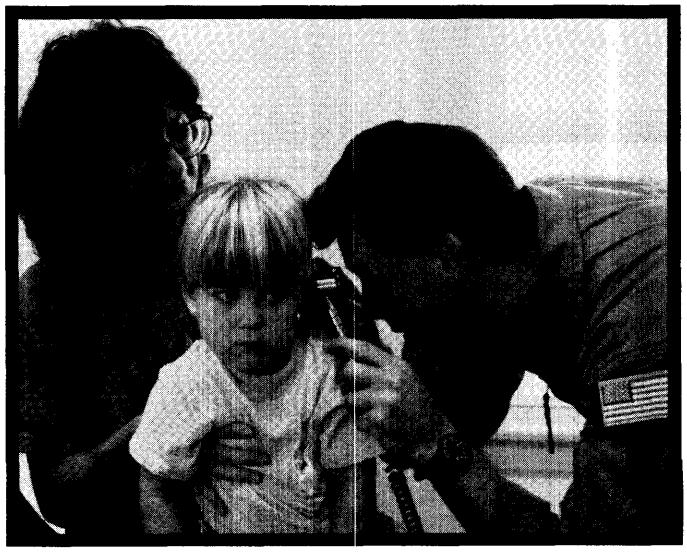
Mission

KC-130, Marine Aircraft Group 14

The headquarters of the 2d Marine Aircraft Wing is located at MCAS, Cherry Point. The Wing is a vital and integral part of II Marine Expeditionary Force's (MEF) Air-Ground Task Force and provides tactical aircraft and Marine and Navy personnel to support II MEF's mission. The Wing is composed of four Marine Aircraft Groups, a Wing Support Group, an Air Control Group, and a Wing Headquarters Squadron. Three of the six groups are located at MCAS, Cherry Point along with the Wing Headquarters Squadron. Marine Aircraft Group 14 flies the AV-8B, TAV-8B, KC-130F, KC-130R, and the EA-6B; its missions include light attack, inflight refueling, fixed-wing assault support, and electronic warfare capability. Marine Wing Support Group 27 provides aviation ground support; Marine Air Control Group 28 provides the air command and control capability for II MEF. Marine Aircraft Group 26 and 29 are located at MCAS, New River, NC, and provide helicopter support. Marine Aircraft Group 31 is located at MCAS, Beaufort, SC, and flies the F/A-18A and F/A-18C strike fighter aircraft and the F/A-18D attack aircraft.

The Naval Hospital at Cherry Point provides medical and administrative support to personnel of MCAS, Cherry Point; 2d MAW; NAVAVNDEPOT; and tenant activities.

The Naval Hospital is responsible for maintaining the health of all eligible personnel through the promotion of physical fitness, prevention and control of diseases and injuries, and treatment and care of the sick and injured. The Naval Hospital is staffed and equipped to provide for the primary medical needs of the eligible personnel in the surrounding communities.


Patient braves some curious probing by Lt Rich Naylor when taken into the after hours clinic by her mother.

Organizations

Hosted
By
Marine Corps Air Station
Cherry Point

Tenant Commands

2d Marine Aircraft Wing
Naval Aviation Depot
Naval Hospital

Service Clubs

Officers' Club
Staff Noncommissioned Officers' Club
Enlisted Club

Activities Represented

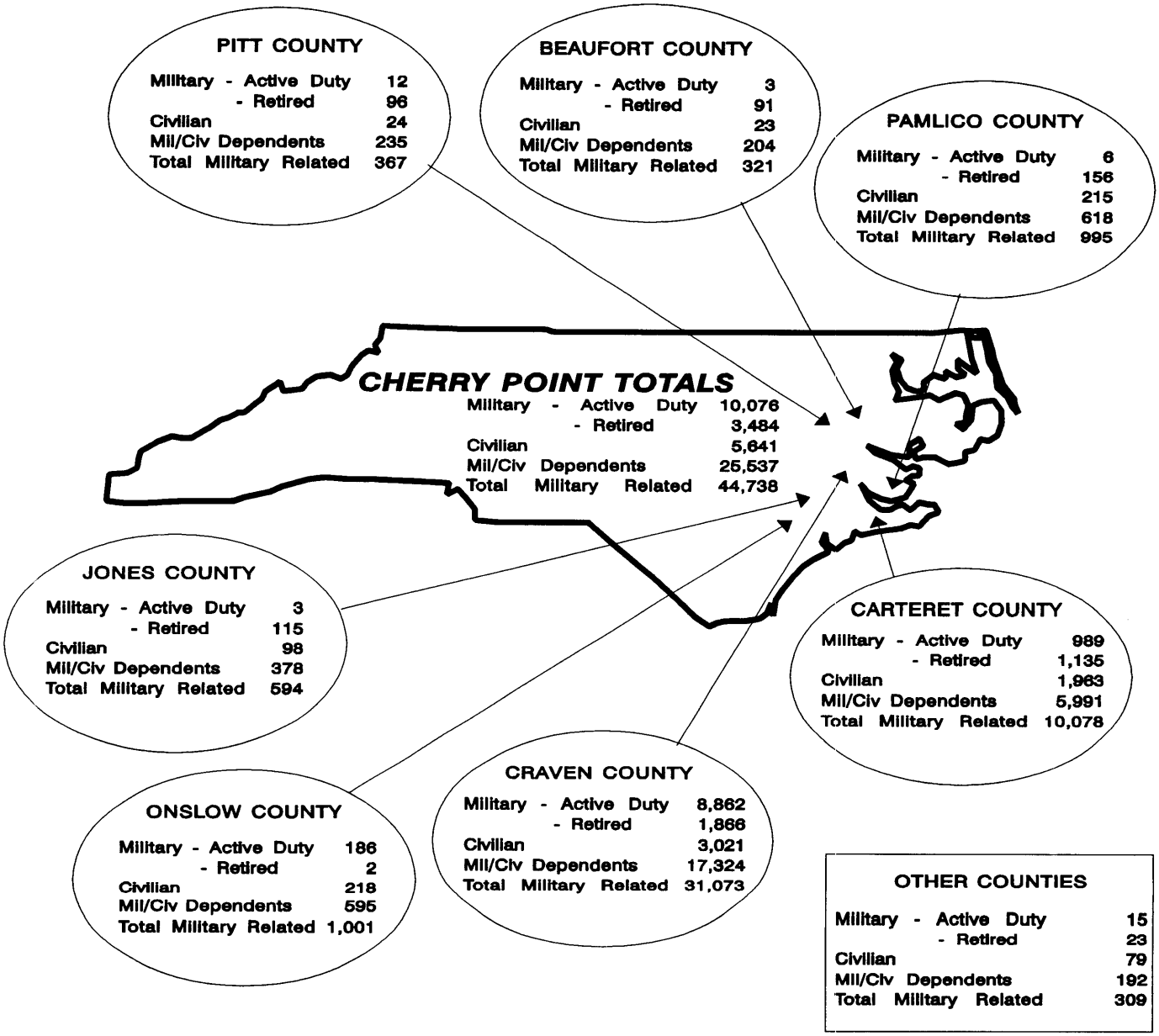
2d Force Services Support Group, Camp Lejeune, NC
Defense Commissary Agency, Central Region, Little Creek, VA
Defense Finance and Accounting Service, Kansas City, MO
Defense Logistics Agency, Defense Distribution Region East, New Cumberland, PA
Defense Printing Service, Naval Base, Charleston, SC
Defense Reutilization & Marketing Service, Memphis, TN
Fleet Aviation Specialized Operational (FASO) Training Group, Norfolk, VA
Naval Air Maintenance Training Group, NAS, Millington, TN
Naval Air Warfare Center, Orlando, FL
Naval Air Warfare Center, Point Magu, CA
Naval Audit Service, S.E. Region, Virginia Beach, VA
Naval Aviation Engineering Service Unit, NAS, Norfolk, VA
Naval Aviation Supply Office, Philadelphia, PA
Naval Dental Clinic, Camp Lejeune, NC
Naval Investigative Service, Virginia Beach, VA
Naval Warfare Assessment Center, Corona, CA
Personnel Support Activity, NAS, Jacksonville, FL
Resident Officer-in-Charge of Construction, Atlantic Division, Naval Facilities Engineering Command, Norfolk, VA
United States Army Medical Department Activity, Fort Bragg, NC
United States Postal Service

Other

Cherry Point Archery Club
Cherry Point Employees' Association
Cherry Point Men's Golf Association
Cherry Point Rifle & Pistol Club
Cherry Point Saddle Club
Cherry Point Toastmasters, Club 2055
Coastal Carolina Council of Girl Scouts
East Carolina Council of Boy Scouts of America, Troop 82 and Cub Scout Pack 301
Ethnic Social Cultural Unitary Committee of Hispanic Awareness (ESCUCHA)
Federal Managers' Association, Chapter 21
Filipino American Association
Hancock Yacht Club
Havelock Hawg Hunters
International Association of Machinists and Aerospace Workers, Locals 1859, 2296, 2297
International Club
Ladies Auxillary
Ladies Tennis Association
Marine Corps Aviation Association
Master Labor Agreement 2065
Model Aviation Group-75 Club
NADEP Annual Picnic Committee
NADEP Toastmasters, Club 4806
National Air Traffic Controllers Association, Local NKT
National Association of Aerospace Examiners, Local 2
Officers' Wives' Club
Officers' Wives' Garden Club
Professional Airways Systems Specialists, Local 252
Staff Wives' Club
Warrant Officers' Association
Whistle Stop Thrift Shop

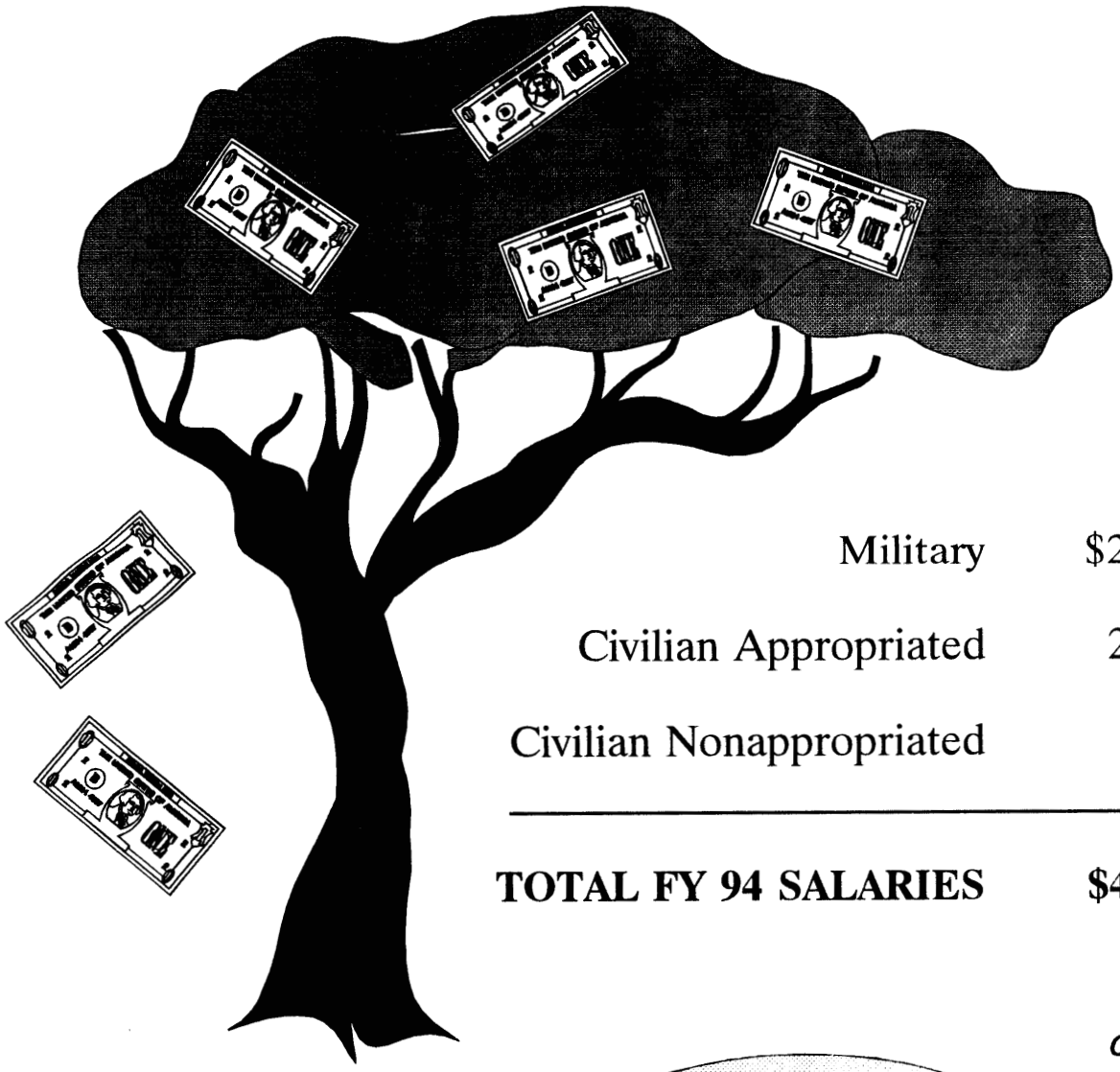
Military-Related Population

(Cherry Point)

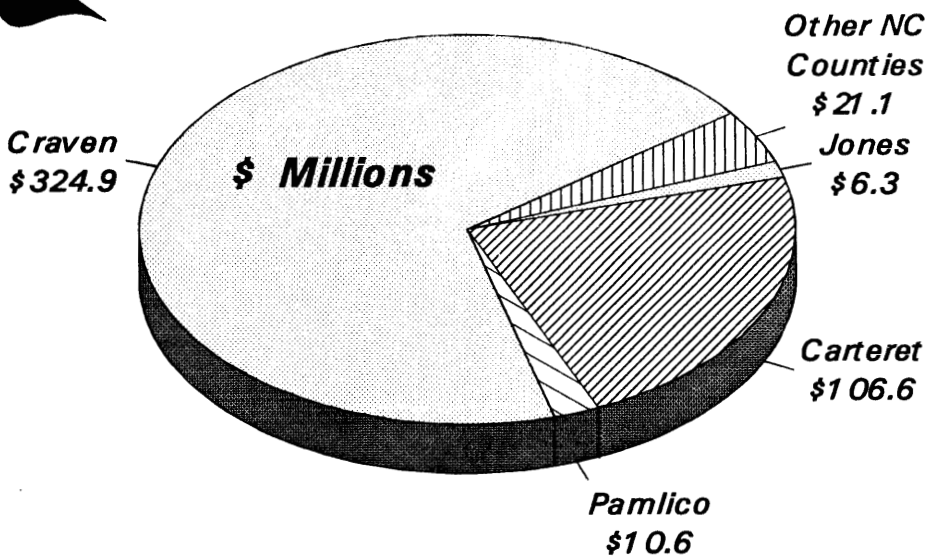


	MCAS Cherry Point	2d MAW	Naval Aviation Depot	Naval Hospital	Other Tenant Activities	Total
Officers	91	1,041	19	72	45	1,268
Enlisted	616	7,582	60	197	353	8,808
Civil Service	1,250		3,362	121	408	5,141
NAFI	500					500
				TOTAL WORKFORCE		**15,717**

Salaries

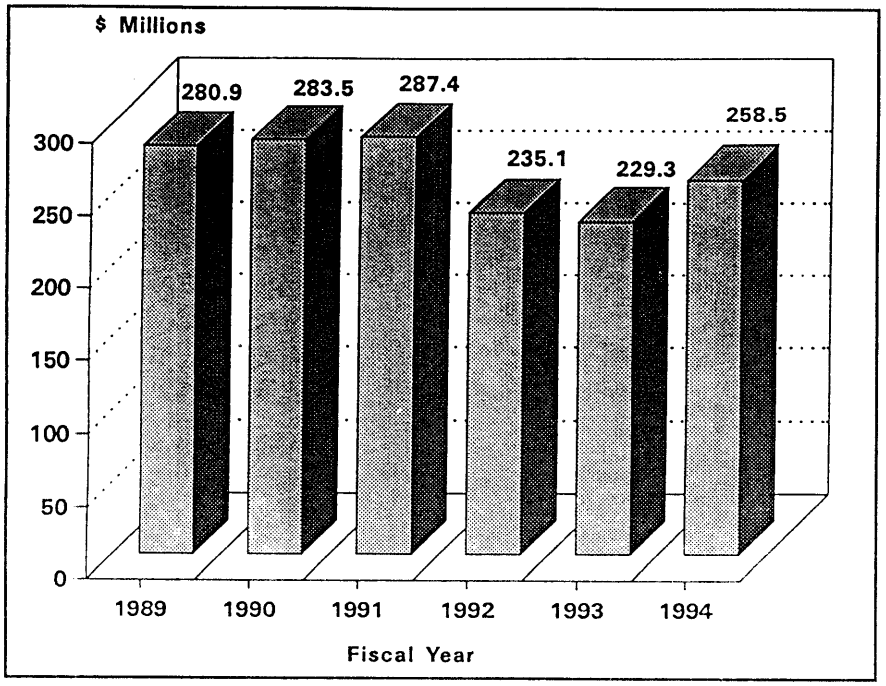


Military	$258,515,300
Civilian Appropriated	204,197,500
Civilian Nonappropriated	6,754,900
TOTAL FY 94 SALARIES	**$469,467,700**



Salaries

(FY 89 - FY 94)

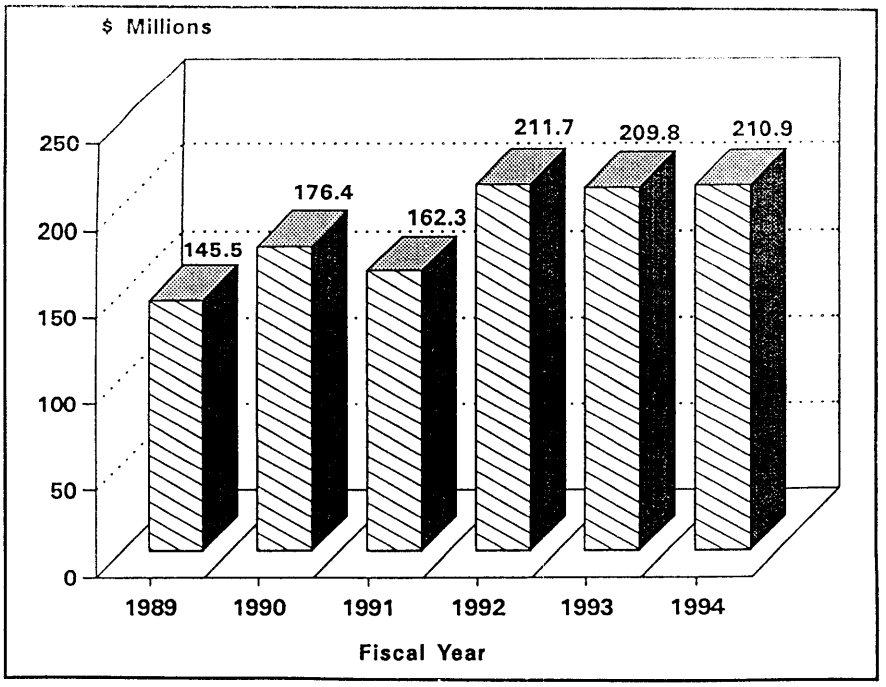


Military

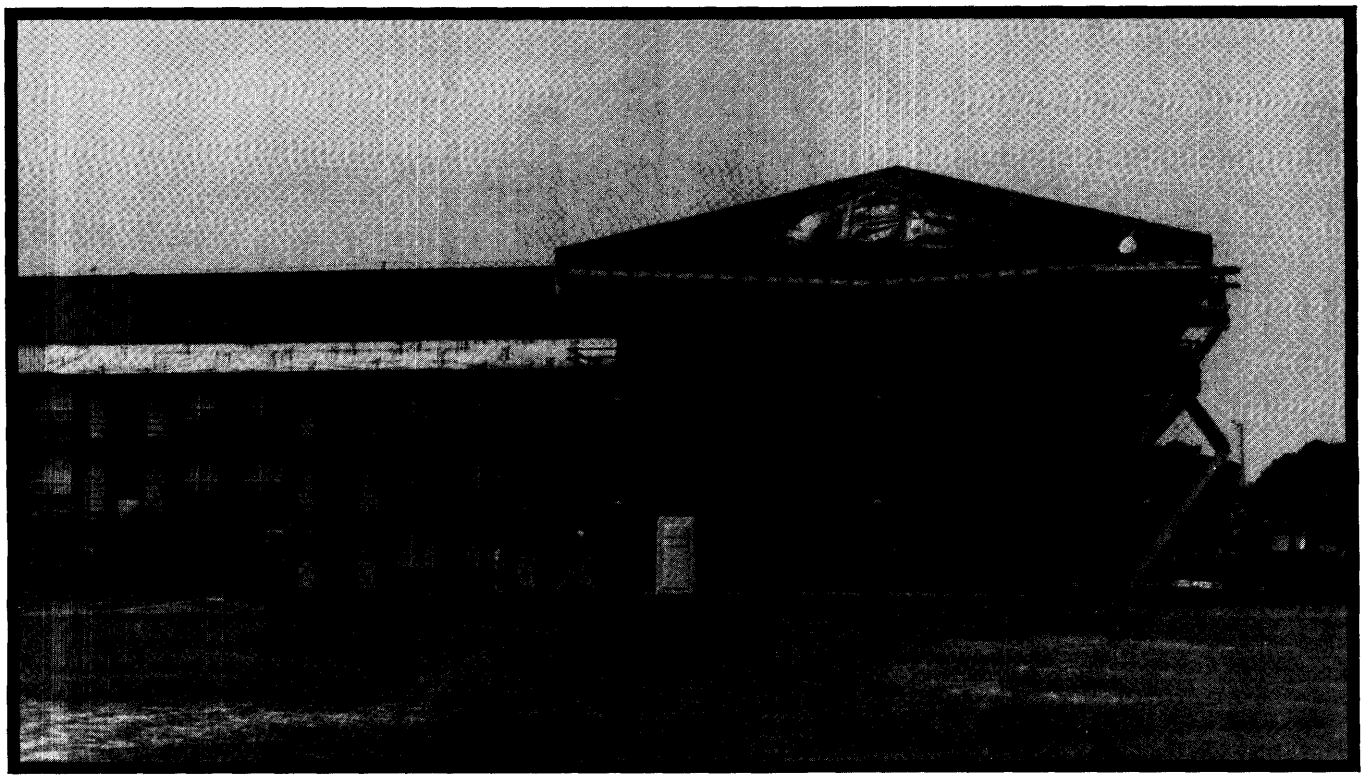
(Based on composite standard military rates which include base pay, housing allowance, subsistence, clothing, and various incentive pay)

Civilian

(Reflects gross pay plus fringe benefits)



Construction/Maintenance/Service



Transient Enlisted Quarters, Building 3673, Olympic Enterprises, Hubert, NC

FY 93 TOP TEN CONSTRUCTION/MAINTENANCE CONTRACTORS

SCRUGGS CO.	VALDOSTA, GA	$4,287,990
C. LAWRENCE CONSTRUCTION CO., INC.	PANAMA CITY, FL	$2,437,946
M & H HEATING, AC & REFRIGERATION	MEMPHIS, TN	$2,284,107
S & H MECHANICAL CONSTRUCTION	DULUTH, GA	$1,811,105
OLYMPIC ENTERPRISES	HUBERT, NC	$1,100,462
CURTIS CONSTRUCTION	KINSTON, NC	$1,051,079
ELECO, INC.	NEW BERN, NC	$1,050,000
VIRTEXCO, INC.	NORFOLK, VA	$956,857
BOLTON CORP.	MOREHEAD CITY, NC	$707,311
PITT ELECTRIC	GREENVILLE, NC	$624,945
OTHER FY 93 CONTRACTS		$10,511,179

Construction/maintenance and service contract expenditures for FY 94 are projected to total approximately $46 million with $17.9 million (39%) in awards to North Carolina companies.

Contracting and Purchasing

(Service and Support)

FY 94 PROJECTION

	Total	State
Supplies, Equipment, and Services	$37,361,900	$16,814,000
Aircraft Fuel	28,816,500	28,240,200
Commissary	20,000,000	620,000
Morale, Welfare, and Recreation	27,131,500	16,341,300
Household Goods Storage and Transportation	18,500,000	18,500,000
Mess Attendant Services	1,652,000	1,652,000
Mess Hall Subsistence	411,000	254,000
Aircraft Refueling Services	582,000	-0-
Naval Hospital	3,300,000	69,300
Naval Aviation Depot (Capital Equipment)	12,136,000	7,446,700
TOTAL	**$149,890,900**	**$89,937,500**

Purchases for supplies, equipment, and services for the Air Station are expected to total more than $37.3 million in FY 94. Total purchases nationwide are projected to exceed $149 million in FY 94; of that amount, approximately $89.9 million (60%) will be spent in the state of North Carolina.

Defense Reutilization and Marketing Office (DRMO)

We recycle through DRMO government equipment which either ends its useful life or is superseded by technological advances that allow us to operate more efficiently.

In FY 93, the DRMO released donation materials valued at $984,469 to the State of North Carolina.

Additionally, DRMO conducts numerous sales of surplus property in which local buyers, businesses, and individuals participate. North Carolina dealers processed 29% of the more than 8,067,600 pounds of scrap materials sold in FY 93.

Morale, Welfare, and Recreation

In order to retain our highly skilled, well trained Marines and achieve maximum return on the taxpayer's dollar spent on that training, we must provide our Marines and sailors with the highest possible quality of life. We do this through a comprehensive Morale, Welfare and Recreation (MWR) program, the preponderance of which operates on nonappropriated funds...money we generate ourselves.

MWR Directorate at MCAS, Cherry Point, operates a full recreation and athletic program, retail sales outlets, food and hospitality centers, and personal service activities. One hundred percent of MWR net profits stay at Cherry Point, of which 70% is used to enrich recreational activities and programs.

In FY 93, our MWR Directorate spent $26,587,100. Of this amount, we spent $16,010,400 (60%) in North Carolina. MWR procures from over 2,988 different vendors of which 1,466 (49%) are located in the state. FY 93 direct vendor payments to North Carolina companies totaled $15,450,400.

