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LAND
STATE PARKS

March 31, 2009

Vice Admiral Bruce E. MacDonald
Judge Advocate General
Washington Navy Yard
1322 Patterson Avenue SE Suite 3000
Washington, D.C. 20374-5066

RE: U.S.S. Port Royal Grounding Incident

Dear Vice Admiral MacDonald:

The purpose of this letter is to identify the forms of substantial damage that have been done to the coral reef that bore the brunt of the grounding of the U.S.S. Port Royal last month and to invite your attention to measures which must be undertaken in a timely fashion to avoid the very real threat of further damage involving the impact summer swells will pose because of the widespread debris caused by the grounding.

We are following up on our prior meeting and letter and to document the State of Hawaii's intent to make a claim for damage caused by the U.S.S. Port Royal and its extraction from the reef fronting the Honolulu Airport's Reef Runway. Included within that claim will be, amongst others, claims for the cost of emergency mitigation for immediate damage, the value of the coral damaged by the grounding of the U.S.S. Port Royal and associated attempts to free the vessel, and secondary and tertiary damage which is on-going and which will continue until measures are taken to mitigate that damage.

The State intends to seek both mitigation and restoration assistance from the U.S. Navy and damages for loss of natural resources. At this time the State is only requesting assistance from the U.S. Navy for the purpose of minimizing the amount of primary damage resulting from the grounding incident and to prevent potentially devastating secondary damage that could be aggravated by the upcoming summer swells.

BACKGROUND:

On February 5, 2009, the U.S.S. Port Royal ran aground atop the coral reef fronting the Honolulu Airport's Reef Runway in depths of approximately fourteen to twenty-two feet. The coral reef surrounding the reef runway is clearly marked on all navigational charts. The vessel was lodged atop the reef for three full days during which several attempts were made to free the vessel. Reports indicate that these attempts involved various other vessels attempting to tug the vessel free using tow lines. The vessel was finally removed on February 9, 2009.

On March 5, 2009, representatives from the State of Hawaii Department of Land and Natural Resources (DLNR), Department of Health (DOH), the State of Hawaii's expert witnesses, and the Department of the Attorney General, as well as representatives from the U.S. Navy, the U.S. Navy's consultants, CSA International, Inc. (CSA), the U.S. Department of Justice, the U.S. Fish and Wildlife Services (USFWS), and the National Oceanic and Atmospheric Administration (NOAA) met specifically for the purpose of sharing data and distributing information garnered in previous natural resource assessment activities. Prior to the meeting the State provided the U.S. Navy with a preliminary list of information the State was seeking from the U.S. Navy to aid in assessment. At the meeting, the State provided the U.S. Navy with fifteen CDs of dive photos taken by the State, a CD of measurements of the main scar, and several other related documents.

On March 10, 2009, the State of Hawaii sent your office a letter memorializing the meeting held on March 5, 2009. In that letter we requested that the U.S. Navy provide the State with information regarding the exact location of the U.S.S. Port Royal when it struck the reef until it was removed, the positions of the tug boats during their removal attempts, and the location of the anchor chains from the time they were cut until they were removed off site. This request was made to allow the State to determine the area and extent of the damage caused by the U.S.S. Port Royal. The State's experts need the information in order to determine the extent of the injury and the scope of the ecological damages. To date we have not received a response or information to the March 10, 2009, letter. By this letter we are renewing our request for data and information previously requested in the State's March 10, 2009, letter.

PRIMARY DAMAGE:

The area where the U.S.S. Port Royal ran aground was a complex spur and groove fringing reef with a relatively high biodiversity of live coral and live rock. Numerous printed resources and the evaluation by various coral reef biologists concur that this area was one of the finest remaining reef habitats around the island of Oahu.

The grounding site has been mapped and injuries have been documented by the State, its expert witnesses, USFWS, NOAA, and CSA. All parties are in agreement as to the location of the "main injury scar." The main injury scar covers an area of approximately 8,000 square meters. The documentation of the full area and extent of the damage associated with the grounding has not been completed, but it is estimated to cover an area of approximately 25,000 to 40,000 square meters (approximately 6-10 acres). These estimates are preliminary and will be modified based on analysis of State, USFWS, and NOAA data.

The State of Hawaii and its expert witnesses, USFWS, and NOAA have found evidence of extensive primary damage to the reef structure, coral, and live rock. CSA has also concurred in this assessment. The damage was caused during various elements associated with this grounding including the primary impact site, the vessel in-bound and out-bound scars, damage caused by the anchor chain and tow boat cables, and possible groundings of tug boats.

This primary damage has resulted in the loss of many valuable live coral specimens as well as the loss of turtle habitat. At the time of the grounding, the DLNR informed the U.S. Navy that the area contained at least three known habitats for green sea turtles, *Chelonia mydas*, listed as an endangered species pursuant to the Endangered Species Act. Preliminary surveys by DLNR suggest that resting and foraging habitat for the green sea turtle may have been affected by the grounding and the response activities.

