



United States Department of the Interior

FISH AND WILDLIFE SERVICE
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In Reply Refer To:
02ETCC00-2012-F-0186-R001

May 1, 2023

Mr. Matthew Thompson
1 Rocket Lane
Hawthorne, CA 90250

Dear Mr. Thompson:

In a meeting on April 17, 2023, SpaceX confirmed their Marine Division is currently handling the operation of a hovercraft to transport SpaceX staff to and from the SpaceX production and manufacturing site and has been in use since August 2022. The U.S. Fish and Wildlife Service's (Service) main concerns relate to federally listed species pursuant to the Endangered Species Act of 1973, as amended (ESA), ~~and a recommendation for a permit.~~

Commented [ACC1]: So is this a separate operation from Tom Byrd? Isn't that who we have been corresponding with on hovercraft operations?

South Bay remains a globally important shorebird area and is designated a Texas Coastal Preserve. Its habitats, like the wind-tidal flats, provide feeding, resting, and wintering habitat for numerous types of migratory bird species as well as threatened and endangered species such as the piping plover (*Charadrius melodus*) and red knot (*Calidris canutus*). The northern aplomado falcon (*Falco femoralis septentrionalis*), ocelot (*Leopardus pardalis*), Gulf coast jaguarundi (*Puma yagouaroundi cacomitli*), Kemp's ridley sea turtle (*Lepidochelys kempii*), hawksbill sea turtle (*Eretmochelys imbricata*), leatherback sea turtle (*Dermochelys coriacea*), loggerhead sea turtle (*Caretta caretta*), and green sea turtle (*Chelonia mydas*) may be found on nearby habitats. South Bay is also within designated piping plover critical habitat unit TX-1 and proposed red knot designated critical habitat unit TX-11. Because of the importance of the area to listed species, we are requesting a meeting to discuss the hovercraft operation's effects and additional conservation measures to minimize or avoid possible "take" of listed species, and habitats. Under the ESA, the term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Additionally, we wanted to review options for hovercraft operation without potential legal liabilities under the ESA.

On February 18, 2023, a biologist shared several videos of a hovercraft traveling across South Bay and near the SpaceX production site. In the videos, shorebirds and other waterbirds were flushing within close range of the hovercraft in motion. As stated previously, South Bay is habitat for the threatened piping plover and red knot and within designated critical habitat for the

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pipin plover and proposed critical habitat for the red knot. If red knots or pipin plovers were flushed during the operation of the hovercraft and it is happening 8 times a day, 5 days a week, this could be considered take in the form of harassment of listed species.

There are two processes available to allow projects to build and operate while affecting and/or taking listed species and their habitats. The first applies if there is federal involvement. Section 7 of the ESA requires Federal agencies to promote the conservation purposes of the ESA and to consult with the Service and National Marine Fisheries Service (NMFS), as appropriate, to ensure that effects of actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of listed species. The Federal Aviation Administration (FAA) has stated the proposed hovercraft operation is not considered part of the FAA license for the launch site. **It is not clear if the hovercraft operation will require other federal permits or funding. If so, then a section 7 consultation with the Service will be required.**

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The second process for ESA coverage for private activities on private property is obtaining a permit under section 10(a)(1)(B) of the ESA to allow take of listed species and their habitat. Obtaining this permit is voluntary and requires a habitat conservation plan (HCP) along with mitigation to the maximum extent practical in perpetuity. The benefits of an HCP for the permittee are that after receiving a permit for activities that would otherwise result in the unlawful take of listed species, they can move forward with their project having the assurance that they will not be in violation of the ESA.

If there is no federal nexus for the hovercraft operations, we recommend obtaining a voluntary section 10(a)(1)(B) permit, which requires an HCP along with mitigation to the maximum extent practical in perpetuity. The benefit of an HCP is after receiving a permit for activities that would otherwise result in the unlawful take of listed species, a project has assurance that they will not be in violation of the ESA.

Commented [ACC2]: Seems like we need to put this in here as a disclaimer since we are unsure of the permitting or funding for the hovercraft per the highlighted text above.

If you have any questions or concerns about the consultation process in general, please contact Mary Orms at mary_orms@fws.gov, 281-271-2162.

Sincerely,

Charles Ardizzone
Field Supervisor

cc: Chris Perez, LRGVNR