Facilities/Services

Marine Corps Air Station, Cherry Point's primary complex consists of 13,164 acres with associated support locations at Atlantic Field, BT-11, Bogue Field, and Oak Grove consisting of 15,746 acres. MCAS, Cherry Point's current plant value exceeds $1.9 billion. Four active runways consisting of approximately 30,000 linear feet as well as approximately 10.5 million square feet in building space are located at MCAS, Cherry Point. In 1993, the Air Station's electric bill was $12,950,500 and is projected to total $14,750,000 in 1994. There are 2,764 government housing units and a mobile home park with 76 spaces available for married military personnel, in addition to over 3,800 spaces available for bachelor military personnel.

The ground transportation department has an inventory of approximately 840 vehicles ranging in size and configuration from large crash, fire, and rescue trucks to sedans. The fleet's main purpose is to support station organizations and tenant activities. The fleet of commercial vehicles and equipment is valued in excess of $14 million.

Support services on station are offered to both active and retired military personnel and their dependents. The Air Station has its own chapel, library, Federal Credit Union, Child Development Center, and commissary; legal counseling is available through the Legal Assistance Office. Complete postal facilities are offered by the Cherry Point Post Office.

The Naval Hospital provides health care to active and retired military members and their families. The hospital has 43 inpatient beds, well-equipped nursery, and treats approximately 2,200 inpatients and 160,800 outpatients per year. The American Red Cross acts a communication link between service members and their families as well as provides disaster assistance and emergency financial aid. The Cherry Point Auxiliary Navy/Marine Corps Relief Society offers assistance in areas such as transportation, food, shelter, utilities, funerals, and medical care.

A full range of recreation activities are offered aboard the Air Station by the Morale, Welfare, and Recreation Directorate. Activities include arts and crafts, auto hobbies, bowling, golfing, swimming, and high adventure programs for scuba, hand gliding, canoeing, back packing, surfing, mountain biking, and white water rafting. The Air Station has a gymnasium; three fitness centers and sauna; theater; three marinas; gear issue for items like campers, pig cookers, and grills; Information, Tour, and Ticket Office; and hosts a variety of concerts and tournaments.

Other services aboard the Air Station include a McDonald's, Shell Service Station, Subway, Domino's Pizza, Marbles Video, One Hour Photo, First Citizens' Bank, optical shop, telephone center, ice cream shop, laundromat, shoe repair, flower shop, watch repair, and dry cleaners.

GOVERNMENT HOUSING

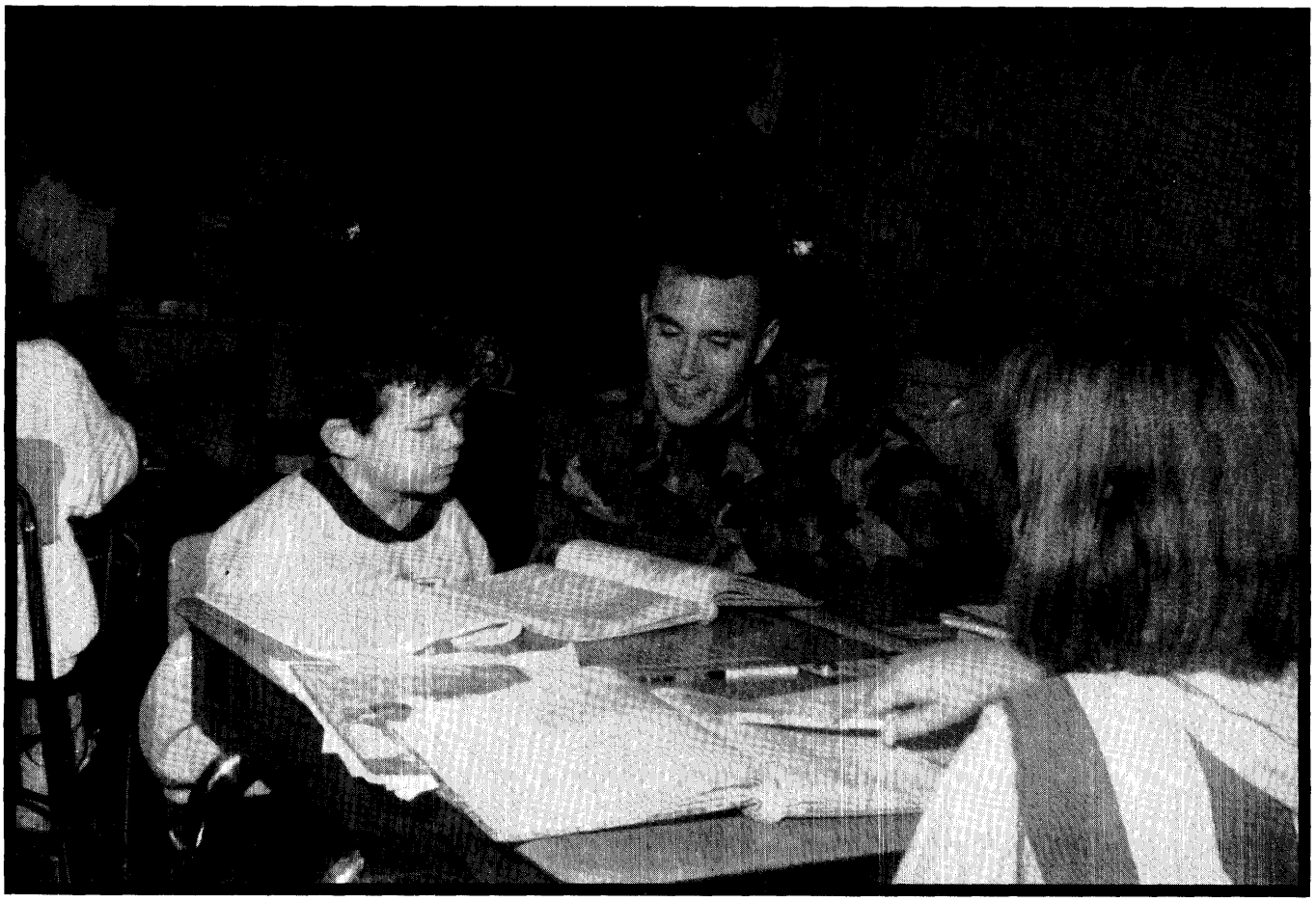
MARRIED	
Officer	
Apartments	48
Two Story Units	49
Capehart	169
Townhouses	60
Staff Noncommissioned Officer	
Capehart	679
Townhouses	240
Enlisted	
Slocum Village	775
Hancock Village	347
Fort Macon Village	249
Lanham	148
Mobile Home Site (Spaces)	76
Total	**2,840**

BACHELOR	
Officer	
Field Grade & Above	14
Company Grade	38
Transient Quarters	78
Staff Noncommissioned Officer	
E-6 & Above	194
Transient Quarters	42
Enlisted	
E-5 & Below	3,412
Transient Quarters	85
Permanent Change of Station	36
Total	**3,899**

Community Services and Contributions

The Marines, Navy personnel, civilians, dependents of MCAS, Cherry Point, and the surrounding "Down East" communities share harmonious relationships and strong community bonds. We participate in both community and station activities which allow us to strengthen our support structure.

In the summer of 1993, MCAS, Cherry Point and the Craven County Board of Education organized the Air Station's Adopt-A-School Program. Six of Craven County's schools are currently participating in this program. Military and civilian personnel are able to enrich the lives of local students by volunteering their time, knowledge, and experience to tutor, mentor, lecture, coach, teach physical fitness, and coordinate base visits for students. This program is a fine example of the cooperation and support that exists between Cherry Point and our neighbors and demonstrates our mutual concern for the positive development of our nation's children.



2ndLt Ted Canaday of Marine Air Control Squadron 6 volunteers through the Adopt-A-School Program at Roger Bell Elementary School.

Combined Federal Campaign

Federal workers contribute to many local and nationwide organizations through the Combined Federal Campaign. Estimated collection for FY 94 is $346,000 with $121,100 (35%) to be designed for state and local area agencies.

Navy/Marine Corps Relief Society

The Navy/Marine Corps Relief Society provides a wide range of services and financial assistance to Marine and Navy families. In FY 93, $620,100 was distributed to local families needing assistance.

Project EQUAL

In support of our local public schools, the Air Station will contribute approximately $600 during FY 94 to Project Educational Quality Up Another Level (EQUAL). Project EQUAL, sponsored by the Havelock Chamber of Commerce Educational Committee, provides funding for the purpose of instructional equipment.

Education

The MCAS, Cherry Point Education Center arranges for educational programs to be delivered by regionally accredited colleges and universities on or near the Air Station. The primary purpose of the voluntary Education Program is to improve the competence of active duty Marines and civilian personnel, assist their career progression, and generally strengthen the personnel base of the Marine Corps.

Projected 93-94

Off-Duty Education Enrollment

	Voc/Tec	Under Graduate	Graduate
Officer	0	41	44
Enlisted	33	1545	15

MC Tuition Assistance	**$934,000**
VA Education Benefits	**$470,700**

PARK COLLEGE

Bachelor of Science
in
Computer Information Systems
Computer Science
Criminal Justice Administration
Human Resources
Industrial Security
Management
Social Psychology

BOSTON UNIVERSITY

Master of Science
in
Business Administration

SOUTHERN ILLINOIS UNIVERSITY

Bachelor of Science
in
Aviation Management
Electronic Management

CRAVEN COMMUNITY COLLEGE

Associate Degrees
Certificate Programs
Continuing Education Programs
GED Testing
High School Completion
Vocational/Technical Diplomas

Civilian Development Programs

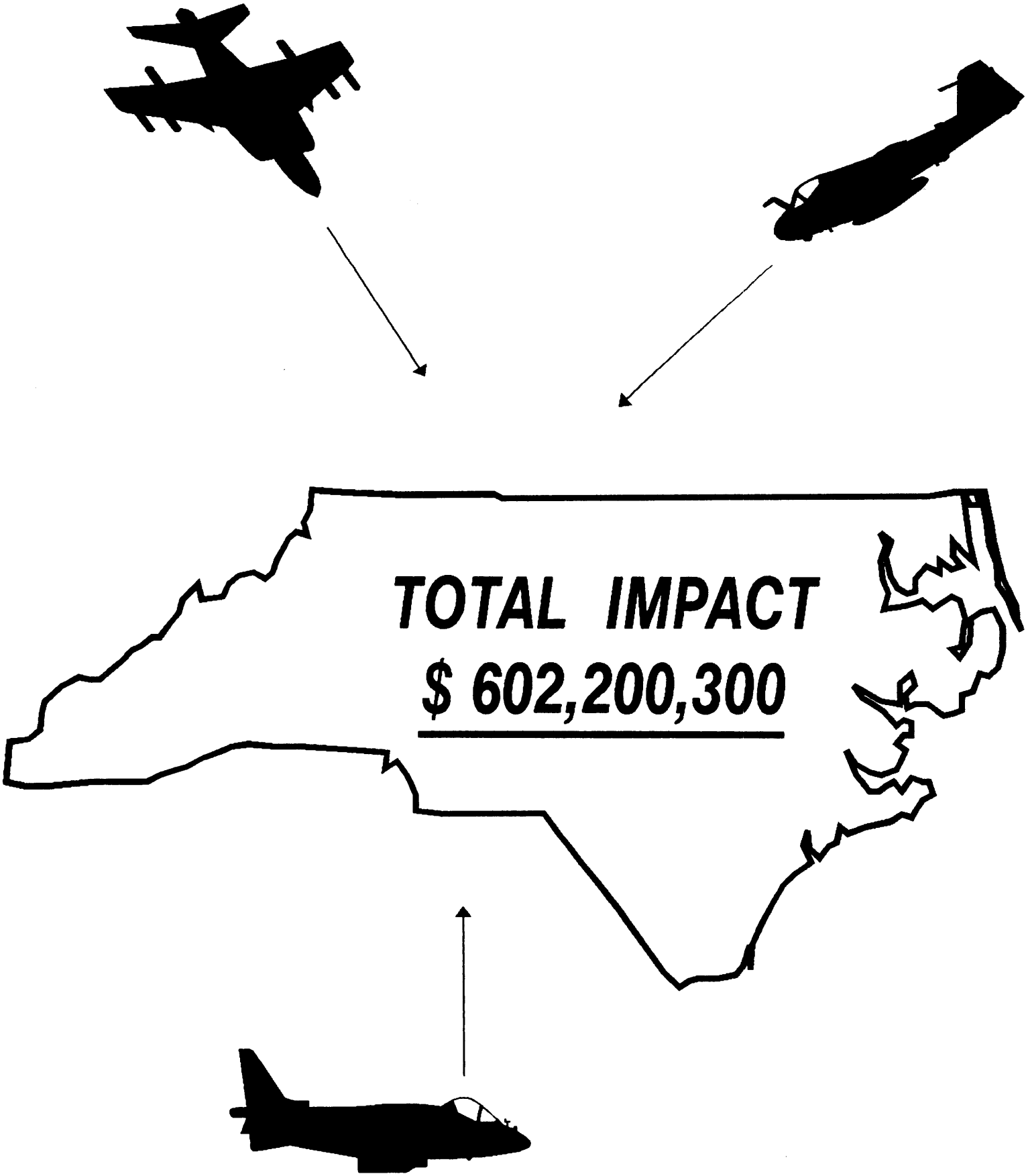
Apprentice
America 2000 Education Enhancement
Consolidated Civilian Career Training
Cooperative Education
Defense Acquisition Workplace Implementation Act
Federal Junior Fellowship Program
Pre-supervisory
Probationary Supervisory Training
Retraining Individual Development Plans
Senior Executive Management
Stay-in-School
Veterans Readjustment Appointment

Approximately $361,800 will be expended for work-related training for Cherry Point's civilian employees during FY 94.

NC IMPACT - $893,100 QUAD-COUNTY IMPACT - $839,800

Economic Impact Summary

	Total Expenditures	Total Spent in NC	Percent Spent in NC	Total Spent Quad-County	Percent Spent in Quad-County
SALARIES					
Military	$258,515,300	$258,515,300	100%	$252,957,200	98%
Civilian					
Appropriated	204,197,500	204,197,500	100%	186,723,200	91%
Nonappropriated	6,754,900	6,754,900	100%	6,493,400	96%
PURCHASING AND CONTRACTING	149,890,900	89,937,500	60%	32,428,100	22%
CONSTRUCTION/ MAINTENANCE/SERVICE	46,000,000	17,900,000	39%	7,191,000	16%
ELECTRIC/TELEPHONE	15,300,000	15,056,800	98%	14,750,000	96%
TRAVEL (Administrative/Training)	12,722,600	127,200	1%	-0-	
TRAINING	1,766,500	893,100	51%	839,800	48%
FEDERAL SCHOOL FUNDS	2,283,200	2,283,200	100%	2,202,000	96%
HEALTH AND MEDICAL					
Civilian Health & Medical Program of the Uniform Services (CHAMPUS)	5,710,500	5,310,800	93%	2,284,200	40%
Active Duty Inpatient Care in Civilian Hospitals	228,300	220,300	97%	212,700	93%
Supplemental Care	264,500	261,900	99%	235,700	89%
COMBINED FEDERAL CAMPAIGN	346,000	121,100	35%	110,700	32%
NAVY/MARINE CORPS RELIEF SOCIETY	620,100	620,100	100%	607,700	98%
PROJECT EQUAL	600	600	100%	600	100%
TOTAL	**$704,600,900**	**$602,200,300**	**85%**	**$507,036,300**	**72%**


TOTAL IMPACT
$ 602,200,300

MARINE CORPS AIR STATION

CHERRY POINT, N.C.

Document Separator

INFORMATION SHEET

Edwards Aquifer Meeting with Federal Agencies to Discuss the Section 7 Consultation Process under the Endangered Species Act

July 14, 1994

at the University of Texas Thompson Conference Center Austin, Texas

PURPOSE OF THE MEETING:

- to bring together the Federal Agencies that fund, aut within the Edwards Aquifer region in order to collec guidelines for section 7 consultation under the Endar

- to identify the importance of Edwards Aquifer gr federally-listed species and their respective design: explore the prospects that Federal agencies may ha recovery of those listed species;

- to briefly describe the current understanding of t Aquifer to those Federal agencies unfamiliar with th groundwater systems;

- to begin the process of assessing the options that sustaining the level of recharge into the aquifer, as v importance of Federal agencies' roles in contrib efficient use of Edwards Aquifer water such that available to all who depend upon it;

- to provide a starting point for Federal agencies to a: Aquifer, to provide a medium to address how to minimize any adverse Federal agencies may have on federally-listed species that are dependent upon the Edwards Aquifer, and to set in motion the process by which a unified group of Federal agencies can enter into formal section 7 consultation with the U.S. Fish and Wildlife Service in order to address any adverse impacts that remain to federally-listed species.

AUSTIN
Edwards Aquifer

Document Separator

DRAFT

Attorney Client Communication

M E M O R A N D U M

TO: Jim Courter, Chairman
Matt Behrmann, Staff Director
Commission Staff

FROM: Frank Cirillo/ for Mary Ann Hook, Acting General Counsel

RE: Legal Update on Sierra Club/Edwards Aquifer Issue

DATE: May 10, 1994

I attended a meeting In the DOJ Wildlife Section Conference Room at 10:30, May 6, 1994 in the absence of Mary Ann Hook who was undergoing surgery. Meeting was chaired by Charlie Shockey, DOJ, and attended by representatives from DOI, DOT, EPA and the Department of the Army as well as other DOJ reps. DoD and USAF were not represented. Mr. Shockey started the meeting by announcing that Judge Bunton, Senior District Judge, U S District Court for the Western Division of Texas, had denied the plaintiff's request to amend the existing law suit as filed against the Secretary of the Interior. The judge did appoint a court monitor. The amended law suit would have added a plaintiff (Chuck Hubbs) and several defendants to include DoD, USAF, U S Army and the DBCRC as noted in our May 2, 1994 Memo. The amendment would also have introduced CERCLA claims regarding the "moving" of Hydrogen Sulfide through the aquifer which contributes to the "taking" of certain endangered species. As a reminder, the intent of the amended suit was to require Endangered Species Act, Section 7 consultation to set up comprehensive plans to restrict aquifer depletion which in turn has and could impact certain endangered or threatened species by restricting flow in two springs supporting their existence.

Mr. Shockey discussed the possibility of plaintiffs filing of a new complaint now that the amendment was denied. He suggested that the potentially effected agencies' "Programming People" should contact Mr. Sam Hamilton, FWS-TX, 512-482-5454 as to what it would take to initiate Section 7 Consultation as a precaution. The FWS rep suggested a "Group" consultation might be possible. I suggested that if a new suit is filed that perhaps DOJ could consider a "Motion to Withdraw" for DBCRC as the Commission is <u>not</u> an entity that "...authorizes, funds or carries out activities that encourage or allow use of Edwards water..." [Lawsuit Civil Action #MO-91-CA-069,, Exhibit D,p. 30,item 45], but merely "recommends" to the President. Mr Shockey commented favorably and suggested we put together an info package requesting same.

Encl: District Court Order on Motion dtd May 5, 1994

FILED
MAY 05 1994
U.S. DISTRICT CLERK
WESTERN TEXAS
BY DEPU

THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
MIDLAND-ODESSA DIVISION

SIERRA CLUB, Plaintiff, GUADALUPE-BLANCO RIVER AUTHORITY, et al., Plaintiff-Intervenors, v. BRUCE BABBITT, In His Official Capacity as Secretary, Department of Interior, and THE UNITED STATES FISH AND WILDLIFE SERVICE, Defendants, DANNY McFADIN, TOMMY WALKER, CARL MUECKE, et al., Defendant-Intervenors.	MO-91-CA-069

ORDER ON MOTION FOR LEAVE TO
FILE AMENDED AND SUPPLEMENTAL COMPLAINT

BEFORE THIS COURT is the Motion of SIERRA CLUB and CLARK HUBBS for Leave to File Amended and Supplemental Complaint. Responses in opposition to the Motion were filed by the Federal Defendants; Defendant-Intervenors City of San Antonio, Texas Natural Resource Conservation Commission (TNRCC), Texas Department of Agriculture, and Danny McFadin, et al.; and *amicus curiae* Edwards Underground

Water District (EUWD). Plaintiff-Intervenors City of New Braunfels and New Braunfels Utilities filed a Response endorsing the Amended and Supplemental Complaint. SIERRA CLUB and CLARK HUBBS base their Motion on Federal Rules of Civil Procedure 15(a) and 15(d) which allow, respectively, for amendment "when justice so requires" and for supplementation to "set[] forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented."

Having reviewed the Motion, the Responses, the history of this case, and the relevant legal authorities, it is the opinion of the Court the Motion should be denied because undue prejudice would result from allowing the SIERRA CLUB and CLARK HUBBS to add new defendants and new claims for relief almost one year after the Amended Judgment was entered in the above-captioned cause of action.

The Court's May 26, 1993, Amended Judgment stated:

> IT IS FURTHER ORDERED that Plaintiff and Plaintiff-Intervenors may seek appropriate relief from this Court at any time *after* May 31, 1993 (the last day of the current regular session of the Texas legislature) *if the State of Texas does not have in effect at such time,* pursuant to new or existing State law, a regulatory system pursuant to which withdrawals from the Edwards Aquifer can and will be limited to whatever extent may be required to avoid unlawful takings of listed species, any appreciable reduction in the likelihood of survival and recovery of listed species in the wild, and any appreciable diminution of the value of critical habitat for the survival and recovery of any listed species, even in a repeat of drought of record."

Amended Judgment at 6 (emphasis in original). As the Court has

previously noted, the State of Texas does *not* have in effect a regulatory system for the Edwards Aquifer, and the City of San Antonio has *not* developed any water supplies from sources other than the Edwards Aquifer. Since, under the circumstances, a request for additional relief would be reasonable, the Court has appointed a Monitor to gather, summarize, and evaluate information necessary to allow the Court to take appropriate action to prevent further violations of the Endangered Species Act (ESA).

Although this Court appointed the Monitor to aid in the determination whether additional relief is necessary to prevent further violations of the ESA, no request for additional relief has been made until now. It is clear the Amended and Supplemental Complaint goes far beyond seeking the relief envisioned by this Court in its Amended Judgment.

Had Plaintiff SIERRA CLUB sought to amend the Complaint upon which this case was tried to seek additional relief supported by the findings and conclusions made by this Court more than one year ago, it is conceivable the amendment could have been allowed pursuant to Rule 15. However, as pointed out by several of the opposing Responses, the proposed Amended and Supplemental Complaint seeks to promote an entirely new and different lawsuit. Since the proposed Amended and Supplemental Complaint does not conform to the evidence previously presented to and the facts previously found by this Court, it would be unjust to allow its filing in this cause of

action. Such broad amendment and supplementation would not only doubtless delay realization of the ultimate relief sought by Plaintiffs in this litigation – regulation of pumping from the Edwards Aquifer – but would also surely obscure this Court's ultimate finding in support of that relief – that continued unregulated pumping will eventually spell disaster not only for the listed species but for all living creatures dependant upon the Aquifer as a source of water.

Should the SIERRA CLUB and CLARK HUBBS wish to litigate new claims for relief not encompassed by the original complaint or seek relief against parties not involved in this cause of action, the proper vehicle for doing so would be to file a wholly new lawsuit. It may well be that much of the relief Plaintiff requests in its proposed Amended and Supplemental Complaint must be sought by way of an entirely new injunctive action and a showing that, based upon the springflow determinations made by the USFWS as a result of the relief previously granted in this case, violations of the ESA by persons or entities other than the Federal Defendants are imminent or are occurring.

Regardless of whether the SIERRA CLUB and CLARK HUBBS choose to move for additional relief by way of a Rule 15 amendment or an entirely new Rule 65 action, information and data provided by the Monitor will allow the Court to rule swiftly and in a manner narrowly targeted to the objectives of the requested relief – the

prevention of unlawful takings of listed species, reduction in the likelihood of survival and recovery of listed species, and any diminution of the value of the listed species' critical habitat. The Amended Findings of Fact and Conclusions of Law may well provide the evidentiary support for such relief.[1]

Nor does the Court believe the interests of justice and judicial economy would be supported by construing this Amended and Supplemental Complaint as a new cause of action and allowing it to be filed as such. The nature of the issues presented and the relief requested in this case are such that all parties involved in this litigation should be required to strictly adhere to settled rules of procedure and pleading. Should Plaintiff SIERRA CLUB wish to move for additional relief in the above-captioned cause of action, it may certainly do so by deleting all new defendants and all new causes of actions from the pleading under review and submitting the resulting document as a motion for further relief. On the other hand, if the SIERRA CLUB and CLARK HUBBS wish to file new causes of action against new defendants, they should do so by way of a new complaint, not by way of an extension of the above-captioned cause of action. Accordingly,

---

[1] To the extent the findings and conclusions announced in the Court's Amended Judgment were unnecessary to the determination that the FWS has a nondiscretionary duty to promulgate springflow information, they are subject to appeal if relied upon to support any additional relief granted by the Court. *See Sierra Club v. Babbitt*, 995 F.2d 571, 575 (5th Cir. 1993).

IT IS ORDERED the Motion of SIERRA CLUB and CLARK HUBBS for Leave to File Amended and Supplemental Complaint is hereby DENIED.

SIGNED this 5th day of May, 1994.

HONORABLE LUCIUS D. BUNTON III
SENIOR DISTRICT JUDGE

Document Separator

BRAC '95

BASE REALIGNMENT AND CLOSURE TASK FORCE

MEMORANDUM

Please refer to this number when responding 941104.3

TO: TOM HOUSTON
FRANK A. CIRILLO, JR.
BENTON L. BORDEN

FROM: PAUL L. ROBERSON, BRAC '95 PROJECT DIRECTOR

DATE: October 31, 1994

Attached for your information, is a letter Mayor Wolff recently sent to the Chairman regarding the issue of water in San Antonio.

I know that "water" has been a concern, but the actions described by the Mayor will preclude any potential impact in San Antonio's military installations for the forseeable future. Please let me know if I can be of any assistance to you on this matter.