SECONDARY DAMAGE:

All parties agree that there is a significant amount of coral rubble that was caused by the grounding. This rubble can be the source of long term secondary damage to the area. The concern regarding secondary damage is that the current injury site will be further degraded and the surrounding reef will sustain additional significant damage, greatly expanding the injury site, as a result of the movement of rubble that

was created by the grounding incident. There is an immediate need to address this situation to avoid further damage that is occurring and may increase exponentially during the upcoming summer swell season. The rubble, and associated damage, is distinguishable by size.

- A. Small to medium sized rubble: Small to medium sized rubble created by the incident appears to be moving with waves and currents into areas relatively un-impacted by the grounding incident. Your expert, CSA, noted that there are large areas of rubble fields, in some places up to two meters deep, creating a "burial effect." Strong concern exists over the need to either remove or stabilize this rubble as soon as possible and prior to a large surge or wave event.
- B. Large sized rubble: Extremely large pieces of dislodged reef substrate and coral colonies have been noted lying free atop the bottom substrate. These large pieces of substrate need to be stabilized prior to the summer swell conditions which would serve to move these pieces around creating a bulldozer effect.

TERTIARY DAMAGE:

The State's experience with other major impact sites has shown that aquatic invasive species (AIS) can quickly invade open and exposed substrate, using the newly-settled area as a base to expand outwards into un-impacted areas. Algal blooms, by both alien and native algal species, can quickly colonize stressed habitats. The algal bloom in this area has rapidly increased, possibly due to the seven thousand gallons of sewage released onto the reef by the U.S.S. Port Royal during the extraction efforts. Divers and CSA have noted that the algae is spreading quickly in both quantity and density, forming a blanketing effect over various areas of the site.

Large amounts of the U.S.S. Port Royal's bottom paint was scraped off at the impact site. Concerns were raised by the DLNR, DOH, and the public about any known biological or ecological concerns about the paint. Randy Vavra agreed to provide a toxicity report for the paint to Alex Wong from the State of Hawaii Department of Health. The State has not yet received any information regarding the toxicity of the paint.

IMMEDIATE ACTION BY THE U.S. NAVY:

The State has not yet completed the process of analyzing all data collected. The State will be preparing a Habitat Equivalency Analysis (HEA) based on the assessment results. The HEA will include proposed compensatory mitigation and restoration projects. Additionally, the State will prepare a Compensatory Mitigation and Restoration Package, to include monitoring of the recovery at the site. However, the Navy must take immediate action to minimize the primary damage done and to reduce the amount of secondary damage in this area, without waiting for the State to complete the HEA assessment.

There is an immediate need to rescue the injured coral and remove the rubble which is and will continue to cause increasing secondary damage. While the Navy did conduct some immediate removal of coral with the assistance of our agency in the aftermath of the grounding, our understanding is the Navy has now discontinued those efforts. These efforts need to be renewed.

There is a critical need for the U.S. Navy to mitigate the damage which has occurred, which continues to occur, and which will get worse with the upcoming south summer swell. We urge the U.S. Navy to commit appropriate resources to rescue disturbed or destroyed coral, remove or stabilize rubble, and protect loose live coral that has resulted from this incident. Such response should follow any and all emergency permitting requirements and must be coordinated with the State DLNR to minimize further damage to public trust resources.

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Please notify the State no later than Friday, April 3, 2009, if the U.S. Navy does not intend to engage in the rescue of disturbed or destroyed coral and the mitigation of the secondary and tertiary damage resulting from the grounding incident. If the U.S. Navy does not institute mitigation measures, the State may undertake actions to mitigate damages while reserving the right to recover all costs from the Navy for such efforts. We are compelled to inform you that due to the State's current economic situation, it is unlikely that the State would be able to fully mitigate the situation to prevent further damage from occurring, and we will pursue recovery for secondary and tertiary damage caused by lack of mitigation efforts by the Navy.

Although the State also intends to seek compensation for any damage caused by the grounding incident, including primary, secondary, and tertiary damage, and the cost of assessment and mitigation activities undertaken in response to this incident, our first priority remains protection of the natural resources and the remaining coral and live rock in this area. We are willing to work with the U.S. Navy to achieve the mutual goal of protection of the natural resources and minimization of ongoing damage to the same resources.

Very truly yours,



Laura H. Thielen
Chairperson, Board of Land and Natural Resources

c: Governor Linda Lingle
Gary Locke, U.S. Secretary of Commerce
Ken L. Salazar, U.S. Secretary of the Interior
Rear Admiral Joseph A. Walsh, Deputy COMPACFLT
Commander Robb Hyde, Deputy Judge Advocate General
R. Michael Underhill, U.S. Dept. of Justice
Captain Jorge P. Rios, P.E., Civil Engineer Corps, U.S. Navy
Michael Molina, U.S. Fish and Wildlife Service
Gerry Davis, Nat'l Oceanic and Atmospheric Administration
Laurence K. Lau, Dept. of Health, State of Hawaii