



United States Department of the Interior



FISH AND WILDLIFE SERVICE
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In Reply Refer To:
2023-0009128

October 27, 2022

Mr. Shyamal Patel
Senior Director
Starship Operations – SpaceX
1 Rocket Road
Brownsville, Texas 78521

Dear Mr. Patel:

The U.S. Fish and Wildlife Service (Service) is seeking clarification on proposed rocket testing at SpaceX's Massey Way location, 1 Massey Way, Brownsville, Cameron County, TX. Our concerns relate to federally listed species pursuant to the Endangered Species Act of 1973, as amended (ESA), and permitting take of listed species in the area as described below.

Federal Trust Species Concerns

SpaceX acquired the Massey Way Gun Range near the intersection of State Highway 4 (SH 4) and Massey Way. The property lies approximately 0.81 miles from the intersection, traveling south on Massey Way, surrounded by a resaca and bordered to the south by the Rio Grande and Mexico border. To the north, northeast, and east lie the Lower Rio Grande Valley National Wildlife Refuge, Boca Chica Wildlife Refuge, South Bay, Brazos Island State Park, Boca Chica Beach, and Las Palomas Wildlife Management Area. To the west of the intersection is Palmito Hill Battlefield Memorial which is managed by the Service.

SpaceX had originally stated they would use the property for storage; however, plans are being discussed to manufacture and/or test rocket engines at this location. The Service does not have any specifics on when, how, or to what degree testing will be performed at the site. Therefore, the Service looked at SpaceX's McGregor facility, where each new engine is tested. Massey Way may not be as large of an operation as McGregor, but noise, vibration, water discharge, and light impacts could be the similar, if not greater, due to its location. Thus, this testing could affect several species listed as threatened and endangered that occur in the area.

The immediate Massey Way vicinity contains known occupied habitat for the federally listed piping plover, red knot, designated piping plover critical habitat unit TX-1, and proposed red knot designated habitat unit TX-11. Northern aplomado falcon, and five species of sea turtles,

can be found in the area, as well as good quality habitat for the ocelot, and Gulf coast jaguarundi. For these reasons, the Service is concerned that tank and rocket testing activities at Massey Way may take listed species and their habitat. We would like to meet to discuss the proposed project and conservation measures that could minimize and avoid the possibility of take of listed species and habitats, as well as review specific options to allow the operation without potential legal liabilities.

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 testing at Massey Way is not considered part of the FAA license for the launch site. It is not clear if the operation will require other federal permits such as a Special Use Permit from the Service's Refuge Division. If so, then a section 7 consultation with the Service will be required.

The second process for ESA compliance for private activities on private property is to obtain 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 you have any questions or concerns about the consultation process in general, please contact Mary Orms at mary_orms@fws.gov, 361-225-7315.

Sincerely,

Charles Ardizzone
Field Supervisor

Mr. Shyamal Patel

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cc: Chris Perez, Lower Rio Grande Valley National Wildlife Refuge