Sincerely,

Paul Roberson

Paul L. Roberson

H:\1031TFB.MEM

BRAC '95
P.O. BOX 1628
SAN ANTONIO, TEXAS 78232

210-229-2147

FAX: 210-229-1600

CITY OF SAN ANTONIO

NELSON W. WOLFF
MAYOR

October 27, 1994

Alan Dixon
Chairman, Defense Base Realignment
and Closure Commission
1700 N. Moore Street, Suite 1425
Arlington, VA 22209

Dear Chairman Dixon:

San Antonio has enjoyed its long partnership with the military bases located in our city. This partnership, I believe, has been of mutual benefit both to our citizens and to the military installations. San Antonio provides personnel stationed here an excellent quality of life, as evidenced by the large number of military personnel who choose to live here when they retire. The military missions have given our citizens excellent employment opportunities. Kelly Air Force Base, for example, is the largest employer of Hispanics in the United States.

Our city's excellent infrastructure capably supports both civilian as well as military operations. Questions about water supply, however, may have raised concerns among observers. Let me assure you that more than sufficient water is available for all our City's military installations, not only for those currently here, but also for additional missions that we hope will be located in our area.

Like the rest of San Antonio, our military installations have their own wells which pump high quality water directly from our underground aquifer. Faced with the need to develop alternative water supplies so that aquifer pumping does not diminish the flow of nearby springs, San Antonio has implemented new strategies. One is a program to distribute reuse water. Reuse water is treated discharge water which is owned by the city and made available for non-potable industrial and irrigation use.

We presently have committed for military use in San Antonio 3,000 acre feet of reuse water each year. That is over <u>one billion gallons annually</u> -- 20% more water than is presently used by the military for industrial and irrigation purposes. Even more reuse water can be made available in the future, if needed.

This committed reuse water is <u>in addition</u> to the amounts of potable water the bases are already using and will continue to use. In other words, the availability of reuse water for industrial and irrigation purposes will offset some of the military's use of potable water, thus making more potable water available for those new and expanded missions which require potable water.

MAILING:
P.O. BOX 839966
SAN ANTONIO, TEXAS 78283-3966

CITY OF SAN ANTONIO, TEXAS
CITY HALL (210) 299-7060
FAX # (210) 270-4077

To formalize the City's commitment, the San Antonio City Council unanimously passed an ordinance on October 20, 1994. The ordinance sets out our proposal to supply military installations within our water utility's service area, on a priority basis, the 3,000 acre feet of reuse water for non-drinking industrial and irrigation uses. This commitment is consistent with what the city is doing in our overall water conservation and reuse planning and programs.

I am attaching the City Council ordinance related to this offer. Also attached is the supporting resolution of the San Antonio Water System, the public utility owned by the City of San Antonio, which owns and distributes reuse water on behalf of the City.

San Antonio is proud of our military installations and missions. I, our City Council, and our utility board are committed to providing total infrastructure support to them. We will take every measure possible to assure their needs not only for water but also for gas and electricity.

If you have any questions, please contact me personally at (210) 207-7060.

Sincerely,

Nelson W. Wolff,
Mayor

Enclosures

AN ORDINANCE 81012

PROVIDING FOR AN ALTERNATIVE SOURCE OF WATER TO CERTAIN FEDERAL MILITARY INSTALLATIONS BY GUARANTEEING 3,000 ACRE FEET OF REUSE WATER ANNUALLY FOR USE BY SUCH INSTALLATIONS IN PERFORMING INDUSTRIAL ACTIVITIES RELATED TO THEIR RESPECTIVE MISSIONS.

* * * * * *

Whereas, the City of San Antonio has long acknowledged the importance of the presence of the Federal military installations in the City of San Antonio, and the great contribution such installations make to the economy of the City and the employment of individuals within the San Antonio Region; and

Whereas, the City, in order to assure the continued existence of said military installations within the City of San Antonio Region shall in conjunction with the San Antonio Water System, provide to such installations a firm yield source of reuse water for industrial purposes; and

Whereas, the provision of a reliable supply of reuse water to such Federal military installations will provide for conservation of the Edwards Aquifer by allowing applicable industrial activities currently being performed on such installations with pumped water from the Edwards to be performed using reuse water; and

Whereas, the City finds that adopting a policy which further assures the current and future availability of water to the Federal military installations, and which provides further conservation of the Edwards Aquifer is in the best interest of all the citizens of the San Antonio Region; and

Whereas, the San Antonio Water System pursuant to Resolution 94-147, dated July 19, 1994, agreed to make such reuse water available to San Antonio Federal military installations; Now Therefore:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

Section 1. The City of San Antonio, in conjunction with the San Antonio Water System, shall make available a minimum of 3,000 acre feet of reuse water each year on a highest priority basis, to the following Federal Military Installations: Kelly A.F.B. and its associated facilities, Lackland A.F.B. and its associated facilities, Brooks A.F.B. and its associated facilities, and Fort Sam Houston.

Section 2. The City of San Antonio shall in conjunction with the San Antonio Water System, shall require that the reuse water guaranteed in Section 1, herein, shall not be used as a source of drinking water.

Section 3. The President/C.E.O. of the San Antonio Water System is hereby authorized and instructed to develop a plan for the provision of the reuse supply committed by this ordinance, and to develop a proposed rate for the provision of reuse service to the Federal military

installations identified in Section 1 herein. The rate to be developed pursuant to this section should be calculated to provide an incentive to an installation to use reuse water in place of water currently produced from the Edwards Aquifer, whenever such use is permitted. Once proposed rates are developed they shall be presented to the Council for review and consideration prior to adoption.

Section 4. The President/C.E.O. of the San Antonio Water System is hereby authorized and instructed to take all necessary action to ensure that the reuse reserve established herein is maintained and that the availability of reuse water for industrial purposes to the installations identified in Section 1 herein is communicated to such installations. The President/C.E.O. is hereby further authorized to enter into discussions and negotiations with appropriate representatives of each of the respective installations for the purpose of providing reuse service to these installations.

Section 5. A copy of this ordinance shall be made available to the Commanding Officer of each installation benefited hereby, and to any other official, committee or commission to which the terms of this resolution may be relevant.

Section 6. Should any Section of this Ordinance, for any reason, be held illegal, inoperative, or invalid, or if any exception to or limitation upon any general provision herein contained be held to be unconstitutional or invalid or ineffective, the remainder shall, nevertheless, stand effective and valid as if it had been enacted and ordained without the portion held to be unconstitutional or invalid or ineffective.

Section 7. It is officially found, determined, and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Ordinance, was given, all as required by Texas Revised Civil Statutes Annotated as amended Title 5, Chapter 532, Government Code. It is further found that provisions of this ordinance are intended to protect the public health, safety and welfare, and, as such, the provisions of this ordinance shall be effective immediately upon and after its passage.

PASSED AN APPROVED this 7th **day of** October, **1994.**

M A Y O R

ATTEST:

ASSISTANT **City Clerk**

APPROVED AS TO FORM:

City Attorney

A RESOLUTION 94-147

OF THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES PROVIDING AN ALTERNATIVE SOURCE OF WATER TO CERTAIN FEDERAL MILITARY INSTALLATIONS WITHIN THE BOARD'S SERVICE AREA BY GUARANTEEING 3,000 ACRE FEET OF REUSE WATER ANNUALLY FOR USE BY SUCH INSTALLATIONS IN PERFORMING INDUSTRIAL ACTIVITIES RELATED TO THEIR RESPECTIVE MISSIONS.

* * * * * *

Whereas, the San Antonio Water System Board of Trustees (the Board) acknowledges the importance of the presence of the Federal military installations in the City of San Antonio, and the great contribution such installations make to the economy of the City and the employment of individuals within the San Antonio Water System service area; and

Whereas, the Board desires to assist in assuring the continued existence of said military installations within the City of San Antonio and the service area of the San Antonio Water System by providing to such installations a firm yield source of reuse water for industrial purposes; and

Whereas, the provision of a reliable supply of reuse water by the Board to such Federal military installations will provide for conservation of the Edwards Aquifer by allowing applicable industrial activities currently being performed on such installations with pumped water from the Edwards to be performed using reuse water; and

Whereas, the Board finds that adopting a policy which further assures the current and future availability of water to the Federal military installations in the Board's service area, and which provides further conservation of the Edwards Aquifer is in the best interest of the rate payers and bond holders of the System; Now Therefore:

BE IT RESOLVED BY THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES:

Section 1. That a minimum of 3,000 acre feet of reuse water each year shall hereafter be made available on a highest priority basis to the following Federal Military Installations: Kelly A.F.B. and its associated facilities, Lackland A.F.B. and its associated facilities, Brooks A.F.B and its associated facilities, and Fort Sam Houston.

Section 2. The reuse water guaranteed by Section 1, above, shall not be used as a source of drinking water.

Section 3. The President and C.E.O. of the San Antonio Water System is hereby authorized and instructed to develop a plan for the provision of the reuse supply committed by this resolution, and

to develop a proposed rate for the provision of reuse service to the Federal military installations identified in Section 1 above. The rate to be developed pursuant to this section should be calculated to provide an incentive to an installation to use reuse water in place of water currently produced from the Edwards Aquifer, whenever such use is permitted. Once proposed rates are developed they shall be presented to the Board for review and consideration prior to making recommendations to the City Counsel for adoption of the same.

Section 4. The President and C.E.O. of the San Antonio Water System is hereby authorized and instructed to take all necessary action and implement all necessary procedures to ensure that the reuse reserve established herein is maintained and that the availability of reuse water for industrial purposes to the installations identified in Section 1 above is communicated to such installations. The President and C.E.O. is hereby further authorized to enter into discussions and negotiations with appropriate representatives of each of the respective installations for the purpose of establishing reuse service to the same.

Section 5. This resolution shall be effective immediately after its adoption and execution, and copies of this resolution shall be made available to the Commanding Officer of each installation benefited hereby, and to any other official, committee or commission to which the terms of this resolution may be relevant.

PASSED AN APPROVED this 19th **day of** JULY, **1994.**

Diane D. Rath

for Clifford E. Morton, Chairman

ATTEST: Curtis E. Neal Jr.

Curtis E. Neal, Secretary

G:\legal\resolutions.res

Document Separator

United States Department of the Interior

FISH AND WILDLIFE SERVICE
611 E. Sixth Street
Grant Bldg., Suite 407
Austin, Texas 78701

July 5, 1994

Mary Ann Hook, General Counsel
Defense Base Closure and
Realignment Commission
1700 North Moore 1425
Arlington, Virginia 22209

Dear Ms. Hook:

This is in regards to the July 14, 1994, meeting in Austin, Texas being hosted by the U.S. Fish and Wildlife Service to discuss Federal actions within the Edwards Aquifer that may require consultation under section 7 of the Endangered Species Act of 1973, as amended.

The meeting will be held on the University of Texas-Austin campus in Room 2.102 of the Thompson Conference Center located on the corner of 26th Street and East Campus Drive. Ample parking is available immediately east and southeast of the conference center. The meeting will begin at 8:30am and last until about 4:00pm with an hour-and-a-half break for lunch. We request that a representative of each Federal agency be prepared to provide a brief (five minute) summary of their agency's present and future planned activities within south-central Texas in order to furnish a perspective on the relative magnitude of Federal involvement in this portion of the State.

A block of rooms are being held until July 8th at the Austin Holiday Inn-Town Lake. For reservations, please call (512) 472-8211 or 1-800-HOLIDAY and mention the "U.S. Fish and Wildlife Service" to obtain the rates of $55 for single rooms or $65 for doubles.

This assemblage of Federal agencies is meant to promote a better understanding of the Edwards Aquifer and the federally-listed endangered or threatened species that depend upon it for their survival, as well as to serve as a beginning point for developing a cooperative, multi-agency approach to plan for long-term sustainability of our limited water resources.

A tentative agenda and location map are enclosed. We look forward to working with you in addressing this most complex and very important issue.

Sincerely,

/s/ Sam Hamilton

Sam D. Hamilton
State Administrator

Enclosure

TENTATIVE AGENDA

Edwards Aquifer Meeting to Discuss Endangered Species Act Implications for Federal Agencies July 14, 1994

8:30AM -WELCOME
Sam Hamilton, State Administrator, U.S. Fish and Wildlife Service

8:40AM -HYDROGEOLOGY OF THE EDWARDS AQUIFER
George Ozuna, Hydrologist, U.S. Geological Survey

8:55AM -AQUIFER DEPENDENT FEDERALLY-LISTED SPECIES
Alisa Shull, Biologist, U.S. Fish and Wildlife Service

9:10AM -SECTION 7 OF THE ENDANGERED SPECIES ACT
Richard Szlemp, Biologist, U.S. Fish and Wildlife Service

9:50AM -BREAK

10:10AM -SECTION 7 DISCUSSION CONTINUED

10:50AM -FEDERAL AGENCY PRESENTATIONS

11:30AM -LUNCH

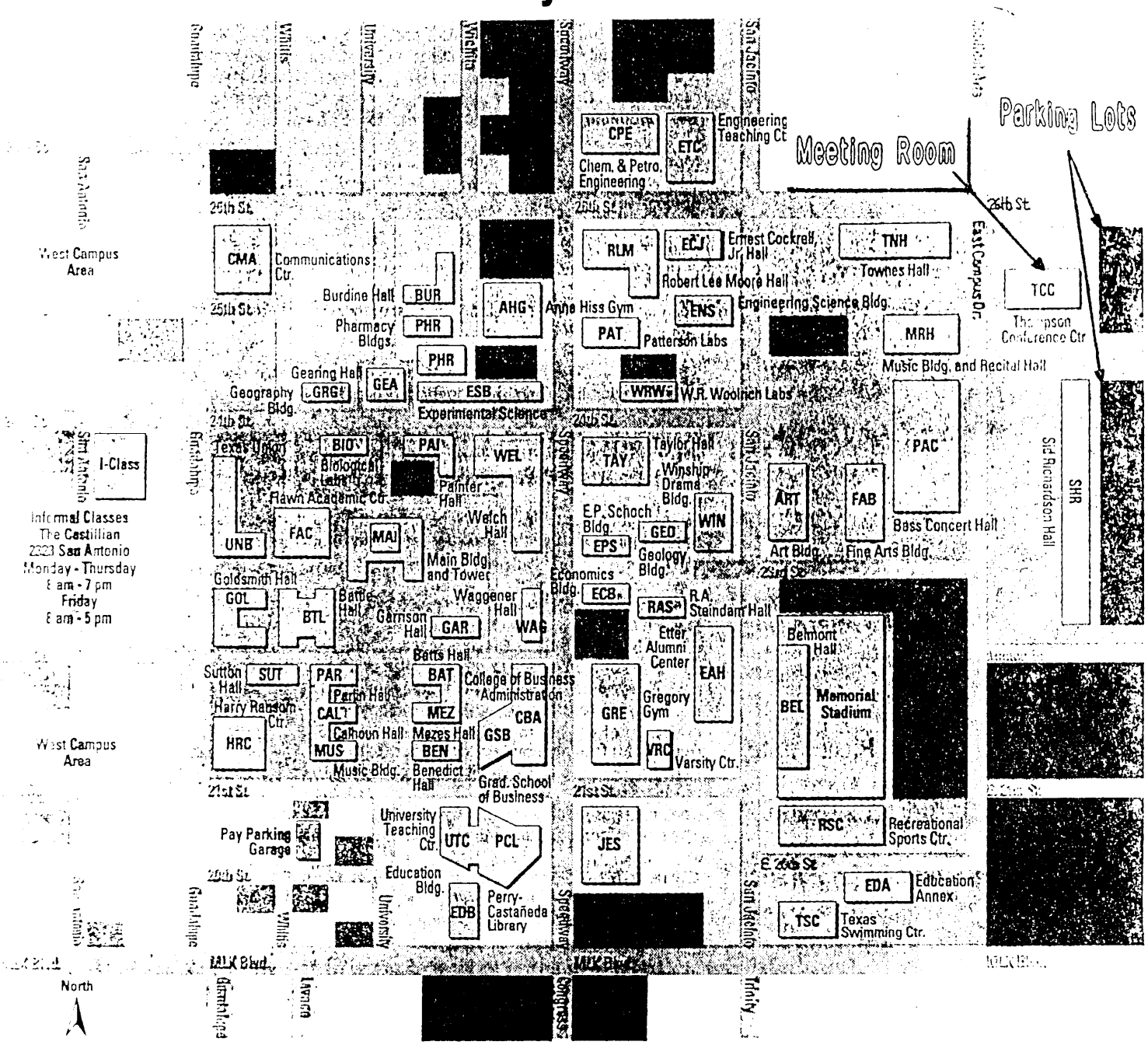
1:00PM -OPEN DISCUSSION, Q&A'S

3:45PM -CLOSING REMARKS ON FUTURE CONSULTATION PLANNING

4:00PM -ADJOURN!

Parking Map

University of Texas



= UT campus

= UT campus buildings

= **Park & Lock's** are usually available. Rates: about $3.00 for an evening. NEVER park without paying. If you use bills, be sure to push the bills all the way into the slot.

= **UT Parking Garage** is more convenient than it looks. Rates: $1 per hour, 4 hours maximum.

= **UT Parking Lots** available for general use after 5 pm. READ THE SIGNS. Some campus spaces are restricted at all times. You will be ticketed if you park in a restricted space.

= **State Employee Parking Lots** available for general use after 5 pm.

We know that parking around the University is difficult, especially for people unfamiliar with the area. It is possible to park if you know where to look, are methodical in your search, and plan to spend at least 20 minutes looking. You may find a space in less than 20 minutes, but if you allow this much time, plus 10 minutes to walk to class, you can be reasonably sure of getting to class on time.

This map shows the most commonly available parking spaces. If you hate driving around and searching, we recommend **Park & Lock's**. Almost all of the campus walkways and surrounding city streets are well lit and bustling with people on weekday evenings, but it's always safer to walk with a friend.

On campus, **Speedway** and **San Jacinto Streets** and **East Campus Drive** usually have diagonal parking spaces available in the evenings. **Whitis** has limited parallel parking. **24th Street** has both parallel and diagonal parking spaces. **20th** and **21st Streets** have very limited parking.

The streets of **West Campus** are worth a try, except on Monday nights. Watch for one-way streets, driveways, dumpsters, etc. Patience and the ability to parallel park are the key elements of success. Parking meters on **Guadalupe** are free in the evenings and on weekends. **San Antonio Street** is not a good place to park

United States Department of the Interior

FISH AND WILDLIFE SERVICE
611 E. Sixth Street
Grant Bldg., Suite 407
Austin, Texas 78701

June 21, 1994

LETTERS WERE SENT TO ALL LIST ATTACHED:

Dear :

Several aquatic federally-listed as endangered or threatened species in Texas depend upon the San Marcos Springs in Hays County, and Comal Springs, in Comal County for their existence. Spring flows directly depend upon the southern portion of the Edwards Underground Aquifer, which is recharged by surface runoff. The aquifer also serves as the primary water source for over a million people in central Texas. The southern Edwards Aquifer region is composed of the following counties: Edwards, Real, Kerr, Bandera, Kendall, Blanco, Hays, Comal, Bexar, Medina, Uvalde, and Kinney. The relatively thin recharge area that runs approximately east-west through the latter six counties is particularly sensitive.

The drainage and recharge area of the aquifer has been negatively impacted by human population growth and associated urbanization in terms of both the quantity and quality of the subsurface water. The increase in surface area of impermeable surfaces such as buildings, streets, and parking lots have reduced the area and contact time available for infiltration of water into the aquifer. Additionally, the recharge area of the aquifer is overlain with relatively thin soils and Edwards limestone with zones of high porosity, which do not significantly filter the water as it flows through the aquifer. Thus, increased urbanization also increases the risk of contamination of the aquifer's water supply.

Urbanization has not only reduced the amount of water entering the aquifer, but it has also resulted in an increased demand for clean water for municipal, industrial, and agricultural purposes. The combination of a reduced effective recharge area, and especially, an increased rate of water withdrawal, can cause a decrease in the discharges at Comal and San Marcos Springs. The U.S. Fish and Wildlife Service has determined that the current level of water withdrawal from the Edwards Aquifer may affect federally-listed, aquatic species during periods when flows at Comal Springs drop below 200 cfs and when flows at San Marcos Springs drop below 100 cfs.

Section 7(a)(1) of the Endangered Species Act of 1973, as amended (Act), states that all Federal agencies shall utilize their authorities in furtherance of the purposes of the Act by carrying out programs for the conservation of endangered and threatened species. Furthermore, section 7(a)(2) of the Act requires that each Federal agency shall consult with the U.S. Fish and Wildlife Service to insure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of habitat of such species.

Currently, there is no State of Texas law in effect that regulates the withdrawal of groundwater from the aquifer. The role of Federal agencies in administering their programs consistent with the conservation of listed species and their habitats associated with the Edwards aquifer under these circumstances becomes even more consequential.

Since the issues surrounding the recharge and withdrawal of Edwards Aquifer water are wide-ranging and both biologically and politically complex, I believe that a comprehensive strategy needs to be developed to ensure that the Edwards Aquifer continues to support both the human users as well as the animal and plant species that depend upon the aquifer for their survival. The U.S. Fish and Wildlife Service wishes to convene all Federal agencies that:

- are currently using the aquifer water;
- are planning to use the aquifer water;
- are planning to increase their use of the aquifer water;
- have any discretionary role in funding, carrying out, or authorizing actions that facilitate increased use of the aquifer water, either directly or indirectly;
- are planning to construct facilities that reduce the amount of recharge to the aquifer; or,
- have any discretionary role in actions that facilitate the construction projects that may reduce the amount of recharge to the aquifer.

Consultation with the U.S. Fish and Wildlife Service is prescribed for any Federal agency whose actions may affect the water quantity and quality in Comal and San Marcos Springs and, therefore, may affect the federally-listed species that depend upon those springs.

We encourage your participation in working with other Federal agencies to develop a joint approach to this complex issue. We are planning a July 14, 1994, meeting in Austin, Texas (see enclosure) to briefly discuss the hydrogeology of the Edwards Aquifer; to further characterize activities that the U.S. Fish and Wildlife Service believes may influence the water quantity and quality at Comal and San Marcos Springs; to listen to agency officials describe their programs and their best understanding of the effects of these programs on the Edwards Aquifer; to provide a forum in which we can answer any questions that you may have regarding how

your activities may affect spring flows; and to ultimately provide a starting point in developing a comprehensive strategy to attempt to maintain spring flows at levels that would not jeopardize the existence of any federally-listed species. This will likely lead to a combined formal section 7 consultation with the U.S. Fish and Wildlife Service, which will be further discussed at the meeting.

Please indicate your willingness to participate by **JUNE 30, 1994.** We look forward to working with you on this very important issue. If you have any questions regarding this proposed meeting, please contact Richard Szlemp in the Austin Field Office at (512) 482-5436.

Sincerely,

/s/ Sam Hamilton

Sam Hamilton
State Administrator

Enclosure

RSVP by Thurs. 6/30

PLEASE NOTE: YOU MAY USE THIS FORM OR, IF YOU PREFER, PROVIDE YOUR OWN WRITTEN OR VERBAL RESPONSE.

Yes, I would be interested in participating in the meeting for Federal agencies involved in activities that may affect spring flows from the Edwards Aquifer. I, or a representative(s) would be able to attend this 1-day meeting.

ADDRESS:

_____
_____
_____
_____
_____
_____

CONTACT PERSON: _____
TELEPHONE: _____

SPECIFIC TOPICS THAT YOU WOULD LIKE DISCUSSED OR QUESTIONS THAT YOU MAY HAVE REGARDING YOUR POTENTIAL INVOLVEMENT IN WATER CONSERVATION ISSUES ASSOCIATED WITH THE EDWARDS AQUIFER:

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

Secretary
U.S. Department of Agriculture
14th Street & Independence Ave. S.W.
Washington, DC 20250

Secretary
U.S. Department of Commerce
14th St.& Constitution Ave., N.W.
Washington, DC 20230

Secretary
Department of Defense
The Pentagon
Washington, DC 20301

U.S. Department of the Air Force
Secretary of the Air Force
The Pentagon
Washington, DC 20330

U.S. Department of the Army
Secretary of the Army
The Pentagon
Washington, DC 20310

U.S. Department of the Navy
Secretary of the Navy
The Pentagon
Washington, DC 20350

U.S. Department of Education
Secretary
400 Maryland Avenue, S.W.
Washington, DC 20202

U.S. Department of Energy
Secretary
Forrestal Building
1000 Independence Avenue, S.W.
Washington, DC 20585

U.S. Department of Health and Human Services
Secretary
200 Independence Avenue, S.W.
Washington, DC 20201

U.S. Department of Housing and Urban Development
Secretary
451 Seventh Street, S.W.
Washington, DC 20410

U.S. Department of the Interior
Secretary
1849 C Street, N.W., Room 6217
Washington, DC 20240

U.S. Department of Justice
Attorney General
10th Street and Constitution Ave., N.W.
Washington, DC 20530

U.S. Department of Labor
Secretary
200 Constitution Avenue, N.W.
Washington, DC 20210

U.S. Department of State
Secretary
2201 C Street, N.W.
Washington, DC 20520

U.S. Department of Transportation
Secretary
400 Seventh Street, S.W.
Washington, DC 20590

U.S. Department of the Treasury
Secretary
1500 Pennsylvania Avenue, N.W.
Washington, DC 20220

U.S. Department of Veterans Affairs
Secretary
810 Vermont Avenue, N.W.
Washington, DC 20420

Environmental Protection Agency
Administrator
401 M Street, S.W.
Washington, DC 20460

Farm Credit Administration
Chairman
1501 Farm Credit Drive
McLean, VA 22102

Farmers Home Administration
Administrator
14th & Independence Avenue, S.W.
Washington, DC 20250

Federal Communications Commission
Chairman
1919 M Street, N.W.
Washington, DC 20554

Federal Deposit Insurance Corporation
Chairman
550 Seventeenth Street, N.W.
Washington, DC 20429

Federal Emergency Management Agency
Director
Federal Center Plaza
500 C Street, S.W.
Washington, DC 20472

Federal Home Loan Mortgage Corp.
Chairman
8200 Jones Branch Drive
McLean, VA 22101

Federal Housing Finance
1777 F Street, NW
Washington, DC 20006

Federal Housing Finance Board
Managing Director
1700 G Street, N.W.
Washington, DC 20552

Federal Labor Relations Authority
Chairman
500 C Street, S.W.
Washington, DC 20424

Federal Trade Commission
Chairman
6th Street & Pennsylvania Avenue, N.W.
Washington, DC 20580

General Services Administration
Administrator
18th and F Streets, N.W.
Washington, DC 20405

Interstate Commerce Commission
12th & Constitution Avenue, NW
Washington, DC 20423

International Development Cooperation Agency
Director
320 20th Street NW
Washington, DC 20523

International Trade Commission
Chairman
500 E Street, S.W.
Washington, DC 20436

National Labor Relations Board
Chairman
1099 14th Street, NW
Washington, DC 20570

Office of Thrift Supervision
Director
1700 G Street, N.W.
Washington, DC 20552

U.S. Postal Service
Postmaster General
475 L'Enfant Plaza West, S.W.
Washington, DC 20260

Resolution Trust Corporation Oversight Board
Chairman
801 17th Street N.W.
Washington, DC 20434

Securities and Exchange Commission
Chairman
450 Fifth Street, N.W.
Washington, DC 20549

Selective Service System
1515 Wilson Blvd.
Arlington, VA 22209-2425

Lt. Colonel Philip M. Jones, Jr.
Director, Directorate of Engineering
and Housing
Department of the Army
Headquarters, Fifth USA & Fort Sam
Houston
Fort Sam Houston, TX 78234-5000

Small Business Administration
Administrator
409 3rd Street, S.W.
Washington, DC 20416

USDA - Soil Conservation Service
101 S. Main Street
Temple, TX 76501-7682

Department of the Army
Corps of Engineers
1114 Commerce Street
Dallas, TX 75242

Environmental Protection Agency
Regional Office, Region VI
1445 Ross Avenue
Dallas, TX 75202

Federal Communication Commission
9330 LBJ Freeway, Suite 1170
Dallas, TX 75243

Federal Labor Relations Authority
525 Griffin Street, Room 926
Dallas, TX 76202

Federal Trade Commission
100 North Central Expressway, Suite 500
Dallas, TX 75201

General Services Administration
1114 Commerce Street, Room B-7
Dallas, TX 75242

General Services Administration
819 Taylor Street
Ft. Worth, TX 76102

General Services Administration
300 E. 8th Street, Room G-100
Austin, TX 78701

Department of the Interior
Minerals Management Service
8303 Elmbrook Drive, Suite 110
Dallas, TX 75247

Department of Labor
525 Griffin Street
Dallas, TX 75202

Small Business Administration
8625 King George Drive, Bldg. C
Dallas, TX 75235

Farmers Home Administration
101 South Main, Suite 102
Temple, TX 76501

Agricultural Stabilization
& Conservation Service
2405 Texas Avenue So., 2nd Fl
College Station, TX 77841

Interstate Commerce Commission
411 West 7th Street, Suite 510
Ft. Worth, TX 76102

National Labor Relations Board
819 Taylor Street, Room 8A24
Ft. Worth, TX 76102

Department of Commerce
611 E. 6th Street, Room 201
Austin, TX 78701

Bureau of Reclamation
300 E. 8th Street, Room 801
Federal Building
Austin, TX 78701

Department of Housing
and Urban Development
1600 Throckmorton
Ft. Worth, TX 76102

Small Business Administration
819 Taylor Street
Ft. Worth, TX 76192

Department of Transportation
Federal Highway Administration
819 Taylor Street, Room 8A00
Ft. Worth, TX 76102

Department of Transportation
Federal Highway Administration
300 E. 8th Street, Room 826
Austin, TX 78701

U.S. Defense Base Closure and
Realignment Commission
Rosslyn Metro Center Bldg.
1700 North Moore Street
Arlington, VA 22209

Department of the Air Force
Lackland Air Force Base
2240 Walker Avenue
Lackland, Texas 78236-5637

National Park Service
LJJ National Historic Park
Ranch Road #1
Stonewall, Texas 78745

Department of Housing and
Urban Development
800 Dolorosa
San Antonio, Texas 78207

Richard Hawkinson
U.S. Geological Survey
8011 Cameron Road
Austin, Texas 78753-6700

William Sewell
San Marcos National Fish Hatchery
and Technology Center
500 East McCarty Lane
San Marcos, Texas 78666

Rural Electrification Administration
USDA - 14th & Independence Avenue, SW
Washington, DC 20250

P. M. SCHENKKAN
727 East 26th Street
Austin, Texas 78705
(512) 471-3280

Re: Edwards Underground River/Aquifer

Greetings:

We have previously notified you pursuant to the citizen suit provision of the Endangered Species Act that your agency is in violation of Section 7 of the Endangered Species Act. Your agency authorizes, funds or carries out activities that jeopardize endangered and threatened species dependent on water from the Edwards Underground River or Aquifer ("the Edwards"), but has not consulted with the U.S. Fish & Wildlife Service concerning such activities. Your agency has authorities it could use in carrying out programs for the conservation of these species, but has not used those authorities. We have notified you of our intent to sue to correct these violations.

We have learned that on June 21, 1994, Sam Hamilton, State Administrator of the U.S. Fish & Wildlife Service in Austin, Texas, wrote you concerning these matters. As we understand it, he invited and encouraged your agency to participate in a July 14, 1994 meeting to discuss these matters. We understand that the U.S. Fish & Wildlife Service intends this meeting as the first step in a "combined formal Section 7 consultation" of all relevant federal agencies with the U.S. Fish & Wildlife Service concerning protection of the Edwards.

The Sierra Club and Clark Hubbs hope you will take this meeting seriously, and begin the formal Section 7 process on the Edwards on July 14.

Sincerely,

P.M. Schenkkan
Attorney for the Sierra Club
and Clark Hubbs

cc: Sam Hamilton

Document Separator

Memo from
FRANK A. CIRILLO, JR., P.E.

5/3

Mary Ann cc Ben, Bob, Ed, Alex

Reference the SNAI/Dacter Suite:— The attached DBCRC Spreadsheet gives an indication of the San Antonio 1993 +/-

— I include the questionaire sections for Water Source for:

Base	Base Wells or Community	Ground or Surface
BROOKS	C	G
Kelly	B	G
LACKLAND	B	G *see note
RANDOLPH	B	G

1993 DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION

Estimated Economic and Personnel Effects of Determinations

By State

Unit ID Code	Installation Name	DOD Recommend.	DBCRC Action	Military Personnel	Civilian Personnel	Total Personnel	Cost of Action	Savings 1994-1999	Annual Savings	Net Present Value (NPV)
A-48188	CORPUS CHRISTI ARMY DEPOT, TX	NONE	RECEIVE	0	700	700	0.00	0.00	0.00	[illegible]
A-48515	RED RIVER ARMY DEPOT, TX	RECEIVE	RECEIVE	0	613	613	0.00	0.00	0.00	[illegible]
D-	DEF DIST DEPOT RED RIVER, TX	NONE	RECEIVE	1	215	216	15.90	0.00	0.00	[illegible]
D-	DISA LSBA-IPC SAN ANTONIO, TX	REALIGN	REALIGN	0	27	27	0.00	0.00	0.00	0.00
D-	DISA-AFMPC RANDOLPH AFB, TX	DISESTBLSH	DISESTBLSH	-62	-1	-63	0.00	0.00	0.00	0.00
D-	DISA-CPSC SAN ANTONIO, TX	DISESTBLSH	DISESTBLSH	-25	-15	-40	0.00	0.00	0.00	0.00
D-	DISA-NAVDAF CORPUS CHRISTI, TX	DISESTBLSH	DISESTBLSH	0	0	0	0.00	0.00	0.00	0.00
F-BJHZ	BERGSTROM AFB, TX	REDIRECT	NONE	0	0		0.00	0.00	0.00	0.00
F-DDPF	CARSWELL AFB, TX	REDIRECT	REDIRECT	0	0		0.30	1.80	0.00	0.00
F-FNWZ	DYESS AFB, TX	REDIRECT	REDIRECT	-23	0	-23	0.00	0.00	0.00	0.00
F-MBPB	KELLY AFB, TX	RECEIVE	RECEIVE	0	15	15	0.00	0.00	0.00	0.00
F-MPLS	LACKLAND AFB, TX	RECEIVE	RECEIVE	129	22	151	0.00	0.00	0.00	0.00
F-VNVP	SHEPPARD AFB, TX	REDIRECT	REDIRECT	-135	-15	-150	0.00	0.00	0.00	0.00
N-DDPF	CARSWELL AFB, TX	RECEIVE	RECEIVE	1487	1493	2980	0.00	0.00	0.00	0.00
N-	MC RESERVE FORT WORTH, TX	RECEIVE	RECEIVE	11	0	11	0.00	0.00	0.00	0.00
N-62257	N/MRC ABILENE, TX	CLOSE	CLOSE	-17	0	-17	0.20	0.01	0.09	0.51
N-00216	NAS, CORPUS CHRISTI, TX	NONE	RECEIVE	143	19	162	0.00	0.00	0.00	0.00
N-00215	NAS, DALLAS, TX	CLOSE	CLOSE	-1112	-263	-1375	136.46	-113.54	5.21	-77.86
N-68891	NAVAL STATION INGLESIDE, TX	NONE	RECEIVE	598	7	605	0.00	0.00	0.00	0.00
N-63485	NRF MIDLAND, TX	CLOSE	CLOSE	-6	0	-6	0.01	0.70	0.17	1.56
Net Totals for TX				989	2817	3806	152.87	-111.03	5.47	-75.79
A-49575	TOOELE ARMY DEPOT, UT	REALIGN	REALIGN	-16	-1942	-1958	73.70	107.20	51.00	387.20
D-	DEF DIST DEPOT TOOELE, UT	CLOSE	CLOSE	-1	-230	-231	23.70	-19.20	5.60	20.00
D-	DISA LSBA-IPC OGDEN (HILL AFB), UT	REALIGN	REALIGN	-96	-53	-149	0.00	0.00	0.00	0.00
D-	DISA-IPC OGDEN, UT	DISESTBLSH	DISESTBLSH	1	-114	-113	0.00	0.00	0.00	0.00
F-KRSM	HILL AFB, UT	RECEIVE	RECEIVE	420	244	664	0.00	0.00	0.00	0.00
N-62124	NRC OGDEN, UT	CLOSE	CLOSE	-12	-1	-13	0.04	2.16	0.48	4.61
Net Totals for UT				296	-2096	-1800	97.44	90.16	57.08	411.81

[VIII.5.H] H. What is the annual utilization capacity?

[VIII.5.I] I. What is the present utilization rate?

[VIII.5.J] J. Are there any known noise sensitive areas associated with the range?
[VIII.5.J(1)] (1) If yes, describe:

[VIII.5.K] K. Are there any known civilian/commercial encroachment associated with the range property?
[VIII.5.K(1)] (1) If yes, describe:

[VIII.5.L] L. What is the status of hazardous material/waste/ordnance disposal?

[VIII.5.M] M. What is the status of any Memorandum of Understanding, Letters of Agreement associated with the range?

VIII.6 UTILITIES - WATER

[VIII.6.A] A. Is the water treatment system operated by the Base or by the local Community? C
[VIII.6.A(1)] (1) When was the system constructed? 1943

[VIII.6.B] B. What is the source of the water supply? G
[VIII.6.B(1)] (1) Specify: THE EDWARDS AQUIFER

[VIII.6.C] C. What is the capacity of the water supply system? 1,520,000 GAL/DAY

[VIII.6.D] D. Does the base supply water to the local community? N

[VIII.6.E] E. If the water treatment system is operated by the local community, what is the daily average demand of the base?
[illegible],000 GAL/DAY

Brooks AFB
29 January 1993

[VIII.6.F] F. Are there any other constraints to the base water system:
[VIII.6.F(1)] (1) Quality? N
[VIII.6.F(2)] (2) Quantity? Y
[VIII.6.F(3)] (3) Seasonal shortages? Y
[VIII.6.F(4)] (4) Capacity? N
[VIII.6.F(5)] (5) Storage? N

[VIII.6.G] G. Are regional water supplies adequate? AT PRESENT, THE REGIONAL WATER SUPPLY APPEARS TO BE ADEQUATE. HOWEVER, FUTURE WATER DEMANDS MAY REQUIRE THE LOCATION OF SUPPLEMENTAL SOURCES OF WATER.

VIII.7 UTILITIES - WASTEWATER

[VIII.7.A] A. Is the base wastewater treatment system Base operated or operated by the local Community? C
[VIII.7.A(1)] (1) What is the capacity of the system:
[VIII.7.A(1a)] (a) Maximum - 157,000,000 GAL/DAY
[VIII.7.A(1b)] (b) Minimum - 0

[VIII.7.A(2)] (2) If community operated, what does the base contribute? 230,000-416,667 GAL/DAY
[VIII.7.A(3)] (3) When was the system constructed? 1943-1986

VIII.7 UTILITIES - WASTEWATER (cont)

Kelly 1/1

[VIII.5.M] M. What is the status of any Memorandum of Understanding, Letters of Agreement associated with the range?

VIII.6 UTILITIES - *WATER*

[VIII.6.A] A. Is the water treatment system operated by the Base or by the local Community? **B***
[VIII.6.A(1)] (1) When was the system constructed? **1940**

[VIII.6.B] B. What is the source of the water supply? **G**
[VIII.6.B(1)] (1) Specify: **EDWARDS UNDERGROUND AQUIFER**

[VIII.6.C] C. What is the capacity of the water supply system? **5,500,000 GAL/DAY**

[VIII.6.D] D. Does the base supply water to the local community? **N**

[VIII.6.E] E. If the water treatment system is operated by the local community, what is the daily average demand of the base?

[VIII.6.F] F. Are there any other constraints to the base water system:
[VIII.6.F(1)] (1) Quality? **N**
[VIII.6.F(2)] (2) Quantity? **N**
[VIII.6.F(3)] (3) Seasonal shortages? **Y**
[VIII.6.F(4)] (4) Capacity? **N**
[VIII.6.F(5)] (5) Storage? **N**

[VIII.6.G] G. Are regional water supplies adequate? **NO**

LACKLAND
1/1

VIII.6 UTILITIES - *WATER*

[VIII.6.A] A. Is the water treatment system operated by the **B**ase or by the local Community? **B**

[VIII.6.A(1)] (1) When was the system constructed? **1940**

[VIII.6.B] B. What is the source of the water supply? **G**

[VIII.6.B(1)] (1) Specify:

[VIII.6.C] C. What is the capacity of the water supply system? **15,141,600 GD**

[VIII.6.D] D. Does the base supply water to the local community? **N**

[VIII.6.E] E. If the water treatment system is operated by the local community, what is the daily average demand of the base?

[VIII.6.F] F. Are there any other constraints to the base water system:

[VIII.6.F(1)] (1) Quality? **N**

[VIII.6.F(2)] (2) Quantity? **N**

[VIII.6.F(3)] (3) Seasonal shortages? **Y**

[VIII.6.F(4)] (4) Capacity? **N**

[VIII.6.F(5)] (5) Storage? **N**

[VIII.6.G] G. Are regional water supplies adequate? **N, THIS ISSUE HAS BECOME A MAJOR CONCERN FOR THE USERS OF THE EDWARDS AQUIFER. CURRENTLY THE TEXAS WATER COMMISSION IS SEEKING CONTROL OF THE AQUIFER, THUS**

Randolph 1/2

[VIII.5.E] E. Does the range have any electronic warfare capability?
[VIII.5.E(1)] (1) If yes, describe. What are the associated restrictions?

[VIII.5.F] F. Does the range have any live ordnance capability?
[VIII.5.F(1)] (1) If yes, describe. What are the associated restrictions?

[VIII.5.G] G. Does the range have any special weapons capability?
[VIII.5.G(1)] (1) If yes, describe. What are the associated restrictions?

[VIII.5.H] H. What is the annual utilization capacity?

[VIII.5.I] I. What is the present utilization rate?

[VIII.5.J] J. Are there any known noise sensitive areas associated with the range?
[VIII.5.J(1)] (1) If yes, describe:

[VIII.5.K] K. Are there any known civilian/commercial encroachment associated with the range property?
[VIII.5.K(1)] (1) If yes, describe:

[VIII.5.L] L. What is the status of hazardous material/waste/ordnance disposal?

[VIII.5.M] M. What is the status of any Memorandum of Understanding, Letters of Agreement associated with the range?

VIII.6 UTILITIES - *WATER*

[VIII.6.A] A. Is the water treatment system operated by the Base or by the local Community? **B**
[VIII.6.A(1)] (1) When was the system constructed? **1929**

RND
Randolph

Randolph 2/2

[VIII.6.B] B. What is the source of the water supply? **G**
[VIII.6.B(1)] (1) Specify:

[VIII.6.C] C. What is the capacity of the water supply system? **6,696,000 GAL/DAY**

[VIII.6.D] D. Does the base supply water to the local community? **N**

[VIII.6.E] E. If the water treatment system is operated by the local community, what is the daily average demand of the base?

[VIII.6.F] F. Are there any other constraints to the base water system:
[VIII.6.F(1)] (1) Quality? **N**
[VIII.6.F(2)] (2) Quantity? **N**
[VIII.6.F(3)] (3) Seasonal shortages? **N**
[VIII.6.F(4)] (4) Capacity? **N**
[VIII.6.F(5)] (5) Storage? **N**

[VIII.6.G] G. Are regional water supplies adequate? **YES**

VIII.7 UTILITIES - *WASTEWATER*

[VIII.7.A] A. Is the base wastewater treatment system **B**ase operated or operated by the local Community? **C**
[VIII.7.A(1)] (1) What is the capacity of the system:
[VIII.7.A(1a)] (a) Maximum - **6,200,000 GAL/DAY**
[VIII.7.A(1b)] (b) Minimum - **UNKNOWN**

[VIII.7.A(2)] (2) If community operated, what does the base contribute? **600,000 GAL/DAY**

Document Separator

Powers Russ, Col DSN 487-6326
AETC/CE
Randolph AFB, TX
Rosenblum, Dave 202-452-1540
OHM Coorp, Wash D.C. Office

~~Trench, Sean 703-524-4821~~

WASSERMAN-GOODMAN, SHERRY 703-695-6639
DEP ASST SEC OF DEF FOR ENV SECURITY

Wood, John 615-483-1274
Advanced Sciences, Inc.
Tennessee

Judy Austin
2774
CHMW Military Water Working Group

INFORMAL DISCUSSION

→ Not the First step in Consultation

Document Separator

FACSIMILE ELECTRO MAIL TRANSMITTAL

(This information collection is not subject to OMB review under PL-96, The Paperwork Reduction Act.)

SECTION I - TO BE COMPLETED BY ORIGINATOR

CLASSIFICATION	TRANSMISSION	PAGE ONE OF 6 PAGES
☐ FOR OFFICIAL USE ONLY	☐ IMMEDIATE ☐ ROUTINE	

TO (Organization and Functional Address Symbol)	FAX NO. DSN	FAX NO. COMMERCIAL
AF Team Leader DBCRC	226-0550	
ATTENTION	**VOICE NO. DSN**	**VOICE NO. COMMERCIAL**
Mr. Francis Cirillo, Jr	226-0504	

SUBJECT: Background Paper - San Antonio H_2O Issues

FROM	FAX NO. DSN	FAX NO. COMMERCIAL
Judith D. (Judi) Austen, PUBLIC UTILITIES SPECIALIST	487-3597	210-652-3597
	VOICE NO. DSN	**VOICE NO. COMMERCIAL**
	487-2774	210-652-3597

Headquarters Air Education and Training Command
HQ AETC/CEOE • 266 F Street West • Randolph AFB, TX 78150-4321
Phone (210) 652-2774 • DSN 487-2774
Fax (210) 652-3597 • DSN Fax 487-3597

REMARKS

Per our conversation, here is the background paper we sent to SAF.

Judi

RELEASER'S SIGNATURE	DATE	TIME
	15 Jul 94	

SECTION II - TO BE COMPLETED BY ELECTRO MAIL OPERATOR

DATE TRANSMITTED	TIME TRANSMITTED	TRANSMITTER'S SIGNATURE
DATE ADDRESSEE CONTACTED	**TIME ADDRESSEE CONTACTED**	**CONTACTOR'S SIGNATURE**

BACKGROUND PAPER
ON
SAN ANTONIO WATER ISSUES

- **Edwards Aquifer is sole source of water for a six county region of South Central Texas - San Antonio is in that region**

  -- Four Air Force Bases are also within that region (Brooks, Kelly, Lackland and Randolph)

  -- Three of the four pump water from the aquifer; Brooks only, purchases its water from San Antonio Water Systems (SAWS), the municipal water utility, which pumps from the aquifer for a number of other clients as well

  -- Also included within San Antonio is one Army post; Fort Sam Houston. It also pumps water from the Aquifer

- **Texas has "right of capture" ground water law; no restrictions on pumping**

- **Edwards Underground Water District (EUWD), was created by Texas legislature in 1959 (following "drought of record" which spanned nearly a decade - late 1940s through 1957)**

  -- Original EUWD mandate - conserve, protect and increase aquifer recharge; no power to register/meter wells, limit pumping.

  -- Original EUWD board - elected representatives from five of the six counties over the aquifer.

  -- In 1987, following another, shorter (1984) drought, City of San Antonio/EUWD jointly sponsored legislation expanding EUWD's mandate to include development of a Drought Management Plan to avoid "mining" the aquifer (i.e. withdrawing more than is recharged)

  -- EUWD developed a plan with pumping limits - attempted to implement (1987-88).

  -- After considerable conflict between agricultural/municipal users, the two western (agricultural) counties withdrew from the EUWD (Jan 89)

    --- the agricultural pumpers objected to restrictions when their traditional use was unlimited

    --- San Antonio and other cities/water purveyors in the remaining counties developed water conservation and drought management ordinances/rules to comply with EUWD's plan

- **Sierra Club filed notice (1989) with Interior Department, alleging violation of the Endangered Species Act (ESA) citing failure to limit pumping from the aquifer, thereby endangering species in Comal/San Marcos springs - formal lawsuit followed (1991) against Secretary of Interior, Manuel Lujan, and Fish And Wildlife Service (FWS)**

-- After several continuances designed to allow local authorities to resolve the problem, Federal District Court (Midland, Texas) ruled if the state failed to implement a water management plan FWS must initiate action to protect species under the ESA (i.e. consultation)

-- During 1993 session, Texas legislature passed a water management plan (SB 1477) which included pumping restrictions

-- Legislation was challenged under voting rights act - it replaced an elected (three county) aquifer management board with an appointed (five county) board. Legislation is still in limbo

-- Federal District Court appointed a monitor (Jan 94) to develop an aquifer management plan by 1 Aug 94

-- FWS scheduled a meeting of all federal activities (14 Jul 94) to discuss the situation

- **Military Water Working Group (MWWG) was conceived and informally implemented during 1986/87; officially established in 1988 for two reasons**

  -- Provided for a dialog on water issues between all San Antonio military installations regardless of service/command

  -- Gave local people (City, County, State) a central point of contact for San Antonio water matters

    --- Representatives from all 5 installations

    --- Engineering, Legal & Public Affairs Offices

  -- MWWG worked with installations/EUWD to develop water conservation/drought management plans

    --- Each San Antonio installation has one

    --- Patterned after EUWD and/or City of San Antonio plans (minor variances)

    --- All are multi-staged

    --- All meet or exceed local guidelines

- **MWWG working together on strategy for future actions**

  -- Each San Antonio base/MAJCOM/service will be represented at 14 Jul FWS meeting in Austin

  -- All installations communicating between each other and service level to coordinate preparations for meeting and follow-on activities

- **Military efforts to conserve water include**
  - -- Leak detection surveys completed at all bases
  - -- Reuse water projects underway/planned
    - --- Randolph working with Cibolo Creek Municipal Authority (CCMA)
      - ---- Return of final treated waste water from base (base owns rights under terms of sewage contract with CCMA))
      - ---- Will be used for golf course irrigation
      - ---- Estimated completion date - spring 1995
    - --- Kelly land disposal permit for final treated industrial plant water
      - ---- Being used for golf course irrigation
      - ---- Also looking into use for cooling towers
  - -- Fort Sam Houston in discussion with San Antonio Water System (SAWS) on reuse water for golf course/national cemetery
  - -- Brooks in good position to use SAWS reuse water with minimal distribution system reconfiguration
  - -- Lackland considering use of excess Kelly reuse water - requires major infrastructure changes
- **Military cooperation with community on water issues - past and present**
  - -- Participation on Chamber of Commerce water committees (1986 - present)
    - --- Water Resources Committee
    - --- Water Use Committee
    - --- Water planning committee
  - -- San Antonio 2050 Water Resources Committee (Dec 93 - May 94)
  - -- Trans-Texas Water Program Advisory Committee (1990 - present)
  - -- San Antonio Target 90 Water Resources Committee (1986 - 1990)
  - -- South Central Texas Water Resources Council Technical Review Panel (1992)
  - -- Observer - Greater San Antonio Area Citizen's Committee on Water (Aug 91 - Mar 92)

- **Representative Tejeda likely will address inquiries to Senator Gramm from Mr Edmond R. McCarthy, Jr regarding military use of water from Medina Lake (copies of correspondence were provided Mr Tejeda's office)**

  -- Mr Tejeda's district includes Randolph AFB, the east side of Kelly AFB, and Fort Sam Houston

  -- Original inquiry targeted Lackland, Kelly, Brooks AFBs and Medina Annex - Fort Sam Houston was added to the most recent inquiry.

  -- Medina Lake water is available through Bexar Metropolitan Water District (BexarMet) agreement with Bexar-Medina-Atascosa Counties Water control and Improvement District (WCID) No. 1 (BMA)

  -- In 1991, (a dry period), BexarMet entered a 20 year take-or-pay contract with BMA for excess Medina Lake water - presumably speculating on a market demand for non-aquifer irrigation water - 1992 brought a record high water level; the potential market disappeared

- **On 22 Oct 93, Mr McCarthy wrote Senator Gramm on behalf of BMA/BexarMet, proposing Air Force bases convert to Medina Lake water for irrigation**

  -- The letter explained no infrastructure was in place to deliver water to the installations.

  -- The "ongoing aquifer crisis" was referred to, and used as part of the argument for Air Force conversion to Medina Lake water

  -- Response to Senator Gramm (HQ AFCESA/EN input 22 Nov 93, SAF/LLP ltr, 8 Dec 93) stated Air Force was working toward a comprehensive solution to water problems, and Medina Lake water would be considered as possible source

- **Mr McCarthy again inquired (3 Feb 94), this time directly to SAF/LLP, stating willingness to work with MWWG and referring to a newspaper article linking pending pumping limitations to possible base closures**

  -- HQ AETC/CE responded (per SAF/LLP request) clarifying MWWG function (technical) and explaining we could not use the water without a delivery system in place

  -- We specifically stated "...Our understanding is that no pipeline is in place to move water from Medina Lake; if this is incorrect, please let us know."

  -- To date we've received no correction from Mr McCarthy; therefore, we assume the distribution system is still non-existent

- **Late on 7 Jul 94 we received a telefaxed copy of a letter from Mr McCarthy, asking for a meeting to discuss the Medina Lake Water - we plan to meet with him next week**

- **Current situation**

  -- To our knowledge, BMA/BexarMet still has no physical plant or distribution system

  -- We cannot use the BMA/BexarMet water without a way to transport it

  -- We do not normally fund construction of utility systems to provide a second source of a utility we already have in place

  -- Completed and/or underway projects already reduce pumping for San Antonio installations, using essentially the same quality water BMA/BexarMet proposes

  -- No economy is involved, since all installations except Brooks pump water at a cost well below what BMA would have to charge

HQ AETC/CEOE/Judi Austen/DSN 487-2774/doc 0930M

< CONFIRMATION REPORT >

07-15-1994(FRI) 11:24

[RECEIVE]

NO.	DATE	TIME	DESTINATION	PG.	DURATION	MODE	RESULT
10286	7-15	11:11	210 652 3597	6	0°12'40"	FINE.E	OK
				6	0°12'40"		

Document Separator

* PL 101-510

- Consultation ≤ 135 Days
* - Commission = 120 Days
* NEPA See C IMPR - 15 July

The Defense Base Closure & Realignment Commission is pleased to be REPRESENTED here today. * The Commission's RESPONSIBILITIES ARE LIMITED TO MAKING RECOMMENDATIONS to the President FOR BASE CLOSURES OR REALIGNMENTS. THE COMMISSION HAS IN 1991 and 1993, and will in 1995 (Between March 1 & July 1) 120 Day period MAKE AN INDEPENDANT ANALYSIS OF THE RECOMMENDATIONS OF THE SECRETARY OF DEFENSE TO INSURE APPLICATION OF the Defense Force STRUCTURE PLAN and Eight Selection CRITERIA. ONE OF THOSE CRITERION INCLUDES

Created under PL 10-510 in Nov 1990

ESSING THE ENVIRONMENTAL IMPACT ON
IN 1993 7 Attributes 1st of which THE
SDLS.
STAFF ONLY - 1995 Commissioners Nominated by JAN 3, 95
- 4 Bases impacted in past -
- OSD in 1993 used 7 Equal attributes 1st of which was THE

Document Separator

PAST

BROOKS AFB, San Antonio TX

1991 Commission recommended realignment of ~~FOUR~~ THREE U.S. Army Laboratories from. Letterman Institute, Presidio CA
. Walter Reed, Wash DC
NATIC, MA

Kelly AFB San Antonio TX

1993 Commission Recommended realignment of 15 equipment maintenance personnel from Newark

LACKLAND AFB

1993 Commission Recommended realignment of the Inter-American Air Forces Academy (129 Military / 22 Civilians) from Homestead AFB FL

Randolph AFB

1991 Commission recommended movement of the 323rd Flying Training Wing from Closing March AFB CA to Randolph instead of to Beale AFB

ATTORNEY - CLIENT COMMUNICATION
TALKING PAPER REGARDING THE EDWARDS AQUIFER ISSUE

Mary Ann Hook , General Counsel, & Frank Cirillo, Air Force Team Leader
Defense Base Closure and Realignment Commission

July 11, 1994

Background: DBCRC has been invited to attend an informational meeting along with 69 federal agencies / organizations that are potential defendants in a Sierra Club complaint. The complaint is regarding depletion of the Edwards Aquifer which serves as the primary water source for over a million people in central Texas and charges two underground springs that impact federally endangered or threatened species.

Points and Issues:

* Sierra Club's attempt to amend a long standing suit to include the 69 federal agencies, including DBCRC, was denied by the U.S. District court in May, 1994.

* A U.S. Fish and Wildlife Service (US F&WS) generic letter of June 21 announced the informational meeting to be held on July 14 in Austin, TX.

* An undated letter by the Plaintiff to potential defendants indicated this meeting was to be the "first step in a combined formal Section 7 consultation of all relevant federal agencies with the US F&WS concerning protection of the Edwards."

* We understand, as stated above, this meeting to be informational in nature for the agencies involved or portending to be involved.

* Mr. Cirillo spoke to Ms. Judy Austin, Chairman of the San Antonio Military Water Working Group on July 8, 1994. She will attempt to get clearance to release a "Point Paper" they are preparing on the subject. She stated that it appears the Air Force and in fact the Department of Defense considers the July 14 meeting as informational. She also implied that they would opt to join in and support a "Group" consultation as opposed to separate consultations for each agency.

* The "Section 7 Consultation" issue involves Section 7(a)(1) of the Endangered Species Act of 1973 that each federal agency consult with US F&WS to insure that any action authorized, funded or carried out by the agency is not likely to jeopardize the continued existence of any threatened or endangered (T&E) species , etc. This consultation is an ongoing process, appropriate for actual users and decision makers.

* The Plaintiff's initial attempt to amend the existing lawsuit was addressing each agency as an entity that "...authorizes, funds or carries out activities that encourage or allow use of Edwards water."

Document Separator

DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION

THE COMMISSION PROCESS

Frank Cirillo, Air Force Team Leader

PUBLIC LAW 101-510

CHANGES FOR THE 1995 ROUND

- SUBMISSION DATE
- TESTIMONY UNDER OATH
- PUBLIC NOTICE OF PROPOSED CHANGES

THE BRAC PROCESS

President Nominates Commissioners (January 3, 1995)

↓

Senate Confirmation

↓

Secretary of Defense Delivers Recommendations to the Commission (March 1)

↓

Commission Conducts Hearings and Deliberations (March 1 - June 30)

↓

Commission Delivers Recommendations to President (July 1)

↓

President Considers Recommendations (July 1 - July 15)

COMMISSION PROCESS

Secretary of Defense Delivers Recommendations to the Commission (March 1)

↓

Investigative Hearings (March - April)

↓

General Compliance Review

↓

(GAO Delivers Report on DoD Process - April 15)

↓

Base Visits (April - May)

↓

Regional Hearings (April - May)

↓

Specific Compliance Review

↓

Adds/Substitutions Hearing (Mid-May)

↓

List of Bases Added for Consideration Published in Federal Register (May 17)

↓

Base Visits and Regional Hearings for Added Bases (May - June)

↓

Final Deliberation Hearings (June)

↓

Commission Delivers Recommendations to the President (July 1)

FORCE STRUCTURE

	FY 1990	1991 Commission FY 1995	1993 Commission FY 1997	Bottom-Up Review	1995 Commission FY 1999
Army Divisions (Active)	28 (18)	18 (12)	18 (12)	15+ (10)	??
Aircraft Carriers (Reserve/Training)	16 (1)	13 (1)	13 (1)	12 (1)	??
Carrier Air Wings (Active)	15 (13)	13 (11)	13 (11)	11 (10)	??
Battle Force Ships	545	451	425	346	??
Marine Corps Divisions (Active)	4 (3)	4 (3)	4 (3)	4 (3)	??
Tactical Fighter Wings (Active)	36 (24)	26 (15)	26 (15)	20 (13)	??

FINAL SELECTION CRITERIA

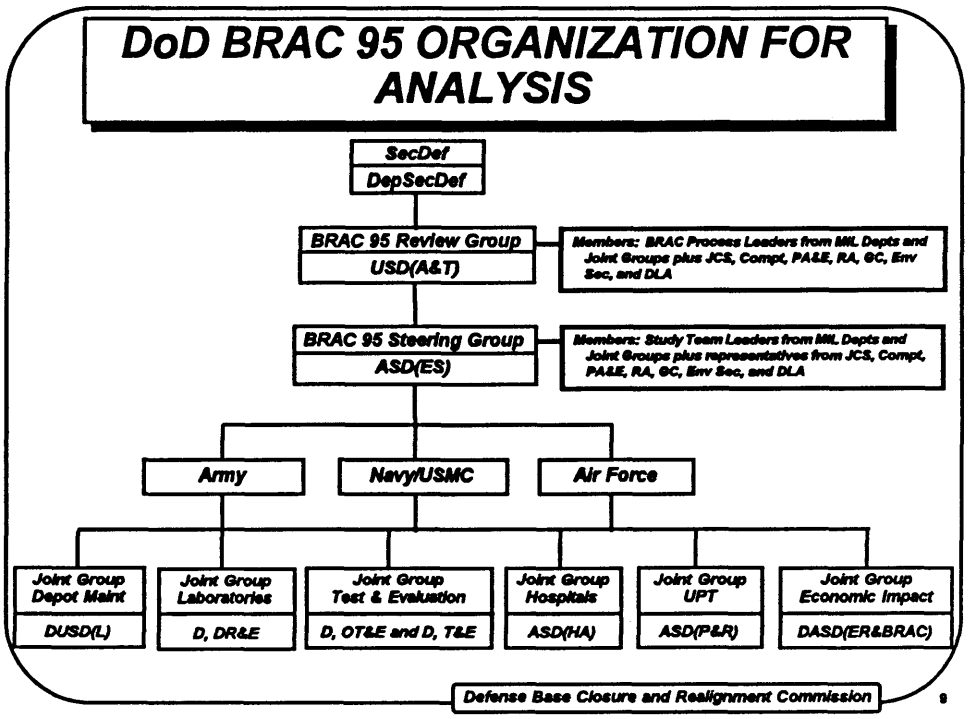
- MILITARY VALUE
  1. THE CURRENT AND FUTURE MISSION REQUIREMENTS AND THE IMPACT ON OPERATIONAL READINESS ON THE DEPARTMENT OF DEFENSE'S TOTAL FORCE.
  2. THE AVAILABILITY AND CONDITION OF LAND, FACILITIES AND ASSOCIATED AIRSPACE AT BOTH THE EXISTING AND POTENTIAL RECEIVING LOCATIONS.
  3. THE AVAILABILITY TO ACCOMMODATE CONTINGENCY, MOBILIZATION AND FUTURE TOTAL FORCE REQUIREMENTS AT BOTH THE EXISTING AND POTENTIAL RECEIVING LOCATIONS.
  4. THE COST AND MANPOWER IMPLICATIONS.
- RETURN ON INVESTMENT
  5. THE EXTENT AND TIMING OF POTENTIAL COSTS AND SAVINGS, INCLUDING THE NUMBER OF YEARS, BEGINNING WITH THE DATE OF COMPLETION OF THE CLOSURE OR REALIGNMENT, FOR THE SAVINGS TO EXCEED THE COSTS.
- IMPACTS
  6. THE ECONOMIC IMPACT ON COMMUNITIES.
  7. THE ABILITY OF BOTH THE EXISTING AND POTENTIAL RECEIVING COMMUNITIES' INFRASTRUCTURE TO SUPPORT FORCES, MISSIONS AND PERSONNEL.
  8. THE ENVIRONMENTAL IMPACT.

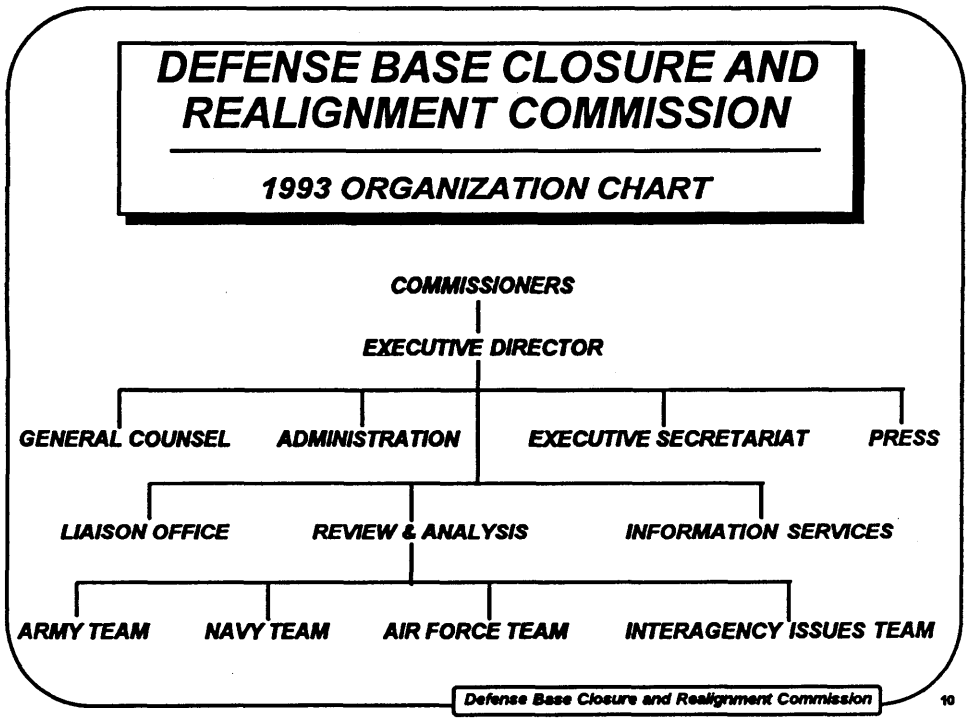
1993 BASE CLOSURE AND REALIGNMENT RECOMMENDATIONS

	DoD SUBMITTAL	ACCEPTS	REJECTS	CHANGES	ADDS
ARMY	10	6	2	2	3
NAVY	99	85	12	2	9
AIR FORCE	14	10	2	2	3
DEFENSE LOGISTICS AGENCY	14	9	4	1	0
DEFENSE INFORMATION SYSTEMS AGENCY	44	42	2	0	1
TOTAL	181	152	22	7	16

BASE CLOSURE AND REALIGNMENT SUMMARY

	1988	1991	1993	TOTAL
ARMY				
CLOSURES	74	5	1	80
REALIGNMENTS	12	24	10	46
NAVY				
CLOSURES	7	16	74	97
REALIGNMENTS	1	18	22	41
AIR FORCE				
CLOSURES	5	13	5	23
REALIGNMENTS	0	6	10	16
DEFENSE AGENCIES				
CLOSURES	0	0	50	50
REALIGNMENTS	0	0	3	3
TOTAL				
CLOSURES	86	34	130	250
REALIGNMENTS	13	48	45	106


DoD BRAC 95 ORGANIZATION FOR ANALYSIS
SecDef
DepSecDef
BRAC 95 Review Group
USD(A&T)
Members: BRAC Process Leaders from MIL Depts and Joint Groups plus JCS, Compt, PA&E, RA, GC, Env Sec, and DLA
BRAC 95 Steering Group
ASD(ES)
Members: Study Team Leaders from MIL Depts and Joint Groups plus representatives from JCS, Compt, PA&E, RA, GC, Env Sec, and DLA
Army
Navy/USMC
Air Force
Joint Group Depot Maint
DUSD(L)
Joint Group Laboratories
D, DR&E
Joint Group Test & Evaluation
D, OT&E and D, T&E
Joint Group Hospitals
ASD(HA)
Joint Group UPT
ASD(P&R)
Joint Group Economic Impact
DASD(ER&BRAC)
Defense Base Closure and Realignment Commission
9


DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION
1993 ORGANIZATION CHART
COMMISSIONERS
EXECUTIVE DIRECTOR
GENERAL COUNSEL
ADMINISTRATION
EXECUTIVE SECRETARIAT
PRESS
LIAISON OFFICE
REVIEW & ANALYSIS
INFORMATION SERVICES
ARMY TEAM
NAVY TEAM
AIR FORCE TEAM
INTERAGENCY ISSUES TEAM
Defense Base Closure and Realignment Commission
10

RECENT EVENTS

- SUPREME COURT DECISION
- CONGRESSIONAL INITIATIVES TO DELAY 1995 ROUND
  - HANSEN AMENDMENT TO FY 95 DEFENSE AUTHORIZATION ACT
  - DEAR COLLEAGUE LETTER IN THE SENATE
- ARTICLES ABOUT EXTENDING PROCESS TO 1997

Document Separator

THE DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION
POSITION DESCRIPTION

JOB SUMMARY: ENVIRONMENT ANALYST (EPA DETAILEE)

Detailee serves as a member of the staff of the Defense Base Closure and Realignment Commission. The Commission falls within the purview of the Defense Base Closure and Realignment Act of 1990 (Public Law 101-510) and the National Defense Authorization Act for Fiscal Year 1992 (Public Law 102-190). The Commission is composed of eight Commissioners appointed by the President. The purpose of the Commission is to provide a fair and independent process to review SECDEF recommendations for timely closure and realignment of military installations within the United States. The Commission's five-year charter provides for the Commissioners to meet only during Calendar Years 1991, 1993 and 1995 in order to make recommendations to the President based on a thorough review and analysis of the Services' and DoD processes for studying and proposing recommended installations for closure and/or realignment.

MAJOR DUTIES AND RESPONSIBILITIES

Detailee will carry out a variety of duties in the normal course of accomplishing the Commission's statutory mission. By the very nature of the Commission's overall charter and charge, that is, efforts relating to closure and realignment of military installations, which will have both high-visibility economic and political impacts, detailee will carry out activities of a sensitive and controversial nature, requiring the full trust and confidence of the Special Team Chief, Director of Review and Analysis' and the Staff Director. In addition, due to the Commission's time-sensitive responsibilities, detailee will be expected to commit fully to the accomplishment of the Commission's stated statutory purpose.

In addition to the responsibilities described below, detailee will perform all tasks as assigned:

* Review and become familiar with legislation and policy pertaining to the Commission and the process for determining recommended base closures and realignments; become familiar with Service-specific force structure as it pertains to air operations; final selection criteria and OSD guidance to the Services regarding the base closure and realignment process.

* Rapidly assimilate the DoD Base Closure and Realignment Report and accompanying information that will be submitted to the Commission by no later than March 15, 1993.

* Assist the three Service teams in the independent analysis of Service recommendations relative to environmental compliance,

restoration, natural resource protection, pollution control, and hazardous waste cleanup within the United States. Must possess an in-depth knowledge of and experience with environmental issues, federal and state regulations and policies and procedures as they relate to the base closure/realignment process.

* Communicate effectively with Service headquarters and EPA Headquarters and the Regions as well as any field offices and local communities involved in various aspects of environmental compliance and restoration efforts.

* Formulate oral and written questions that will effectively elicit the additional information from government sources that the Commission may require for its decision-making.

* Provide internal briefings to staff and Commissioners on subjects within detailee's field of expertise. Give testimony before Commission during public hearings.

* Prepare memos, point papers, briefing materials, and sections within the Commission's final report using personal computer-based word processing.

* A SECRET security clearance is desirable but not mandatory.

Document Separator

COMPLIANCE WITH DOD DIRECTION ON CRITERIA VIII 93

12/4/92 Memo from Colin McMillen lists seven environmental "attributes":

1. Threatened or Endangered Species
2. Wetlands
3. Historical or Archeological Sites
4. Pollution Control
5. Hazardous Materials/Waste
6. Land Use and Airspace Implications
7. Programmed Environmental Costs/Cost Avoidances

There is apparently no guidance on how these attributes are considered. The 12/4 memo states that the status of the attributes should be discussed. It appears that the services are evaluating how continued and/or expanded military operations are influenced by these attributes.

- AIR FORCE ANALYSIS AND RECOMMENDATIONS (VOL. V)

Volume V summarizes the impacts of attributes 1, 2, 3 on future operations.

Pollution Control is not explicitly addressed. There is discussion of Air Quality in noting whether the base is located in an attainment area. The quality and quantity of Water supplies is also discussed.

Hazardous Materials/Waste are discussed by results of surveys on asbestos and radon, along with a discussion of future capacity for the disposal of solid waste. The presence of soil contamination and its impact on operations was evaluated.

Attributes 6 and 7 are not addressed. The 12/4 memo directs land value estimates to be adjusted due to contamination problems. It appears that this has not been done.

Volume V also rates the presence of "Prime and unique farmlands," and "Mineral and Energy Resources."

- AIR FORCE BASE QUESTIONNAIRES

The base-specific questionnaires provide details on the attributes summarized in Volume V. Questions on the attributes not discussed in Volume V. (6, 7) are additionally included. The focus on these questions on Attribute 6 is on how base activities interface with local land use or airspace constraints.

The only environmental costs (#7) discussed in the questionnaire are restoration costs. Questions under the <u>title</u> of "Environmental Cleanup/Compliance Costs" also ask about the status of permits and ground water contamination, but do not seek costs on

these activities. It is unclear how new environmental costs (e.g for receiving bases) or cost avoidances (for closing bases) could be determined from this information.

Under Attributes 4 and 5, the questionnaires provide more details on the status of pollution control (wastewater treatment, drinking water treatment) and the presence of hazardous materials/waste.

RESTORATION COSTS

The 12/4 memo states that "environmental restoration costs at closing bases are not to be considered in the cost of closure calculations." The apparent rationale was noted by Chairman Courter during the 3/22 Environmental Hearing when he noted that bases that disregard environmental protection (thus requiring elevated cleanup costs) should not be rewarded by remaining open. Ms. Munsell of the Navy noted that cleanup costs are "a wash" if a base is closing or remaining open. While this could theoretically be true in rare circumstances, in most cases there will be additional <u>incremental</u> costs associated with the restoration of closing bases. At least three factors lead to these incremental costs:

1. As Commissioner Levitt noted on 3/22, distinct future uses of closing bases may lead to more stringent cleanup requirements. This has been supported by experiences at Norton AFB (San Bernadino, CA) and Hunter's Point Naval Annex (San Francisco, CA) where cleanup objectives are impacted by future use considerations. Incremental cleanup costs will be incurred for these bases that would not be incurred if the bases remain open. The current estimated cleanup at McClellan AFB is $1.1 <u>Billion</u> (not $1.1 <u>Million</u> as stated by Mr. Vest on 3/22) were this base to remain open. The Air Force has estimated that if the base closes, the cleanup costs could reach $10 Billion due to the residential surroundings.

2. The Community Environmental Response and Facilitation Act (CERFA) requires that uncontaminated property at closing bases be identified to facilitate reuse. This results in incremental costs that are not incurred by non-closing bases.

3. The FY-92 Defense Authorization Act established deadlines for the completion of Remedial Investigation/Feasibility (RI/FS) work at Round I and Round II closing bases on the Superfund NPL. The impact of these mandated deadlines is that work must be accelerated, resulting in incremental short-term costs.

The 12/4 memo also notes that when environmental restoration is required, that this will be "a potential limitation on near-term community reuse of the installation." It would apparently be appropriate to consider this under Criteria VI (Economic Impact on Communities). The Air Force's Volume V report notes comparative cleanup durations in their Criteria VI summary.

Document Separator

ANALYSIS OF GENERAL COMPLIANCE

CRITERION 8

THE ENVIRONMENTAL IMPACT

DESCRIPTION: Pursuant to Public Law 101-510, as amended, on May 5, 1992, the Department of Defense (DOD) issued guidance with selection criteria for the 1993 base closure and realignment recommendations. This guidance includes criterion 8, the environment impact. On December 4, 1992, DOD issued further guidance on how the environmental impact should be considered for closing, realigning, and receiving locations. The December 4, 1992 guidance requires a summary statement and status on seven environmental attributes for each installation affected by the closure/realignment action, including receiving installations. These seven environmental attributes are:

- Threatened or Endangered Species
- Wetlands
- Historical or Archeological sites
- Pollution Control
- Hazardous Materials/Wastes
- Land Use and Airspace Implications
- Programmed Environmental Costs/Cost Avoidances

ANALYSIS: General compliance with these procedures is analyzed for each Service as follows:

Army: The Army compiled Installation Environmental Baseline Summaries for each Army installation eligible for closure or realignment. The Total Army Basing Study (TABS) also provided supplemental information in response to questions from the Defense Base Closure and Realignment Commission (DBCRC). The Army's installation summaries directly address six of the seven environmental attributes in DOD's guidance. Under the seventh attribute, Programmed Environmental Costs/Cost Avoidances, the Installation Summaries do not consistently follow DOD's guidance. In some cases the Installation Summaries only provide restoration costs. This is inconsistent with DOD's December 4, 1992 guidance, which directs the Services not to use restoration costs in the cost of closure calculations. However, the supplemental information provided by TABS to the DBCRC certifies that environmental compliance costs were determined to evaluate the impact of programmed cost/cost avoidances for all recommended actions. This supplemental information documents that program costs for receiving installations were evaluated.

The Army's Analyses and Recommendations Report (Volume III) summarized the environmental impact on closing and realigning installations, and appropriately addressed six of the seven attributes. Again, the evaluation of Programmed Environmental

Costs/Cost Avoidances was clarified by the supplemental information provided by the TABS to the DBCRC.

Navy: The Navy compiled summaries of environmental conditions for each installation eligible for closure or realignment. The Navy considered Criterion 8 in detail for installations that were recommended for closure or realignment after a review of the Military Value Criteria (Criteria 1 through 4). The Navy's "Summary of Environmental Consequences" is included in their Analyses and Recommendations Report (Volume IV). For closing and realigning bases, the Navy evaluated each installation with respect to the seven environmental attributes laid out in DOD's December 4, 1992 guidance. Summaries of environmental impacts at receiving bases are also included. These summaries on receiving bases generally address six of the seven environmental attributes, but do not specifically address Programmed Environmental Costs/Cost Avoidances. The Navy addressed the attribute of environmental costs at receiving installations in their Cost of Base Realignment Action (COBRA) model. The costs necessary to comply with environmental requirements due to new functions at these receiving bases are documented in the COBRA reports.

Air Force: The Air Force completed base-specific questionnaires on environmental issues for each Air Force installation eligible for closure or realignment. These questionnaires address all recommended closing, realigning and receiving bases. Documentation was provided on six of the seven environmental attributes. These questionnaires did not directly address the attribute of Programmed Environmental Costs/Cost Avoidances. Several questions are included under the title of "Environmental Cleanup/Compliance Costs." However, estimated costs were provided only on environmental restoration costs, and DOD's guidance specifically notes that restoration costs are not to be considered in the cost of closure. The Air Force's environmental analysis was summarized in their Analyses and Recommendations Report (Volume V). This documented the status of all environmental attributes except Programmed Environmental Costs/Cost Avoidances.

The results of the Air Force's Cost of Base Realignment Action (COBRA) Model runs were consulted in an attempt to determine whether Programmed Environmental Costs/Cost Avoidances were considered. Financial Summary reports indicate that environmental costs were entered as zero for all bases impacted by major actions. The possibility that environmental costs were merged with Military Construction costs in the COBRA model was reviewed. It was learned that Military Construction costs considered the cost of constructing mission-related facilities, such as base housing, on receiving installations. Military Construction costs also include the impacts on the capacity of utilities at receiving installations. Utility costs can include water supply and sewage treatment capacity. These were the only environmentally-related costs that were considered, however these only address receiving

bases, and no specific environmental compliance costs as described in the December 4, 1992 DOD guidance were included.

Defense Agencies: Two Defense Agencies are impacted by the 1993 Realignments and Closures, the Defense Logistics Agency, and the Defense Information Systems Agency. However, only the Defense Logistics Agency (DLA) is involved in installation closures or realignments with environmental impact. DLA completed installation-specific questionnaires that address the seven environmental attributes for all facilities where DLA has host responsibilities. At other DLA facilities, they are the tenant, and the property owner (e.g. Tooele Army Depot) addressed the environmental criterion. In DLA's Detailed Analysis Report (part of Volume VI), DLA considered Criterion 8 for installations recommended for closure or realignment based on DLA's Military Value Criteria. All seven environmental attributes were addressed in DLA's analyses. Consideration was given to closing, realigning, and receiving installations.

DIFFERENCES IN APPROACH ACROSS THE SERVICES

The Services used different perspectives in considering the relationship between closure decisions and the seven environmental attributes from DOD's guidance. When the Army made its recommendations on closure or realignment in Volume III, the analyses addressed the environmental impact on closure. (i.e. How does a wetland impact the decision to close?) Both the Navy and Defense Logistics Agency considered the impact of closure or realignment on the environmental attribute. (i.e., Will closure impact a wetland?) The Air Force's perspective was to consider the impact of the environmental attributes on the continued military mission of the installation. (i.e. How does a wetland impact the future military mission at the base?)

CONCLUSIONS

DOD's December 4, 1992 guidance on evaluating the environmental impact of closure and realignment is sufficiently general and flexible to allow the Services to apply varied perspectives to the environmental attributes. All Services have addressed most of the considerations required by the DOD guidance. The documentation provided by the Army, Navy and DLA, including the supplemental information from the Army's TABS, addresses the seven environmental attributes pursuant to DOD's guidance. Therefore the Army, Navy and DLA are in general compliance with DOD's guidance on Criterion 8 pursuant to Public Law 101-510, as amended.

The Air Force did not demonstrate that their decision-making considered the environmental attribute of Programmed Environmental Costs/Cost Avoidances pursuant to DOD's December 4, 1992 guidance. Since the Air Force properly addressed the remaining six attributes, and because it is very unlikely that the decisions made

by the Air Force would be different had they fully followed DOD's guidance, it can be concluded that the Air Force is in general compliance with the requirements to evaluate Criterion 8.

Document Separator

Draft 5/20/93

ANALYSIS OF SPECIFIC COMPLIANCE
CRITERION 8
ENVIRONMENTAL IMPACTS

DESCRIPTION: The purpose of this analysis is to evaluate the Department of Defense Services' consideration of environmental impacts in their recommendations of specific installations for closing and realignment. The environmental data used by the Services in their installation-specific conclusions were evaluated. The methodologies used to consider environmental impacts were reviewed for consistency within each Service. A determination was made on whether the Services complied with Department of Defense (DOD) policy guidance issued pursuant to Public Law 101-510, as amended. Based on the analysis on how the Services considered environmental impacts, recommendations were made on whether a specific installation's status pursuant to BRAC-93 could be revised.

The specific compliance analysis is broken down by Service. The following steps were taken in this analysis:

1. Installation-specific data (compiled in base questionnaires or data calls) were reviewed and compared to the Services' conclusions on environmental impacts in the Recommendations and Analyses Reports (Volumes III-VI).

2. The Services' summaries of the environmental impacts at specific installations were evaluated for consistency within each Service, and for compliance with DOD's December 4, 1992 policy memorandum. In this policy memorandum, guidance is provided to the Services for considering the environmental impacts on installations affected by closure and realignment actions, including receiving installations.

3. Discrepancies pursuant to the first two steps were considered in recommending whether a specific installation's status pursuant to BRAC-93 could change.

After evaluating each Service, recommendations for improvements to the environmental impact evaluation process for BRAC-95 are presented.

ANALYSIS

ARMY

1. Data Evaluation

All Army installations impacted by major closures and realignments were reviewed to determine whether the Army's Recommendations and Analyses Report (Volume III) accurately reflected their Environmental Baseline Surveys (EBS). In several

recommended actions, the conditions documented were in agreement. In several other specific cases, issues were raised in the EBS's that were not carried through to Volume III. These were raised in an April 26, 1993 letter from the Commission to the Army's Total Army Basing Study (TABS). On May 18, 1993, TABS responded that in these specific cases, environmental impacts were considered, and it was concluded that there would be no environmental constraints.

2. Consistency/Compliance

Questions were raised in the Commission's April 26, 1993 letter to TABS regarding discrepancies in costs reported in Army's output from the Cost of Base Realignment Action (COBRA) model. In their May 18, 1993 response, TABS stated, "The Army did not use any Environmental Programmed Costs/Cost Avoidances in the cost analysis (COBRA)." According to the TABS letter, costs that were identified by the Army as environmental costs in the COBRA "Other Costs" reports were erroneous, and actually represent non-environmental costs, such as furniture. Since environmental program costs/cost avoidances were not used in return on investment calculations, the Army did not comply with DOD guidance.

The Army's evaluation of criterion 8 at specific facilities made use of environmental restoration costs in a way that may be inconsistent with DOD's policy. DOD's "Policy Memorandum Two," December 4, 1992, states, "Environmental Restoration costs at closing bases are not to be considered in cost of closure calculations." The memo goes on to stipulate that these costs can be "considered as a potential limitation on near-term community reuse of the installation." Thus, simply by noting restoration costs, the Army is not necessarily in non-compliance, they are only in non-compliance if these restoration costs are used in the cost of closure, or return on investment.

In its base specific EBS's, and in its Volume III report, the Army often cites environmental restoration costs, along with the environmental compliance costs. In one specific case, Tooele Army Depot, the documentation provided is only for restoration costs in Volume III, and the EBS does not distinguish between restoration and compliance costs. This documentation for Tooele does not allow for consideration of compliance costs, pursuant to DOD's direction, in the evaluation of Programmed Costs/Cost Avoidances.

The Army's use of environmental restoration costs in decisions on Fort Monroe, VA has been questioned. Documentation on briefings given by TABS in late January, and early February, 1993, discusses environmental restoration impacts on the possible closing of Fort Monroe, VA. On February 3, 1993, the Secretary of the Army and Army Chief of Staff were briefed on a recommendation for deferral of closure of Fort Monroe due to "environmental and operational considerations." During the March 16, 1993 Commission Hearing, Brigadier General Ballard of TABS, stated that the "primary reason"

for not closing Fort Monroe was due to environmental restoration costs. During the March 22, 1993 Commission Hearing, Mr. Newsome of the Army stated that the application of military criteria was the basis for the decision not to close Fort Monroe.

The Commission's April 26, 1993 letter requested a clarification of the Army's decision-making on Fort Monroe. In response, TABS contended that they followed DOD's guidance, since environmental restoration costs were not used in the return on investment calculations for Fort Monroe. The May 18, 1993 TABS response notes that consideration of restoration costs is relevant when examining Fort Monroe. The costs to clear unexploded ordnance at Fort Monroe are quoted as "$600 million or greater." The accuracy of this cost estimate can be questioned. Based on cost information provided to the Commission by TABS on April 21, 1993, the main component of the Army's estimate is $614 million in "Archeological Labor." If this archeological component is not included, costs are estimated as approximately $20 million.

3. Impact on Base Status

Given the wording of the DOD guidance on use of environmental restoration costs, the Army followed the guidance in the case of Fort Monroe in that these costs were not considered in the cost of closure. The Army's consideration of restoration costs at Fort Monroe may have been appropriate, however since the restoration cost estimate appears inflated, the status of Fort Monroe could be reassessed.

By not considering environmental compliance costs in their return on investment calculations in the COBRA model, the Army did not follow DOD's guidance. Solely based on the analysis of Criterion 8, it is unlikely that any of the Army's recommendations would change had they fully followed DOD's guidance. However, if the Army made any BRAC-III recommendations based on Return on Investment (Criterion 5), these specific recommendations may be flawed since environmental compliance costs were not used in return on investment calculations.

NAVY

1. Data Evaluation

The base-specific conclusions in the Navy's Recommendations and Analyses Report (Volume IV) were checked for accuracy by reviewing a subset of the individual Navy data calls on environmental issues. Each recommended closing, realigning, and receiving Navy installation was not reviewed, due to the large number of installations involved. The specific bases were selected based on the magnitude of the closure or realignment, and the environmental significance of the action (based on the judgement of

the Commission staff). The conclusions documented by the Navy's Volume IV report accurately reflected the information from the Navy's data calls.

One issue noted in the Volume IV report that is not identified in the Navy's data calls is the status of air pollutant non-attainment areas. This information was included in the Volume IV report after the installation data calls were submitted, as the Naval Facilities Engineering Command compiled and entered data on non-attainment status from the Environmental Protection Agency.

2. Consistency/Compliance

In some specific cases, cost figures in cited in the Navy's Volume III report could be reconciled with costs noted in the base-specific data calls. In other cases these costs did not exactly match. Environmental costs were entered into COBRA for the Navy's recommended actions. Based on the Navy's BRAC-93 Scenario Development documentation, these costs include additional environmental compliance costs incurred as a result of closure or realignment actions, and cost avoidances for environmental projects which are no longer necessary as a result of closure or realignment. Specific costs in COBRA could not be exactly reconciled with other cost documentation provided by the Navy.

The Navy's installation-specific data summarizes the environmental attributes consistently with DOD's policy guidance.

3. Impact on Base Status

No recommended change in any specific base's status due to the Navy's evaluation of criterion 8.

<u>AIR FORCE</u>

1. Data Evaluation

All Air Force installations impacted by major closures and realignments were reviewed to determine whether the Air Force's Recommendations and Analyses Report (Volume V) accurately reflected the information compiled in base-specific questionnaires. The Air Force assigned ratings (red, yellow, green) for twelve environmental factors in their Volume V report. These ratings did not accurately reflect the base questionnaires. For example, Plattsburgh AFB, NY is rated as "Y" for air quality, which means the base is located in a non-attainment area, and pollutants are classified as moderate or marginal. However, the base questionnaire for Plattsburgh indicates that it is not in a non-attainment area. In some cases the discrepancies are widespread. For example, on K.I. Sawyer AFB, eight of the twelve ratings in Volume V do not reflect the base questionnaire. Through discussions with the Air Force's Environmental Planning Division,

it was learned that, in some cases, the Air Force's Base Capacity Evaluation Team, upon reviewing the questionnaires, revised the answers to the questionnaires. Revisions were based on the Team's evaluation of the base, and their knowledge of how the base completed the questionnaire. These revisions were based on the Team's professional judgement and are not documented.

The Air Force rated twelve environmental factors, and combined these into one overall environmental rating for each base. In assigning these overall ratings, the Air Force concluded that the twelve factors are not of equal value. However, they chose not to assign numerical values to weigh these factors. Instead, a qualitative approach was used, based on the judgement of the Air Force decision-makers. This qualitative approach was not documented.

2. Consistency/Compliance

Because the Volume V recommendations did not reflect the base questionnaire results and since the methodology for determining an overall environmental rating was not documented, the Air Force has not demonstrated that their methodology was applied consistently within each base category.

As noted in General Compliance with Criterion 8, the Air Force did not consider Programmed Environmental Costs/Cost Avoidances in their environmental analyses in either the base questionnaires or the Volume V report. On April 2, 1993, the Defense Base Closure and Realignment Commission wrote to the Deputy Assistant Secretary of the Air Force (Installations) requesting the Air Force's explanation for not evaluating this environmental attribute. The Air Force responded that their evaluation process did include environmental compliance, but referred to a section of the base questionnaires that does not address these costs. A follow-up letter to the Air Force was signed by Chairman Courter on May 6, 1993. Unless new information on the Air Force's consideration of compliance costs is provided, it appears that the Air Force did not comply with DOD guidance on the use of these costs in return on investment calculations.

Results of the Cost of Base Realignment Action (COBRA) model were reviewed for specific bases, and it was found that environmental costs were only entered for McClellan AFB and Newark AFB. For other recommended actions, the Air Force entered environmental costs of zero into the COBRA model.

Relative to the other Services, the Air Force's approach to evaluating criterion 8 provides minimal information on the environmental impacts of specific recommended closure or realignment actions. Whereas the other Services compiled baseline data, and subsequently evaluated environmental impacts from each specific recommended action, the Air Force compiled data on the

current status of environmental conditions and summarized the impact of environmental attributes on continued military mission at each installation. The Air Force's approach does not examine specific actions to determine environmental impacts from closure or realignment. Despite the absence of this discussion regarding specific recommendations, the Air Force's approach is not inconsistent with DOD's guidance on considering environmental impacts, as environmental conditions at all impacted bases were summarized.

3. Impact on Base Status

It is unlikely the discrepancies in the Air Force's use of questionnaire data in assigning ratings would dramatically change the overall environmental ratings. Again, using K.I. Sawyer AFB as an example, four of the eight discrepancies give "higher" ratings (e.g. Yellow instead of Red), while four discrepancies give "lower" ratings (e.g. Yellow instead of Green). None of the recommended bases had discrepancies in ratings that would lead to major swings in the overall environmental ratings.

Although the documentation provided by the Air Force does not demonstrate an internally accurate or consistent methodology, and apparently does not fully follow OSD's policy for evaluating environmental impacts, because the overall environmental ratings would not significantly change, and since this criterion was not a primary factor in the Air Force's decisions, it very unlikely that the status of any base would be revised due to the Air Force's analysis of the environmental criterion.

As was noted in the discussion of the Army's Impact on Base Status, if decisions were made on specific Air Force installations based on Return on Investment (Criterion 5), these decisions may be flawed since environmental compliance costs were not considered in all cases pursuant to DOD's guidance.

<u>DEFENSE AGENCIES</u> - Of the Defense Agencies impacted by BRAC-93, only the Defense Logistics Agency is being considered for major closures or realignments with environmental impacts.

1. Data Evaluation

The Defense Logistics Agency's (DLA's) Recommendations and Analyses Report (Part of Volume VI) accurately reflects the information compiled in DLA's environmental questionnaires for the recommended installations.

2. Consistency/Compliance

COBRA environmental costs were entered for DLA's recommended action at DPSC-Philadelphia, however these costs were not entered into COBRA for DESC-Dayton. The installation questionnaire for

DESC-Dayton indicates that environmental costs at this facility are relatively low.

3. Impact on Base Status

No recommended change in base status due to evaluation of criterion 8.

RECOMMENDED CHANGES FOR BRAC-95

1. Specific, detailed direction should be given to the Services on how to evaluate environmental impacts. Guidance should be given on the perspective the Services should use to address each of the environmental attributes, and how the environmental impact of the Services' recommended actions should be evaluated.

2. The consideration of environmental costs should be modified to consider incremental restoration costs associated with closure.

There are several unique factors that contribute to additional restoration costs at closing bases.

a. The Community Environmental Response, Facilitation Act (CERFA) includes requirements unique to closing bases. There must be an assessment of the property to identify clean parcels in order to attempt to facilitate reuse. The costs of these assessments are typically in the same order of magnitude as many of the compliance costs that are currently tracked under Programmed Costs/Cost Avoidances.

b. Investigation and cleanup acceleration is necessary due to pressure to convert to civilian use. Deadlines, unique to closing bases, for the completion of the investigation phase have been established by Congress. This acceleration will often lead to additional costs due to:

1) The need to use "off-the-shelf" cleanup technology rather than seeking more cost-efficient innovative approaches, which by their nature require more testing prior to application.

2) Spending incremental funds in near-term fiscal years, that is not currently programmed

c. In some cases, cleanup standards for converting to a new, civilian use may be more stringent than standards for continuing military use. This could result in significant incremental costs at closing bases, relative to restoration costs at bases that remain open.

Document Separator

IMPACTS FROM THE SUPERFUND LAW ON CLOSING BASES

BACKGROUND

In 1980, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) was passed. CERCLA created a trust fund, known as the Superfund, to address the nation's most significant hazardous waste sites. Congress passed CERCLA in response to such dramatic contamination problems as Love Canal, NY, and Times Beach, MO. EPA was given authority to respond to hazardous waste problems using the Superfund, and recover costs from responsible parties to reimburse the Superfund. A list of the most serious sites, the National Priorities List (NPL) was established.

As passed in 1980, CERCLA did not specifically address the federal government's property. In late 1970's DOD began discovering that it had the same impacts from historical mismanagement of chemical waste as private industry. Investigatory work was initiated by DOD in the late 1970's and early 1980's, without formal involvement by regulatory agencies such as the EPA.

In 1986 CERCLA was amended by the Superfund Amendments and Reauthorization Act (SARA). Importantly for DOD, Section 120 was added, which states that federal agencies must comply with CERCLA in the same manner as everybody else. EPA was required to list federal facilities on the NPL, the authority for the selection of cleanup actions for federal facilities on the NPL was given to EPA, and Interagency Agreements between EPA and federal facilities on the NPL were required. In January, 1987 the President issued Executive Order 12580, which gave the Secretary of Defense the authority to respond to contamination on DOD property. As a result of this Order, EPA is prevented from spending money from the Superfund at a DOD facility, unless DOD agrees upfront to reimburse EPA.

THE CERCLA PROCESS

DOD follows a stipulated process for identifying, investigating, and cleaning up contamination pursuant to CERCLA. This process can be summarized by the following steps:

1) Preliminary Assessment/Site Inspection (PA/SI) - DOD searches for contaminated sites, and determines whether there are significant threats to public health or the environment based on this preliminary information. If these threats exist, EPA adds the facility to the NPL. The relative ranking of facilities on the NPL has little or no meaning. From both DOD and EPA's perspective, if a facility is on the NPL, it is a priority. It is not uncommon for a PA/SI to be completed, a facility listed on the NPL, and subsequently for numerous additional contaminated sites to be identified. For many DOD facilities much of this phase was completed in the late 70's and early 80's.

2) Remedial Investigation/Feasibility Study (RI/FS) - DOD investigates the extent of contamination and evaluates methods to clean it up. A proposed cleanup action goes through a public comment period. After public comment, a decision is made on the cleanup action to take. This decision includes the standards that the cleanup must meet, which must comply with State requirements. If the site is on the NPL, EPA makes the final decision on how the site is to be cleaned up. The majority of the work at DOD facilities is in this stage. Until this stage is completed, estimates of cleanup costs cannot be made with confidence.

3) Remedial Design/Remedial Action (RD/RA) - The selected cleanup action is designed and implemented. When the implemented action has achieved the selected cleanup standards, the action is complete. For facilities on the NPL, EPA must conclude that cleanup standards have been met prior to delisting the facility from the NPL.

It is important to recognize that if at any time during this process (as early as the PA/SI phase), it becomes clear that cleanup work should be initiated, DOD has the authority to take an expedited response without going through the entire process of seeking public comment and gaining regulatory agency concurrence. In fact, it is common for a facility to find that a public water supply is threatened, and take a expedited response to attempt prevent contamination of the water supply. EPA encourages these expedited responses by DOD as early in the process as possible, but retains its authority to select the final cleanup standards.

CLEANUP STANDARDS

If a cleanup action is necessary, establishing specific standards for the cleanup is often a case-by-case decision. To illustrate, consider a closing base with contaminated soil with three possible scenarios for setting soil cleanup levels.

1) If land is to be used for residential purposes, cleanup standards must be set at low concentrations to allow people (especially children) to come into extended, direct contact with soils. This would result in the lowest standard, and would be the most expensive cleanup.

2) If land is to be used for commercial purposes, short-term exposure by workers to soils must be considered. Additionally, in many cases, future land owners will want to construct new buildings on the property. The cleanup may need to address soils to a depth of 10 feet in order to protect individuals exposed to soils that are excavated for building foundations. Costs for this action would be moderate.

3) Finally, it is also possible for a CERCLA action to impose institutional controls (deed restrictions) to prevent any

excavation and to limit exposure to the contaminated soils. This would be the least expensive scenario, but would of course also severely limit the options for future use of the property.

Completion of any of these three scenarios could constitute an acceptable action under CERCLA, despite the potentially huge cost difference between the three. Thus, when Commissioner Byron refers to "100% cleanup" versus some lower percentage, she should understand that many different degrees of cleanup can be considered 100% complete under CERCLA.

CERCLA AND PROPERTY TRANSFER

One of the most important requirements in CERCLA impacting closing bases is Section 120(h)(3), which requires that "all remedial action necessary to protect public health and the environment," be taken prior to the deed transfer of property to a party outside the federal government. This provision does not apply to non-deed transfers (leases) or intra-federal government transfers.

In 1992, CERCLA was amended to stipulate that this milestone can be met when EPA concludes that the remedial action is in place, and operating pursuant to an approved remedial design. For example, when a ground water extraction and treatment system is necessary to cleanup up ground water contamination, the property could be transferred after the extraction and treatment system are in place and operating. It is not necessary to wait until cleanup standards are met (which can be decades) prior to the transfer.

It must be noted that very little work at closing bases has reached the Remedial Design/Remedial Action phase, and it will be several years until many bases closed under Rounds I and II can transfer property that has ground water contamination. Typically actions to address soil contamination will be implemented several years after actions cleaning up ground water.

Document Separator

50 CFR 402

requirements as defined by the Paperwork Reduction Act. The analyses under Executive Order 12291, the Regulatory Flexibility Act, and NEPA are available to the public at the Office of Endangered Species, U.S. Fish and Wildlife Service, at the address listed above.

List of Subjects in 50 CFR Part 402

Endangered and threatened wildlife, Fish, Intergovernmental relations, Plants (agriculture).

Regulation Promulgation

Accordingly, the Service revises 50 CFR Part 402 to read as follows:

PART 402—INTERAGENCY COOPERATION—ENDANGERED SPECIES ACT OF 1973, AS AMENDED

Subpart A—General

Sec.

402.01 Scope.
402.02 Definitions.
402.03 Applicability.
402.04 Counterpart regulations.
402.05 Emergencies.
402.06 Coordination with other environmental reviews.
402.07 Designation of lead agency.
402.08 Designation of non-Federal representative.
402.09 Irreversible or irretrievable commitment of resources.

Subpart B—Consultation Procedures

402.10 Conference on proposed species or proposed critical habitat.
402.11 Early consultation.
402.12 Biological assessment.
402.13 Informal consultation.
402.14 Formal consultation.
402.15 Responsibilities of Federal agency following issuance of a biological opinion.
402.16 Reinitiation of formal consultation.

Authority: 16 U.S.C. 1531 *et seq.*

Subpart A—General

§ 402.01 Scope.

(a) This Part interprets and implements sections 7(a)–(d) [16 U.S.C. 1536(a)–(d)] of the Endangered Species Act of 1973, as amended ("Act"). Section 7(a) grants authority to and imposes requirements upon Federal agencies regarding endangered or threatened species of fish, wildlife, or plants ("listed species") and habitat of such species that has been designated as critical ("critical habitat"). Section 7(a)(1) of the Act directs Federal agencies, in consultation with and with the assistance of the Secretary of the Interior or of Commerce, as appropriate, to utilize their authorities to further the purposes of the Act by carrying out conservation programs for listed species. Such affirmative conservation programs must comply with applicable permit requirements (50 CFR Parts 17, 220, 222, and 227) for listed species and should be coordinated with the appropriate Secretary. Section 7(a)(2) of the Act requires every Federal agency, in consultation with and with the assistance of the Secretary, to insure that any action it authorizes, funds, or carries out, in the United States or upon the high seas, is not likely to jeopardize the continued existence of any listed species or results in the destruction or adverse modification of critical habitat. Section 7(a)(3) of the Act authorizes a prospective permit or license applicant to request the issuing Federal agency to enter into early consultation with the Service on a proposed action to determine whether such action is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat. Section 7(a)(4) of the Act requires Federal agencies to confer with the Secretary on any action that is likely to jeopardize the continued existence of proposed species or result in the destruction or adverse modification of proposed critical habitat. Section 7(b) of the Act requires the Secretary, after the conclusion of early or formal consultation, to issue a written statement setting forth the Secretary's opinion detailing how the agency action affects listed species or critical habitat. Biological assessments are required under section 7(c) of the Act if listed species or critical habitat may be present in the area affected by any major construction activity as defined in § 404.02. Section 7(d) of the Act prohibits Federal agencies and applicants from making any irreversible or irretrievable commitment of resources which has the effect of foreclosing the formulation or implementation of reasonable and prudent alternatives which would avoid jeopardizing the continued existence of listed species or resulting in the destruction or adverse modification of critical habitat. Section 7(e)–(o)(1) of the Act provide procedures for granting exemptions from the requirements of section 7(a)(2). Regulations governing the submission of exemption applications are found at 50 CFR Part 451, and regulations governing the exemption process are found at 50 CFR Parts 450, 452, and 453.

(b) The U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) share responsibilities for administering the Act. The Lists of Endangered and Threatened Wildlife and Plants are found in 50 CFR 17.11 and 17.12 and the designated critical habitats are found in 50 CFR 17.95 and 17.96 and 50 CFR Part 226. Endangered or threatened species under the jurisdiction of the NMFS are located in 50 CFR 222.23(a) and 227.4. If the subject species is cited in 50 CFR 222.23(a) or 227.4, the Federal agency shall contact the NMFS. For all other listed species the Federal Agency shall contact the FWS.

§ 402.02 Definitions.

"Act" means the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

"Action" means all activities or programs of any kind authorized, funded, or carried out, in whole or in part, by Federal agencies in the United States or upon the high seas. Examples include, but are not limited to: (a) actions intended to conserve listed species or their habitat; (b) the promulgation of regulations; (c) the granting of licenses, contracts, leases, easements, rights-of-way, permits, or grants-in-aid; or (d) actions directly or indirectly causing modifications to the land, water, or air.

"Action area" means all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action.

"Applicant" refers to any person, as defined in section 3(13) of the Act, who requires formal approval or authorization from a Federal agency as a prerequisite to conducting the action.

"Biological assessment" refers to the information prepared by or under the direction of the Federal agency concerning listed and proposed species and designated and proposed critical habitat that may be present in the action area and the evaluation potential effects of the action on such species and habitat.

"Biological opinion" is the document that states the opinion of the Service as to whether or not the Federal action is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat.

"Conference" is a process which involves informal discussions between a Federal agency and the Service under section 7(a)(4) of the Act regarding the impact of an action on proposed species or proposed critical habitat and recommendations to minimize or avoid the adverse effects.

"Conservation recommendations" are suggestions of the Service regarding discretionary measures to minimize or avoid adverse effects of a proposed action on listed species or critical habitat or regarding the development of information.

"Critical habitat" refers to an area designated as critical habitat listed in 50 CFR Parts 17 or 226.

"Cumulative effects" are those effects of future State or private activities, not involving Federal activities, that are reasonably certain to occur within the action area of the Federal action subject to consultation.

"Designated non-Federal representative" refers to a person designated by the Federal agency as its representative to conduct informal consultation and/or to prepare any biological assessment.

"Destruction or adverse modification" means a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.

"Director" refers to the Assistant Administrator for Fisheries for the National Oceanic and Atmospheric Administration, or his authorized representative; or the Fish and Wildlife Service regional director, or his authorized representative, for the region where the action would be carried out.

"Early consultation" is a process requested by a Federal agency on behalf of a prospective applicant under section 7(a)(3) of the Act.

"Effects of the action" refers to the direct and indirect effects of an action on the species or critical habitat, together with the effects of other activities that are interrelated or interdependent with that action, that will be added to the environmental baseline. The environmental baseline includes the past and present impacts of all Federal, State, or private actions and other human activities in the action area, the anticipated impacts of all proposed Federal projects in the action area that have already undergone formal or early section 7 consultation, and the impact of State or private actions which are contemporaneous with the consultation in process. Indirect effects are those that are caused by the proposed action and are later in time, but still are reasonably certain to occur. Interrelated actions are those that are part of a larger action and depend on the larger action for their justification. Interdependent actions are those that have no independent utility apart from the action under consideration.

"Formal consultation" is a process between the Service and the Federal agency that commences with the Federal agency's written request for consultation under section 7(a)(2) of the Act and concludes with the Service's issuance of the biological opinion under section 7(b)(3) of the Act.

"Incidental take" refers to takings that result from, but are not the purpose of, carrying out an otherwise lawful activity conducted by the Federal agency or applicant.

"Informal consultation" is an optional process that includes all discussions, correspondence, etc., between the Service and the Federal agency or the designated non-Federal representative prior to formal consultation, if required.

"Jeopardize the continued existence of" means to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.

"Listed species" means any species of fish, wildlife, or plant which has been determined to be endangered or threatened under section 4 of the Act. Listed species are found in 50 CFR 17.11–17.12.

"Major construction activity" is a construction project (or other undertaking having similar physical impacts) which is a major Federal action significantly affecting the quality of the human environment as referred to in the National Environmental Policy Act [NEPA, 42 U.S.C. 4332(2)(C)].

"Preliminary biological opinion" refers to an opinion issued as a result of early consultation.

"Proposed critical habitat" means habitat proposed in the **Federal Register** to be designated or revised as critical habitat under section 4 of the Act for any listed or proposed species.

"Proposed species" means any species of fish, wildlife, or plant that is proposed in the **Federal Register** to be listed under section 4 of the Act.

"Reasonable and prudent alternatives" refer to alternative actions identified during formal consultation that can be implemented in a manner consistent with the intended purpose of the action, that can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction, that is economically and technologically feasible, and that the Director believes would avoid the likelihood of jeopardizing the continued existence of listed species or resulting in the destruction or adverse modification of critical habitat.

"Reasonable and prudent measures" refer to those actions the Director believes necessary or appropriate to minimize the impacts, *i.e.*, amount or extent, of incidental take.

"Recovery" means improvement in the status of listed species to the point at which listing is no longer appropriate under the criteria set out in section 4(a)(1) of the Act.

"Service" means the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, as appropriate.

§402.03 Applicability.

Section 7 and the requirements of this Part apply to all actions in which there is discretionary Federal involvement or control.

§402.04 Counterpart regulations.

The consultation procedures set forth in this Part may be superseded for a particular Federal agency by joint counterpart regulations among that agency, the Fish and Wildlife Service, and the National Marine Fisheries Service. Such counterpart regulations shall be published in the **Federal Register** in proposed form and shall be subject to public comment for at least 60 days before final rules are published.

§402.05 Emergencies.

(a) Where emergency circumstances mandate the need to consult in an expedited manner, consultation may be conducted informally through alternative procedures that the Director determines to be consistent with the requirements of sections 7(a)–(d) of the Act. This provision applies to situations involving acts of God, disasters, casualties, national defense or security emergencies, etc.

(b) Formal consultation shall be initiated as soon as practicable after the emergency is under control. The Federal agency shall submit information on the nature of the emergency action(s), the justification for the expedited consultation, and the impacts to endangered or threatened species and their habitats. The Service will evaluate such information and issue a biological opinion including the information and recommendations given during the emergency consultation.

§402.06 Coordination with other environmental reviews.

(a) Consultation, conference, and biological assessment procedures under section 7 may be consolidated with interagency cooperation procedures required by other statutes, such as the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*, implemented at 40 CFR Parts 1500–1508) or the Fish and Wildlife Coordination Act (FWCA) (16 U.S.C. 661 *et seq.*). Satisfying the requirements of these other statutes, however, does not in itself relieve a Federal agency of its

obligations to comply with the procedures set forth in this Part or the substantive requirements of section 7. The Service will attempt to provide a coordinated review and analysis of all environmental requirements.

(b) Where the consultation or conference has been consolidated with the interagency cooperation procedures required by other statutes such as NEPA or FWCA, the results should be included in the documents required by those statutes.

§ 402.07 Designation of lead agency.

When a particular action involves more than one Federal agency, the consultation and conference responsibilities may be fulfilled through a lead agency. Factors relevant in determining an appropriate lead agency include the time sequence in which the agencies would become involved, the magnitude of their respective involvement, and their relative expertise with respect to the environmental effects of the action. The Director shall be notified of the designation in writing by the lead agency.

§ 402.08 Designation of non-Federal representative.

A Federal agency may designate a non-Federal representative to conduct informal consultation or prepare a biological assessment by giving written notice to the Director of such designation. If a permit or license applicant is involved and is not the designated non-Federal representative, then the applicant and Federal agency must agree on the choice of the designated non-Federal representative. If a biological assessment is prepared by the designated non-Federal representative, the Federal agency shall furnish guidance and supervision and shall independently review and evaluate the scope and contents of the biological assessment. The ultimate responsibility for compliance with section 7 remains with the Federal agency.

§ 402.09 Irreversible or irretrievable commitment of resources.

After initiation or reinitiation of consultation required under section 7(a)(2) of the Act, the Federal agency and any applicant shall make no irreversible or irretrievable commitment of resources with respect to the agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternatives which would avoid violating section 7(a)(2). This prohibition is in force during the consultation process and continues until the requirements of section 7(a)(2) are satisfied. This provision does not apply to the conference requirement for proposed species or proposed critical habitat under section 7(a)(4) of the Act.

Subpart B—Consultation Procedures

§ 402.10 Conference on proposed species or proposed critical habitat.

(a) Each Federal agency shall confer with the Service on any action which is likely to jeopardize the continued existence of any proposed species or result in the destruction or adverse modification of proposed critical habitat. The conference is designed to assist the Federal agency and any applicant in identifying and resolving potential conflicts at an early stage in the planning process.

(b) The Federal agency shall initiate the conference with the Director. The Service may request a conference if, after a review of available information, it determines that a conference is required for a particular action.

(c) A conference between a Federal agency and the Service shall consist of informal discussions concerning an action that is likely to jeopardize the continued existence of the proposed species or result in the destruction or adverse modification of the proposed critical habitat at issue. Applicants may be involved in these informal discussions to the greatest extent practicable. During the conference, the Service will make advisory recommendations, if any, on ways to minimize or avoid adverse effects. If the proposed species is subsequently listed or the proposed critical habitat is designated prior to completion of the action, the Federal agency must review the action to determine whether formal consultation is required.

(d) If requested by the Federal agency and deemed appropriate by the Service, the conference may be conducted in accordance with the procedures for formal consultation in § 402.14. An opinion issued at the conclusion of the conference may be adopted as the biological opinion when the species is listed or critical habitat is designated, but only if no significant new information is developed (including that developed during the rulemaking process on the proposed listing or critical habitat designation) and no significant changes to the Federal action are made that would alter the content of the opinion. An incidental take statement provided with a conference opinion does not become effective unless the Service adopts the opinion once the listing is final.

(e) The conclusions reached during a conference and any recommendations shall be documented by the Service and provided to the Federal agency and to any applicant. The style and magnitude of this document will vary with the complexity of the conference. If formal consultation also is required for a particular action, then the Service will provide the results of the conference with the biological opinion.

§ 402.11 Early consultation.

(a) *Purpose.* Early consultation is designed to reduce the likelihood of conflicts between listed species or critical habitat and proposed actions and occurs prior to the filing of an application for a Federal permit or license. Although early consultation is conducted between the Service and the Federal agency, the prospective applicant should be involved throughout the consultation process.

(b) *Request by prospective applicant.* If a prospective applicant has reason to believe that the prospective action may affect listed species or critical habitat, it may request the Federal agency to enter into early consultation with the Service. The prospective applicant must certify in writing to the Federal agency that (1) it has a definitive proposal outlining the action and its effects and (2) it intends to implement its proposal, if authorized.

(c) *Initiation of early consultation.* If the Federal agency receives the prospective applicant's certification in paragraph (b) of this section, then the Federal agency shall initiate early consultation with the Service. This request shall be in writing and contain the information outlined in § 402.14(c) and, if the action is a major construction activity, the biological assessment as outlined in § 402.12.

(d) *Procedures and responsibilities.* The procedures and responsibilities for early consultation are the same as outlined in § 402.14(c)–(j) for formal consultation, except that all references to the "applicant" shall be treated as the "prospective applicant" and all references to the "biological opinion" or the "opinion" shall be treated as the "preliminary biological opinion" for the purpose of this section.

(e) *Preliminary biological opinion.* The contents and conclusions of a preliminary biological opinion are the same as for a biological opinion issued after formal consultation except that the incidental take statement provided with a preliminary biological opinion does not constitute authority to take listed species.

(f) *Confirmation of preliminary biological opinion as final biological opinion.* A preliminary biological opinion may be confirmed as a

biological opinion issued after formal consultation if the Service reviews the proposed action and finds that there have been no significant changes in the action as planned or in the information used during the early consultation. A written request for confirmation of the preliminary biological opinion should be submitted after the prospective applicant applies to the Federal agency for a permit or license but prior to the issuance of such permit or license. Within 45 days of receipt of the Federal agency's request, the Service shall either: (1) confirm that the preliminary biological opinion stands as a final biological opinion; or (2) if the findings noted above cannot be made, request that the Federal agency initiate formal consultation.

§402.12 Biological assessments.

(a) *Purpose.* A biological assessment shall evaluate the potential effects of the action on listed and proposed species and designated and proposed critical habitat and determine whether any such species or habitat are likely to be adversely affected by the action and is used in determining whether formal consultation or a conference is necessary.

(b) *Preparation requirement.* (1) The procedures of this section are required for Federal actions that are "major construction activities"; provided that a contract for construction was not entered into or actual construction was not begun on or before November 10, 1978. Any person, including those who may wish to apply for an exemption from section 7(a)(2) of the Act, may prepare a biological assessment under the supervision of the Federal agency and in cooperation with the Service consistent with the procedures and requirements of this section. An exemption from the requirements of section 7(a)(2) is not permanent unless a biological assessment has been prepared.

(2) The biological assessment shall be completed before any contract for construction is entered into and before construction is begun.

(c) *Request for information.* The Federal agency or the designated non-Federal representative shall convey to the Director either (1) a written request for a list of any listed or proposed species or designated or proposed critical habitat that may be present in the action area; or (2) a written notification of the species and critical habitat that are being included in the biological assessment.

(d) *Director's response.* Within 30 days of receipt of the notification of, or the request for, a species list, the Director shall either concur with or revise the list or, in those cases where no list has been provided, advise the Federal agency or the designated non-Federal representative in writing whether, based on the best scientific and commercial data available, any listed or proposed species or designated or proposed critical habitat may be present in the action area. In addition to listed and proposed species, the Director will provide a list of candidate species that may be present in the action area. Candidate species refers to any species being considered by the Service for listing as endangered or threatened species but not yet the subject of a proposed rule. Although candidate species have no legal status and are accorded no protection under the Act, their inclusion will alert the Federal agency of potential proposals or listings.

(1) If the Director advises that no listed species or critical habitat may be present, the Federal agency need not prepare a biological assessment and further consultation is not required. If only proposed species or proposed critical habitat may be present in the action area, then the Federal agency must confer with the Service if required under §402.10, but preparation of a biological assessment is not required unless the proposed listing and/or designation becomes final.

(2) If a listed species or critical habitat may be present in the action area, the Director will provide a species list or concur with the species list provided. The Director also will provide available information (or references thereto) regarding these species and critical habitat, and may recommend discretionary studies or surveys that may provide a better information base for the preparation of an assessment. Any recommendation for studies or surveys is not to be construed as the Service's opinion that the Federal agency has failed to satisfy the information standard of section 7(a)(2) of the Act.

(e) *Verification of current accuracy of species list.* If the Federal agency or the designated non-Federal representative does not begin preparation of the biological assessment within 90 days of receipt of (or concurrence with) the species list, the Federal agency or the designated non-Federal representative must verify (formally or informally) with the Service the current accuracy of the species list at the time the preparation of the assessment is begun.

(f) *Contents.* The contents of a biological assessment are at the discretion of the Federal agency and will depend on the nature of the Federal action. The following may be considered for inclusion:

(1) The results of an on-site inspection of the area affected by the action to determine if listed or proposed species are present or occur seasonally.

(2) The views of recognized experts on the species at issue.

(3) A review of the literature and other information.

(4) An analysis of the effects of the action on the species and habitat, including consideration of cumulative effects, and the results of any related studies.

(5) An analysis of alternate actions considered by the Federal agency for the proposed action.

(g) *Incorporation by reference.* If a proposed action requiring the preparation of a biological assessment is identical, or very similar, to a previous action for which a biological assessment was prepared, the Federal agency may fulfill the biological assessment requirement for the proposed action by incorporating by reference the earlier biological assessment, plus any supporting data from other documents that are pertinent to the consultation, into a written certification that:

(1) The proposed action involves similar impacts to the same species in the same geographic area;

(2) No new species have been listed or proposed or no new critical habitat designated or proposed for the action area; and

(3) The biological assessment has been supplemented with any relevant changes in information.

(h) *Permit requirements.* If conducting a biological assessment will involve the taking of a listed species, a permit under section 10 of the Act (16 U.S.C. 1539) and Part 17 of this Title (with respect to species under the jurisdiction of the FWS) or Parts 220, 222, and 227 of this Title (with respect to species under the jurisdiction of the NMFS) is required.

(i) *Completion time.* The Federal agency or the designated non- Federal representative shall complete the biological assessment within 180 days after its initiation (receipt of or concurrence with the species list) unless a different period of time is agreed to by the Director and the Federal agency. If a permit or license applicant is involved, the 180-day period may not be extended unless the agency provides the applicant, before the close of the 180-day period, with a written statement setting forth the estimated length of the proposed extension and the reasons why such an extension is necessary.

(j) *Submission of biological assessment.* The Federal agency shall

submit the completed biological assessment to the Director for review. The Director will respond in writing within 30 days as to whether or not he concurs with the findings of the biological assessment. At the option of the Federal agency, formal consultation may be initiated under §402.14(c) concurrently with the submission of the assessment.

(k) *Use of the biological assessment.* (1) The Federal agency shall use the biological assessment in determining whether formal consultation or a conference is required under §402.14 or §402.10, respectively. If the biological assessment indicates that there are no listed species or critical habitat present that are likely to be adversely affected by the action and the Director concurs as specified in paragraph (j) of this section, then formal consultation is not required. If the biological assessment indicates that the action is not likely to jeopardize the continued existence of proposed species or result in the destruction or adverse modification of proposed critical habitat, and the Director concurs, then a conference is not required.

(2) The Director may use the results of the biological assessment in (i) determining whether to request the Federal agency to initiate formal consultation or a conference, (ii) formulating a biological opinion, or (iii) formulating a preliminary biological opinion.

§ 402.13 Informal consultation.

(a) Informal consultation is an optional process that includes all discussions, correspondence, etc., between the Service and the Federal agency or the designated non-Federal representative, designed to assist the Federal agency in determining whether formal consultation or a conference is required. If during informal consultation it is determined by the Federal agency, with the written concurrence of the Service, that the action is not likely to adversely affect listed species or critical habitat, the consultation process is terminated, and no further action is necessary.

(b) During informal consultation, the Service may suggest modifications to the action that the Federal agency and any applicant could implement to avoid the likelihood of adverse effects to listed species or critical habitat.

§ 402.14 Formal consultation.

(a) *Requirement for formal consultation.* Each Federal agency shall review its actions at the earliest possible time to determine whether any action may affect listed species or critical habitat. If such a determination is made, formal consultation is required, except as noted in paragraph (b) of this section. The Director may request a Federal agency to enter into consultation if he identifies any action of that agency that may affect listed species or critical habitat and for which there has been no consultation. When such a request is made, the Director shall forward to the Federal agency a written explanation of the basis for the request.

(b) *Exceptions.* (1) A Federal agency need not initiate formal consultation if, as a result of the preparation of a biological assessment under §402.12 or as a result of informal consultation with the Service under §402.13, the Federal agency determines, with the written concurrence of the Director, that the proposed action is not likely to adversely affect any listed species or critical habitat.

(2) A Federal agency need not initiate formal consultation if a preliminary biological opinion, issued after early consultation under §402.11, is confirmed as the final biological opinion.

(c) *Initiation of formal consultation.* A written request to initiate formal consultation shall be submitted to the Director and shall include:

(1) A description of the action to be considered;

(2) A description of the specific area that may be affected by the action;

(3) A description of any listed species or critical habitat that may be affected by the action;

(4) A description of the manner in which the action may affect any listed species or critical habitat and an analysis of any cumulative effects;

(5) Relevant reports, including any environmental impact statement, environmental assessment, or biological assessment prepared; and

(6) Any other relevant available information on the action, the affected listed species, or critical habitat.

Formal consultation shall not be initiated by the Federal agency until any required biological assessment has been completed and submitted to the Director in accordance with §402.12. Any request for formal consultation may encompass, subject to the approval of the Director, a number of similar individual actions within a given geographical area or a segment of a comprehensive plan. This does not relieve the Federal agency of the requirements for considering the effects of the action as a whole.

(d) *Responsibility to provide best scientific and commercial data available.* The Federal agency requesting formal consultation shall provide the Service with the best scientific and commercial data available or which can be obtained during the consultation for an adequate review of the effects that an action may have upon listed species or critical habitat. This information may include the results of studies or surveys conducted by the Federal agency or the designated non-Federal representative. The Federal agency shall provide any applicant with the opportunity to submit information for consideration during the consultation.

(e) *Duration and extension of formal consultation.* Formal consultation concludes within 90 days after its initiation unless extended as provided below. If an applicant is not involved, the Service and the Federal agency may mutually agree to extend the consultation for a specific time period. If an applicant is involved, the Service and the Federal agency may mutually agree to extend the consultation provided that the Service submits to the applicant, before the close of the 90 days, a written statement setting forth:

(1) The reasons why a longer period is required,

(2) The information that is required to complete the consultation, and

(3) The estimated date on which the consultation will be completed.

A consultation involving an applicant cannot be extended for more than 60 days without the consent of the applicant. Within 45 days after concluding formal consultation, the Service shall deliver a biological opinion to the Federal agency and any applicant.

(f) *Additional data.* When the Service determines that additional data would provide a better information base from which to formulate a biological opinion, the Director may request an extension of formal consultation and request that the Federal agency obtain additional data to determine how or to what extent the action may affect listed species or critical habitat. If formal consultation is extended by mutual agreement according to §402.14(e), the Federal agency shall obtain, to the extent practicable, that data which can be developed within the scope of the extension. The responsibility for conducting and funding any studies belongs to the Federal agency and the applicant, not the Service. The Service's request for additional data is not to be construed as the Service's opinion that the Federal agency has failed to satisfy the information standard of section 7(a)(2) of the Act. If no extension of formal consultation is agreed to, the Director will issue a biological opinion

using the best scientific and commercial data available.

(g) *Service responsibilities.* Service responsibilities during formal consultation are as follows:

(1) Review all relevant information provided by the Federal agency or otherwise available. Such review may include an on-site inspection of the action area with representatives of the Federal agency and the applicant.

(2) Evaluate the current status of the listed species or critical habitat.

(3) Evaluate the effects of the action and cumulative effects on the listed species or critical habitat.

(4) Formulate its biological opinion as to whether the action, taken together with cumulative effects, is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat.

(5) Discuss with the Federal agency and any applicant the Service's review and evaluation conducted under paragraphs (g)(1)–(3) of this section, the basis for any finding in the biological opinion, and the availability of reasonable and prudent alternatives (if a jeopardy opinion is to be issued) that the agency and the applicant can take to avoid violation of section 7(a)(2). The Service will utilize the expertise of the Federal agency and any applicant in identifying these alternatives. If requested, the Service shall make available to the Federal agency the draft biological opinion for the purpose of analyzing the reasonable and prudent alternatives. The 45-day period in which the biological opinion must be delivered will not be suspended unless the Federal agency secures the written consent of the applicant to an extension to a specific date. The applicant may request a copy of the draft opinion from the Federal agency. All comments on the draft biological opinion must be submitted to the Service through the Federal agency, although the applicant may send a copy of its comments directly to the Service. The Service will not issue its biological opinion prior to the 45-day or extended deadline while the draft is under review by the Federal agency. However, if the Federal agency submits comments to the Service regarding the draft biological opinion within 10 days of the deadline for issuing the opinion, the Service is entitled to an automatic 10-day extension on the deadline.

(6) Formulate discretionary conservation recommendations, if any, which will assist the Federal agency in reducing or eliminating the impacts that its proposed action may have on listed species or critical habitat.

(7) Formulate a statement concerning incidental take, if such take may occur.

(8) In formulating its biological opinion, any reasonable and prudent alternatives, and any reasonable and prudent measures, the Service will use the best scientific and commercial data available and will give appropriate consideration to any beneficial actions taken by the Federal agency or applicant, including any actions taken prior to the initiation of consultation.

(h) *Biological opinions.* The biological opinion shall include:

(1) A summary of the information on which the opinion is based;

(2) A detailed discussion of the effects of the action on listed species or critical habitat; and

(3) The Service's opinion on whether the action is likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of critical habitat (a "jeopardy biological opinion"); or, the action is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of critical habitat (a "no jeopardy" biological opinion). A "jeopardy" biological opinion shall include reasonable and prudent alternatives, if any. If the Service is unable to develop such alternatives, it will indicate that to the best of its knowledge there are no reasonable and prudent alternatives.

(i) *Incidental take.* (1) In those cases where the Service concludes that an action (or the implementation of any reasonable and prudent alternatives) and the resultant incidental take of listed species will not violate section 7(a)(2), the Service will provide with the biological opinion a statement concerning incidental take that:

(i) Specifies the impact, i.e., the amount or extent, of such incidental taking of the species;

(ii) Specifies those reasonable and prudent measures that the Director considers necessary or appropriate to minimize such impact;

(iii) Sets forth the terms and conditions (including, but not limited to, reporting requirements) that must be complied with by the Federal agency or any applicant to implement the measures specified under (ii) above; and

(iv) Specifies the procedures to be used to handle or dispose of any individuals of a species actually taken.

(2) Reasonable and prudent measures, along with the terms and conditions that implement them, cannot alter the basic design, location, scope, duration, or timing of the action and may involve only minor changes.

(3) In order to monitor the impacts of incidental take, the Federal agency or any applicant must report the progress of the action and its impact on the species to the Service as specified in the incidental take statement. The reporting requirements will be established in accordance with 50 CFR 13.45(FWS) and 222.23(d)(NMFS).

(4) If during the course of the action the amount or extent of incidental taking, as specified under paragraph (i)(1)(i) of this Section, is exceeded, the Federal agency must reinitiate consultation immediately.

(j) *Conservation recommendations.* The Service may provide with the biological opinion a statement containing discretionary conservation recommendations. Conservation recommendations are advisory and are not intended to carry any binding legal force.

(k) *Incremental steps.* When the action is authorized by a statute that allows the agency to take incremental steps toward the completion of the action, the Service shall, if requested by the Federal agency, issue a biological opinion on the incremental step being considered, including its views on the entire action. Upon the issuance of such a biological opinion, the Federal agency may proceed with or authorize the incremental steps of the action if:

(1) The biological opinion does not conclude that the incremental step would violate section 7(a)(2);

(2) The Federal agency continues consultation with respect to the entire action and obtains biological opinions, as required, for each incremental step;

(3) The Federal agency fulfills its continuing obligation to obtain sufficient data upon which to base the final biological opinion on the entire action;

(4) The incremental step does not violate section 7(d) of the Act concerning irreversible or irretrievable commitment of resources; and

(5) There is a reasonable likelihood that the entire action will not violate section 7(a)(2) of the Act.

(l) *Termination of consultation.* (1) Formal consultation is terminated with the issuance of the biological opinion.

(2) If during any stage of consultation a Federal agency determines that its proposed action is not likely to occur, the consultation may be terminated by written notice to the Service.

(3) If during any stage of consultation a Federal agency determines, with the concurrence of the Director, that its proposed action is not likely to adversely affect any listed species or critical habitat, the consultation is terminated.

§402.15 Responsibilities of Federal agency following issuance of a biological opinion.

(a) Following the issuance of a biological opinion, the Federal agency shall determine whether and in what manner to proceed with the action in light of its section 7 obligations and the Service's biological opinion.

(b) If a jeopardy biological opinion is issued, the Federal agency shall notify the Service of its final decision on the action.

(c) If the Federal agency determines that it cannot comply with the requirements of section 7(a)(2) after consultation with the Service, it may apply for an exemption. Procedures for exemption applications by Federal agencies and others are found in 50 CFR Part 451.

§402.16 Reinitiation of formal consultation.

Reinitiation of formal consultation is required and shall be requested by the Federal agency or by the Service, where discretionary Federal involvement or control over the action has been retained or is authorized by law and:

(a) If the amount or extent of taking specified in the incidental take statement is exceeded;

(b) If new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered;

(c) If the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion; or

(d) If a new species is listed or critical habitat designated that may be affected by the identified action.

Dated: December 12, 1985.

William P. Horn,

Assistant Secretary for Fish and Wildlife and Parks.

Dated: January 30, 1986.

William G. Gordon,

Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration.

[FR Doc. 86-10566 Filed 6-86; 8:45 am]

BILLING CODE 4310-55, 3510-22-M

Document Separator

ENDANGERED SPECIES ACT OF 1973

As Amended through the

100th Congress

U.S. Fish and Wildlife Service
U.S. Department of the Interior
Washington, D.C. 20240
1988

ENDANGERED SPECIES ACT OF 1973*

FINDINGS, PURPOSES, AND POLICY

SEC. 2. (a) FINDINGS.—The Congress finds and declares that—

(1) various species of fish, wildlife, and plants in the United States have been rendered extinct as a consequence of economic growth and development untempered by adequate concern and conservation;

(2) other species of fish, wildlife, and plants have been so depleted in numbers that they are in danger of or threatened with extinction;

(3) these species of fish, wildlife, and plants are of esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people;

(4) the United States has pledged itself as a sovereign state in the international community to conserve to the extent practicable the various species of fish or wildlife and plants facing extinction, pursuant to—

(A) migratory bird treaties with Canada and Mexico;

(B) the Migratory and Endangered Bird Treaty with Japan;

(C) the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere;

(D) the International Convention for the Northwest Atlantic Fisheries;

(E) the International Convention for the High Seas Fisheries of the North Pacific Ocean;

(F) the Convention on International Trade in Endangered Species of Wild Fauna and Flora; and

(G) other international agreements; and

(5) encouraging the States and other interested parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation programs which meet national and international standards is a key to meeting the Nation's international commitments and to better safeguarding, for the benefit of all citizens, the Nation's heritage in fish, wildlife, and plants.

(b) PURPOSES.—The purposes of this Act are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve

*As amended by P.L. 94-325, June 30, 1976; P.L. 94-359, July 12, 1976; P.L. 95-212, December 19, 1977; P.L. 95-632, November 10, 1978; P.L. 96-159, December 28, 1979; P.L. 97-304, October 13, 1982; P.L. 98-327, June 25, 1984; and P.L. 100-478, October 7, 1988.

the purposes of the treaties and conventions set forth in subsection (a) of this section.

(c) POLICY.—(1) It is further declared to be the policy of Congress that all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this Act.

(2) It is further declared to be the policy of Congress that Federal agencies shall cooperate with State and local agencies to resolve water resource issues in concert with conservation of endangered species.

DEFINITIONS

SEC. 3. For the purposes of this Act—

(1) The term "alternative courses of action" means all alternatives and thus is not limited to original project objectives and agency jurisdiction.

(2) The term "commercial activity" means all activities of industry and trade, including, but not limited to, the buying or selling of commodities and activities conducted for the purpose of facilitating such buying and selling: *Provided, however,* That it does not include exhibitions of commodities by museums or similar cultural or historical organizations.

(3) The terms "conserve," "conserving," and "conservation" mean to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

(4) The term "Convention" means the Convention on International Trade in Endangered Species of Wild Fauna and Flora, signed on March 3, 1973, and the appendices thereto.

(5)(A) The term "critical habitat" for a threatened or endangered species means—

(i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of this Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and

(ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of this Act, upon a determination by the Secretary that such areas are essential for the conservation of the species.

(B) Critical habitat may be established for those species now listed as threatened or endangered species for which no critical habitat has heretofore been established as set forth in subparagraph (A) of this paragraph.

(C) Except in those circumstances determined by the Secretary, critical habitat shall not include the entire geographical area which can be occupied by the threatened or endangered species.

(6) The term "endangered species" means any species which is in danger of extinction throughout all or a significant portion of its range other than a species of the Class Insecta determined by the Secretary to constitute a pest whose protection under the provisions of this Act would present an overwhelming and overriding risk to man.

(7) The term "Federal agency" means any department, agency, or instrumentality of the United States.

(8) The term "fish or wildlife" means any member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, nonmigratory, or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof.

(9) The term "foreign commerce" includes, among other things, any transaction—

(A) between persons within one foreign country;

(B) between persons in two or more foreign countries;

(C) between a person within the United States and a person in a foreign country; or

(D) between persons within the United States, where the fish and wildlife in question are moving in any country or countries outside the United States.

(10) The term "import" means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States.

(11) The term "permit or license applicant" means, when used with respect to an action of a Federal agency for which exemption is sought under section 7, any person whose application to such agency for a permit or license has been denied primarily because of the application of section 7(a) to such agency action.

(12) "The term person means an individual, corporation, partnership, trust, association, or any other private entity; or any officer, employee, agent, department, or instrumentality of the Federal Government, of any State, municipality, or political subdivision of a State, or of any foreign government; any State, muncipality, or political subdivision of a State; or any other entity subject to the jurisdiction of the United States."

(13) The term "plant" means any member of the plant kingdom, including seeds, roots and other parts thereof.

(14) The term "Secretary" means, except as otherwise herein provided, the Secretary of the Interior or the Secretary of Commerce as program responsibilities are vested pursuant to the provisions of Reorganization Plan Numbered 4 of 1970; except that with respect to the enforcement of the provisions of this Act and the Convention which pertain to the importation or exportation of terrestrial plants, the term also means the Secretary of Agriculture.

SEC. 7. (a) FEDERAL AGENCY ACTIONS AND CONSULTATIONS.—(1) The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act.

(2) Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency (hereinafter in this section referred to as an "agency action") is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with affected States, to be critical, unless such agency has been granted an exemption for such action by the Committee pursuant to subsection (h) of this section. In fulfilling the requirements of this paragraph each agency shall use the best scientific and commercial data available.

(3) Subject to such guidelines as the Secretary may establish, a Federal agency shall consult with the Secretary on any prospective

agency action at the request of, and in cooperation with, the prospective permit or license applicant if the applicant has reason to believe that an endangered species or a threatened species may be present in the area affected by his project and that implementation of such action will likely affect such species.

(4) Each Federal agency shall confer with the Secretary on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under section 4 or result in the destruction or adverse modification of critical habitat proposed to be designated for such species. This paragraph does not require a limitation on the commitment of resources as described in subsection (d).

(b) OPINION OF SECRETARY.—(1)(A) Consultation under subsection (a)(2) with respect to any agency action shall be concluded within the 90-day period beginning on the date on which initiated or, subject to subparagraph (B), within such other period of time as is mutually agreeable to the Secretary and the Federal agency;

(B) in the case of an agency action involving a permit or license applicant, the Secretary and the Federal agency may not mutually agree to conclude consultation within a period exceeding 90 days unless the Secretary, before the close of the 90th day referred to in subparagraph (A)—

(i) if the consultation period proposed to be agreed to will end before the 150th day after the date on which consultation was initiated, submits to the applicant a written statement setting forth—

(I) the reasons why a longer period is required;

(II) the information that is required to complete the consultation; and

(III) the estimated date on which consultation will be completed; or

(ii) if the consultation period proposed to be agreed to will end 150 or more days after the date on which consultation was initiated, obtains the consent of the applicant to such period.

The Secretary and the Federal agency may mutually agree to extend a consultation period established under the preceding sentence if the Secretary, before the close of such period, obtains the consent of the applicant to the extension.

(2) Consultation under subsection (a)(3) shall be concluded within such period as is agreeable to the Secretary, the Federal agency, and the applicant concerned.

(3)(A) Promptly after conclusion of consultation under paragraph (2) or (3) of subsection (a), the Secretary shall provide to the Federal agency and the applicant, if any, a written statement setting forth the Secretary's opinion, and a summary of the information on which the opinion is based, detailing how the agency action affects the species or its critical habitat. If jeopardy or adverse modification is found, the Secretary shall suggest those reasonable and prudent alternatives which he believes would not violate subsection (a)(2) and can be taken by the Federal agency or applicant in implementing the agency action.

(B) Consultation under subsection (a)(3), and an opinion based by the Secretary incident to such consultation, regarding an agency action shall be treated respectively as a consultation under subsec-

tion (a)(2), and as an opinion issued after consultation under such subsection, regarding that action if the Secretary reviews the action before it is commenced by the Federal agency and finds, and notifies such agency, that no significant changes have been made with respect to the action and that no significant change has occurred regarding the information used during the initial consultation.

(4) If after consultation under subsection (a)(2) of this section, the Secretary concludes that—

(A) the agency action will not violate such subsection, or offers reasonable and prudent alternatives which the Secretary believes would not violate such subsection;

(B) the taking of an endangered species or a threatened species incidental to the agency action will not violate such subsection; and

(C) if an endangered species or threatened species of a marine mammal is involved, the taking is authorized pursuant to section 1371(a)(5) of this title;

the Secretary shall provide the Federal agency and the applicant concerned, if any, with a written statement that—

(i) specifies the impact of such incidental taking on the species,

(ii) specifies those reasonable and prudent measures that the Secretary considers necessary or appropriate to minimize such impact,

(iii) in the case of marine mammals, specifies those measures that are necessary to comply with section 1371(a)(5) of this title with regard to such taking, and

(iv) sets forth the terms and conditions (including, but not limited to, reporting requirements) that must be complied with by the Federal agency or applicant (if any), or both, to implement the measures specified under clauses (ii) and (iii).

(c) BIOLOGICAL ASSESSMENT.—(1) To facilitate compliance with the requirements of subsection (a)(2) each Federal agency shall, with respect to any agency action of such agency for which no contract for construction has been entered into and for which no construction has begun on the date of enactment of the Endangered Species Act Amendments of 1978, request of the Secretary information whether any species which is listed or proposed to be listed may be present in the area of such proposed action. If the Secretary advises, based on the best scientific and commercial data available, that such species may be present, such agency shall conduct a biological assessment for the purpose of identifying any endangered species or threatened species which is likely to be affected by such action. Such assessment shall be completed within 180 days after the date on which initiated (or within such other period as is mutually agreed to by the Secretary and such agency, except that if a permit or license applicant is involved, the 180-day period may not be extended unless such agency provides the applicant, before the close of such period, with a written statement setting forth the estimated length of the proposed extension and the reasons therefor) and, before any contract for construction is entered into and before construction is begun with respect to such action. Such assessment may be undertaken as part of a Federal agency's compliance with

the requirements of section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

(2) Any person who may wish to apply for an exemption under subsection (g) of this section for that action may conduct a biological assessment to identify any endangered species or threatened species which is likely to be affected by such action. Any such biological assessment must, however, be conducted in cooperation with the Secretary and under the supervision of the appropriate Federal agency.

(d) LIMITATION ON COMMITMENT OF RESOURCES.—After initiation of consultation required under subsection (a)(2), the Federal agency and the permit or license applicant shall not make any irreversible or irretrievable commitment of resources with respect to the agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures which would not violate subsection (a)(2).

(e)(1) ESTABLISHMENT OF COMMITTEE.—There is established a committee to be known as the Endangered Species Committee (hereinafter in this section referred to as the "Committee").

(2) The Committee shall review any application submitted to it pursuant to this section and determine in accordance with subsection (h) of this section whether or not to grant an exemption from the requirements of subsection (a)(2) of this action for the action set forth in such application.

(3) The Committee shall be composed of seven members as follows:

(A) The Secretary of Agriculture.

(B) The Secretary of the Army.

(C) The Chairman of the Council of Economic Advisors.

(D) The Administrator of the Environmental Protection Agency. Agency.

(E) The Secretary of the Interior.

(F) The Administrator of the National Oceanic and Atmospheric Administration.

(G) The President, after consideration of any recommendations received pursuant to subsection (g)(2)(B) shall appoint one individual from each affected State, as determined by the Secretary, to be a member of the Committee for the consideration of the application for exemption for an agency action with respect to which such recommendations are made, not later than 30 days after an application is submitted pursuant to this section.

(4)(A) Members of the Committee shall receive no additional pay on account of their service on the Committee.

(B) While away from their homes or regular places of business in the performance of services for the Committee, members of the Committee shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5 of the United States Code

(5)(A) Five members of the Committee or their representatives shall constitute a quorum for the transaction of any function of the Committee, except that, in no case shall any representative be considered in determining the existence of a quorum for the transac-

tion of any function of the Committee if that function involves a vote by the Committee on any matter before the Committee.

(B) The Secretary of the Interior shall be the Chairman of the Committee.

(C) The Committee shall meet at the call of the Chairman or five of its members.

(D) All meetings and records of the Committee shall be open to the public.

(6) Upon request of the Committee, the head of any Federal agency is authorized to detail, on a nonreimbursable basis, any of the personnel of such agency to the Committee to assist it in carrying out its duties under this section.

(7)(A) The Committee may for the purpose of carrying out its duties under this section hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Committee deems advisable.

(B) When so authorized by the Committee, any member or agent of the Committee may take any action which the Committee is authorized to take by this paragraph.

(C) Subject to the Privacy Act, the Committee may secure directly from any Federal agency information necessary to enable it to carry out its duties under this section. Upon request of the Chairman of the Committee, the head of such Federal agency shall furnish such information to the Committee.

(D) The Committee may use the United States mails in the same manner and upon the same conditions as a Federal agency.

(E) The Administrator of General Services shall provide to the Committee on a reimbursable basis such administrative support services as the Committee may request.

(8) In carrying out its duties under this section, the Committee may promulgate and amend such rules, regulations, and procedures, and issue and amend such orders as it deems necessary.

(9) For the purpose of obtaining information necessary for the consideration of an application for an exemption under this section the Committee may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents.

(10) In no case shall any representative, including a representative of a member designated pursuant to paragraph (3)(G) of this subsection, be eligible to cast a vote on behalf of any member.

(f) REGULATIONS.—Not later than 90 days after the date of enactment of the Endangered Species Act Amendments of 1978, the Secretary shall promulgate regulations which set forth the form and manner in which applications for exemption shall be submitted to the Secretary and the information to be contained in such applications. Such regulations shall require that information submitted in an application by the head of any Federal agency with respect to any agency action include but not be limited to—

(1) a description of the consultation process carried out pursuant to subsection (a)(2) of this section between the head of the Federal agency and the Secretary; and

(2) a statement describing why such action cannot be altered or modified to conform with the requirements of subsection (a)(2) of this section.

(g) APPLICATION FOR EXEMPTION AND REPORT TO THE COMMITTEE.—(1) A Federal agency, the Governor of the State in which an agency action will occur, if any, or a permit or license applicant may apply to the Secretary for an exemption for an agency action of such agency if, after consultation under subsection (a)(2), the Secretary's opinion under subsection (b) indicates that the agency action would violate subsection (a)(2). An application for an exemption shall be considered initially by the Secretary in the manner provided for in this subsection, and shall be considered by the Committee for a final determination under subsection (h) after a report is made pursuant to paragraph (5). The applicant for an exemption shall be referred to as the "exemption applicant" in this section.

(2)(A) An exemption applicant shall submit a written application to the Secretary, in a form prescribed under subsection (f), not later than 90 days after the completion of the consultation process; except that, in the case of any agency action involving a permit or license applicant, such application shall be submitted not later than 90 days after the date on which the Federal agency concerned takes final agency action with respect to the issuance of the permit or license. For purposes of the preceding sentence, the term "final agency action" means (i) a disposition by an agency with respect to the issuance of a permit or license that is subject to administrative review, whether or not such disposition is subject to judicial review; or (ii) if administrative review is sought with respect to such disposition, the decision resulting after such review. Such application shall set forth the reasons why the exemption applicant considers that the agency action meets the requirements for an exemption under this subsection.

(B) Upon receipt of an application for exemption for an agency action under paragraph (1), the Secretary shall promptly (i) notify the Governor of each affected State, if any, as determined by the Secretary, and request the Governors so notified to recommend individuals to be appointed to the Endangered Species Committee for consideration of such application; and (ii) publish notice of receipt of the application in the Federal Register, including a summary of the information contained in the application and a description of the agency action with respect to which the application for exemption has been filed.

(3) The Secretary shall within 20 days after the receipt of an application for exemption, or within such other period of time as is mutually agreeable to the exemption applicant and the Secretary—

(A) determine that the Federal agency concerned and the exemption applicant have—

(i) carried out the consultation responsibilities described in subsection (a) in good faith and made a reasonable and responsible effort to develop and fairly consider modifications or reasonable and prudent alternatives to the proposed agency action which would not violate subsection (a)(2);

(ii) conducted any biological assessment required by subsection (c); and

(iii) to the extent determinable within the time provided herein, refrained from making any irreversible or irre-

trievable commitment of resources prohibited by subsection (d); or

(B) deny the application for exemption because the Federal agency concerned or the exemption applicant have not met the requirements set forth in subparagraph (A) (i), (ii), and (iii).

The denial of an application under subparagraph (B) shall be considered final agency action for purposes of chapter 7 of title 5, United States Code.

(4) If the Secretary determines that the Federal agency concerned and the exemption applicant have met the requirements set forth in paragraph (3)(A) (i), (ii) and (iii) he shall, in consultation with the Members of the Committee, hold a hearing on the application for exemption in accordance with sections 554, 555, and 556 (other than subsection (b) (1) and (2) thereof) of title 5, United States Code, and prepare the report to be submitted pursuant to paragraph (5).

(5) Within 140 days after making the determinations under paragraph (3) or within such other period of time as is mutually agreeable to the exemption applicant and the Secretary, the Secretary shall submit to the Committee a report discussing—

(A) the availability of reasonable and prudent alternatives to the agency action, and the nature and extent of the benefits of the agency action and of alternative courses of action consistent with conserving the species of the critical habitat;

(B) a summary of the evidence concerning whether or not the agency action is in the public interest and is of national or regional significance;

(C) appropriate reasonable mitigation and enhancement measures which should be considered by the Committee; and

(D) whether the Federal agency concerned and the exemption applicant refrained from making any irreversible or irretrievable commitment of resources prohibited by subsection (d).

(6) To the extent practicable within the time required for action under subsection (g) of this section, and except to the extent inconsistent with the requirements of this section, the consideration of any application for an exemption under this section and the conduct of any hearing under this subsection shall be in accordance with sections 554, 555, and 556 (other than subsection (b)(3) of section 556) of title 5, United States Code.

(7) Upon request of the Secretary, the head of any Federal agency is authorized to detail, on a nonreimbursable basis, any of the personnel of such agency to the Secretary to assist him in carrying out his duties under this section.

(8) All meetings and records resulting from activities pursuant to this subsection shall be open to the public.

(h) EXEMPTION.—(1) The Committee shall make a final determination whether or not to grant an exemption within 30 days after receiving the report of the Secretary pursuant to subsection (g)(5). The Committee shall grant an exemption from the requirements of subsection (a)(2) for an agency action if, by a vote of not less than five of its members voting in person—

(A) it determines on the record, based on the report of the Secretary, the record of the hearing held under subsection (g)(4), and on such other testimony or evidence as it may receive, that—

(i) there are no reasonable and prudent alternatives to the agency action;

(ii) the benefits of such action clearly outweigh the benefits of alternative courses of action consistent with conserving the species or its critical habitat, and such action is in the public interest;

(iii) the action is of regional or national significance; and

(iv) neither the Federal agency concerned nor the exemption applicant made any irreversible or irretrievable commitment of resources prohibited by subsection (d); and

(B) it establishes such reasonable mitigation and enhancement measures, including, but not limited to, live propagation, transplantation, and habitat acquisition and improvement, as are necessary and appropriate to minimize the adverse effects of the agency action upon the endangered species, threatened species, or critical habitat concerned.

Any final determination by Committee under this subsection shall be considered final agency action for purposes of chapter 7 of title 5 of the United States Code.

(2)(A) Except as provided in subparagraph (B), an exemption for an agency action granted under paragraph (1) shall constitute a permanent exemption with respect to all endangered or threatened species for the purposes of completing such agency action—

(i) regardless whether the species was identified in the biological assessment; and

(ii) only if a biological assessment has been conducted under subsection (c) with respect to such agency action.

(B) An exemption shall be permanent under subparagraph (A) unless—

(i) the Secretary finds, based on the best scientific and commercial data available, that such exemption would result in the extinction of a species that was not the subject of consultation under subsection (a)(2) or was not identified in any biological assessment conducted under subsection (c), and

(ii) the Committee determines within 60 days after the date of the Secretary's finding that the exemption should not be permanent.

If the Secretary makes a finding described in clause (i), the Committee shall meet with respect to the matter within 30 days after the date of the finding.

(i) REVIEW BY SECRETARY OF STATE.—Notwithstanding any other provision of this Act, the Committee shall be prohibited from considering for exemption any application made to it, if the Secretary of State, after a review of the proposed agency action and its potential implications, and after hearing, certifies, in writing, to the Committee within 60 days of any application made under this section that the granting of any such exemption and the carrying out of such action would be in violation of an international treaty obligation or other international obligation of the United States. The Secretary of State shall, at the time of such certification, publish a copy thereof in the Federal Register.

(j) Notwithstanding any other provision of this Act, the Committee shall grant an exemption for any agency action if the Secretary of Defense finds that such exemption is necessary for reasons of national security.

(k) SPECIAL PROVISIONS.—An exemption decision by the Committee under this section shall not be a major Federal action for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.): *Provided,* That an environmental impact statement which discusses the impacts upon endangered species or threatened species or their critical habitats shall have been previously prepared with respect to any agency action exempted by such order.

(l) COMMITTEE ORDERS.—(1) If the Committee determines under subsection (h) that an exemption should be granted with respect to any agency action, the Committee shall issue an order granting the exemption and specifying the mitigation and enhancement measures established pursuant to subsection (h) which shall be carried out and paid for by the exemption applicant in implementing the agency action. All necessary mitigation and enhancement measures shall be authorized prior to the implementing of the agency action and funded concurrently with all other project features.

(2) The applicant receiving such exemption shall include the costs of such mitigation and enhancement measures within the overall costs of continuing the proposed action. Notwithstanding the preceding sentence the costs of such measures shall not be treated as project costs for the purpose of computing benefit-cost or other ratios for the proposed action. Any applicant may request the Secretary to carry out such mitigation and enhancement measures. The costs incurred by the Secretary in carrying out any such measures shall be paid by the applicant receiving the exemption. No later than one year after the granting of an exemption, the exemption applicant shall submit to the Council on Environmental Quality a report describing its compliance with the mitigation and enhancement measures prescribed by this section. Such report shall be submitted annually until all such mitigation and enhancement measures have been completed. Notice of the public availability of such reports shall be published in the Federal Register by the Council on Environmental Quality.

(m) NOTICE.—The 60-day notice requirement of section 11(g) of this Act shall not apply with respect to review of any final determination of the Committee under subsection (h) of this section granting an exemption from the requirements of subsection (a)(2) of this section.

(n) JUDICIAL REVIEW.—Any person, as defined by section 3(13) of this Act, may obtain judicial review, under chapter 7 of title 5 of the United States Code, of any decision of the Endangered Species Committee under subsection (h) in the United States Court of Appeals for (1) any circuit wherein the agency action concerned will be, or is being, carried out, or (2) in any case in which the agency action will be, or is being, carried out outside of any circuit, the District of Columbia, by filing in such court within 90 days after the date of issuance of the decision, a written petition for review. A copy of such petition shall be transmitted by the clerk of the court to the Committee and the Committee shall file in the court the record in the proceeding, as provided in section 2112, of title 28,

United States Code. Attorneys designated by the Endangered Species Committee may appear for, and represent the Committee in any action for review under this subsection.

(o) EXEMPTION AS PROVIDING EXCEPTION ON TAKING OF ENDANGERED SPECIES.—Notwithstanding sections 1533(d) and 1538(a)(1)(B) and (C) of this title, sections 1371 and 1372 of this title, or any regulation promulgated to implement any such section—

(1) any action for which an exemption is granted under subsection (h) of this section shall not be considered to be a taking of any endangered species or threatened species with respect to any activity which is necessary to carry out such action; and

(2) any taking that is in compliance with the terms and conditions specified in a written statement provided under subsection (b)(4)(iv) of this section shall not be considered to be a prohibited taking of the species concerned.

(p) EXEMPTIONS IN PRESIDENTIALLY DECLARED DISASTER AREAS.—In any area which has been declared by the President to be a major disaster area under the Disaster Relief Act of 1974, the President is authorized to make the determinations required by subsections (g) and (h) of this section for any project for the repair or replacement of a public facility substantially as it existed prior to the disaster under section 401 or 402 of the Disaster Relief Act of 1974, and which the President determines (1) is necessary to prevent the recurrence of such a natural disaster and to reduce the potential loss of human life, and (2) to involve an emergency situation which does not allow the ordinary procedures of this section to be followed. Notwithstanding any other provision of this section, the Committee shall accept the determinations of the President under this subsection.

Document Separator

	301-320-3756 FAX
Allen, Jerry, Maj AF/XOOR	703-695-6766 FAX 39707
Atkin, Jen OSD Transition Office, Leg Liaison	703-697-5825
Callaghan, Mike, Col AF/XOOR	703-695-6766
Cantwell, Frank Atlantic Coastal Airlines	703-406-6703
Casey, Col Jim SAF/MII Mil Asst	703-695-6456 FAX 37568
Cirillo, Jim Neams Market	202-338-4694
DEFENSE CLEAN UP OFFICE COL THOMAS	703-697-9789
DiCamillo, Rick AF/XO Bases and Units	703-697-7356
Dittmer, Kurt, Lt Col AF/XO	703-693-8315
Goins, Bill OSD Environ (CFC)	703-756-5640
Griffin, Bobbie, Capt	703-697-3355
Haley, Mary AF/CECP	703-697-7763
Houck, Roger Battlle	703-516-7446
Jeeter, Bradford Dean Witter	703-790-7000
Kohlhass, Dan Director, Air Force Programs Louis Berger & Associates	202-331-7775
Leistner, Jim Home Paramount	703-361-8111
Marshall, James Russ, Col Director of Environmental Management Robins AFB, GA	DSN 468-1001
Mayfield, Col Wayne,"Mafe" AF/XOOR AF Base Realignment Office	703-695-6766 FAX 39707
Owendoff, James Col AFCE DERA	703=697-3445

The contents of this file is available in hardcopy. The maps are to large to scan.